BRAZILIAN PERCEPTIONS OF THE EU AND BRAZIL
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INTRODUCTION

This collected volume is the result of the research undertaken within the Young Researcher Seminar book project, which is core to the Brazil-Caeni-EU Project, a three year (2015 to 2018) Project of the Institute for International Relations (IRI) of the University of São Paulo, co-financed by the European Union’s Erasmus+ Programme, in the form of Jean Monnet Support to Institutions project funding.

The 10 chapters of this book are drawn from the research and presentation of nineteen young researchers from different states and universities within Brazil, spanning diverse disciplines and exploring themes arising in the context of the EU-Brazil Strategic Partnership, which reached its ten year anniversary in 2017. Disciplines participating in this seminar include social and political sciences, international relations and international affairs and development, law, communications as well as environmental management and sciences, languages and literature. This seminar proceeded in English in order to help establish networks beyond Brazil, and aims to set the foundations for identifying and stimulating future research questions and initiatives arising in the context of research on Brazil-EU relations today.

Reflecting the multi-disciplinary reach of the Call for Papers of August 2016, the Young Researcher Seminar of February 2017 presented contributions tackling diverse issues ranging from trends in Brazilian foreign policy rhetoric, topical trade and environment matters, multi-lateralism and bilateralism in the EU-Brazil relationship, the significance of knowledge mobility in Brazil-EU relations, EU external relations, as well as analysis of policy and regulatory instruments by young environmental managers and scientists in addition to young lawyers, relating to the environment, climate change and energy, cross-cutting horizontal issues dealing with eco-system services in forestry/agriculture and payment for ecosystem services, the traceability issues in the sharing of genetic resources, and common challenges for translating scientific and regulatory innovations into policy concerning waste electronic and electrical equipment (WEEE) and construction materials.
The ten contributions contained in this collected volume are arranged into two parts. The first part is entitled “Brazilian Perceptions of Brazil’s relations with the EU” and the second part is dedicated to comparative legal and policy analysis, by lawyers as well as environmental managers on topics under the heading of climate change, energy, ecosystems services and the traceability and exchange of genetic resources.

**COMMENT ON EU-Brazil Relations today**

The first chapter brings together contributions from two Master Graduates in International Relations (PPGRI) from State University of Rio de Janeiro (UERJ), Rafaela Marinho Silva and Thiago Mattos Moreira, who explore the implications of the 2016 inaugural speech of Brazil’s Foreign Minister, José Serra, announcing the “modernization” of Brazil’s foreign policy and the implications for future EU-Brazil relations. The authors have undertaken a substantive content analysis of each Foreign Minister’s inaugural or farewell speeches over the last 14 years in order to interpret the value of these diplomatic speeches in terms of their political relevance. The content analysis follows Discourse Analytical Approaches (DAAs), a booming methodology in International Relations (IR), and specifically that of Lakatos and Marconi (2003). The authors hone in on direct references to the European Union (or obvious lacks thereof) and specific high profile practice examples – business transactions or physical political presence – in order to test this ideational perception of the Brazil-EU relationship. They conclude that, “Today’s new administration represents a fresh overture towards a different and more progressive relationship for Brazil and the EU”, while highlighting the lack of progress in EU-MERCOSUR trade arrangements as weakening future viability and deepening of the Brazil-EU bilateral relationship.

The second chapter is the work of two Master Graduates from the Departament of Political Science of the University of Sao Paulo. In order to examine the analysis by key media outlets in Brazil of EU-Brazil relations since the Brexit referendum, the authors have collected data from the three largest national newspapers in Brazil – *O Globo* (193,079 units), *Folha*
Part 1. Brazilian perceptions of the EU and Brazil’s relations with it

de S. Paulo (189.254) and O Estado de S. Paulo (157.761) – following a methodology that allows for quantitative and qualitative analysis. They highlight the scarcity of analysis of the impact of Brexit on Brazil’s relations with the European Union from the perspective of the media. Indeed, the authors conclude that the Brexit tensions between the UK and the EU does not impact on these outlets’ approaches to EU-Brazil relations, but rather remains more a matter of concern for the purposes of potential Brazil-UK relations in a post-Brexit scenario. Also interesting among their findings is the lack of coverage of EU-Brazil relations beyond the economic concerns, including MERCOSUR, and the lack of any common vision by these three outlets of Brazil’s relations with the EU.

In Chapter Three, Lívia Radaeski who obtained her Bachelor degree in International Relations from the Pontificate Catholic University (PUC) of São Paulo in 2014, makes an impressive comparison of the application of the good neighbourliness principle within the EU and South America in the form of MERCOSUR. In an impressive coverage of primary sources and commentary, the author draws on the application of good neighbourliness in the EU regional integration context, and goes on to explore it in comparison with the South American integration process. The lack of a codification of the concept in international law highlights the difficulties of defining and applying the principle in customary law and practice. She highlights to loosenes of the principle and Brazil and MERCOSUR relations by comparison with the depth of application of this principle within the EU and in EU external Relations. Nevertheless, Radaeski insists on the fact that the good neighbourliness principle is essential to the South American experience of MERCOSUR, and explores the many ways that the members further the principles through their foreign policies and cooperation initiatives, drawing on lessons that can be drawn from the European experience.

Fernão Kastrup graduated in International Relations at the Pontificate Catholic University (PUC) of São Paulo in 2014. In Chapter Four he takes up the challenge of making a comparative exploration of how Brazil and the UK safeguard and promoted fundamental rights, against the backdrop of EU provision for fundamental rights, based on the emergence of new social movements: in Brazil the “Journeys of June 2013”, and; in the UK, the “Occupy” movement, in the winter of 2010/2011. These examples exemplify
how in recent years, public outreach for values becomes clear in many and very new ways. Concerned specifically with access to basic rights and social goods (goods that generate indivisible advantages to the benefit of all), the State violence wielded against these social movements is discussed against constitutional rights and obligations, including in international relations. Kastrup highlights the contradictions in the application of rights in these cases of newly emerging democratic and social movements. Kastrup’s analytical framework is based on Guillermo O’Donnel’s theory on concessions to the people in order to refrain social movements from Authoritarian Bureaucracy (2008) and Anselm Jappe’s ideas on how the State manipulates and uses violence against social movements, from Violence, what use is it? (2009). In addition to the importance of political will to give effect to these rights, Kastrup insists on the necessity of enabling independent institutions promote and safeguard these democratic values.

On the topic of the EU Global Strategy and Russia, in Chapter Five Caio Duarte – an undergraduate working on legal philosophy and international law here at the Law School of the University of Sao Paulo – grapples with one of the EU’s main challenges on the European continent. With on the ground research in Moscow financed by the Institute for Global Leadership at Tufts University, Duarte sets out to provide us with:

“a grasp of how historical content and a narrative are present in Russian policy-making to this day, as loci of memory, that is, collective constructions that alter or contrast with a historical and political narrative from both sides, and how those issues relate to the current European Union Global Strategy and might affect policy making in the field”.

He explores core themes of the EUGS against age-old recurring themes that have characterised Europe-Moscow relations for centuries, tracing them to the current day. Guiding themes of the EUGS of public diplomacy, how to link up internal and external policies, how to ensure cooperation in security and defence, and how to bring about resilience on regions bordering the EU. Asserting that “at home the Kremlin uses all means available to retain control and stability in separatist regions such as Chechnya, abroad it is a great supporter of ethnic-oriented separatism: Transnistria in Moldova, Abkhazia in Georgia and the Crimea”, Duarte provides valuable insights in to the many threads that make up the seemingly intransigent knot that makes
up EU-Moscow relations today, and goes on present certain potential healing factors of détente between Brussels and Moscow, and in his conclusions, going so far as to suggest that “resilience might require shared affection amongst the peoples”.

In Chapter Six, Joyce Pereira de Almeida, holding her Master in Letters from the University of São Paulo, approaches the matter of Brazilian perceptions of the EU from the perspective of knowledge mobility. The EU-Brazil partnership in science and technology tems involves highly skilled migration and bring mutually beneficial benefits. The agreements and dialogues that have taken place between the partners are analyzed through the number of exchange students in research (based in double degrees) within the University of São Paulo together with EU universities. She shows how the cooperation has increased continuously and intensified progressively to the present day, contributing to the economic partnership as well common cultural and human development goals, and all this in spite of asymmetries in the partnership and the difficulties facing both partners in furthering this partnership.

The final four Chapters belong to Part Two, which is dedication to comparative law and policy analysis of EU and Brazil relations in four fields of environmental and climate change policy and law: the energy matrix; Strategic Environmental Assessment for renewable energies; the traceability and exchange of genetic resources, and; changes in the Brazilian New Forest Code and how it impacts on greenhouse gas emissions and contributes to Brazil’s commitments under the World Climate Conference (COP 23) in Bonn (2017).

Patrícia Bianchi, currently post-doctoral research at the University of Sao Paulo, in Chapter 7, makes a comparative analysis of the obstacles and challenges facing Brazil and the EU in terms of the legal and political aspects of the evolution of the energy matrix. This exercise focuses on how guiding principles and themes are given effect, the functioning of the governance and supporting institutional arrangements, how the two partners approach the shift in the energy matrix away from fossil fuels and also, how these two international partners address climate change, at the national levels as well as in their international relations. In spite of the differences between Brazil and the EU’s energy matrixes, Bianchi is recommends greater joint efforts
in the areas of energy efficiency and climate change, especially through investments in public policies and strategies aimed at the evolution of the national energy matrix towards the adoption of “clean” sources that are socio-environmental benefit.

In Chapter 8, Paula Galbiatti Silveira takes a comparative approach to assessing Strategic Environmental Assessment (SEA) for renewable energies in Brazil and the EU, necessarily also taking into account the Environmental Impact Assessment (EIA). Silveira first graduated with her Bachelor of Laws by the Federal University of Mato Grosso, Brazil, and received her Master of Laws at the Federal University of Santa Catarina, Brazil. The approaches in Brazil and the EU differ in important ways: in Brazil, the SEA lacks legal form and important challenges for its development remain underexamined, such as how to incorporate socio-environmental impacts, notably indigenous and traditional communities’ territories. She also identifies weakness in the EU instrument from the point of view of renewable energies. Silveira concludes that the SEA offers a considerable potential to support and improve the environmental and social impacts if renewable energy projects in Brazil, including the involvement of society in the process of sustainable development, particularly climate change mitigation.

In Chapter Nine, Samara Martins Silva who is an Environmental Manager and Master of Science in Forest Resources (ESALQ) here at the University of Sao Paulo, and Fernando Paiva Scardua, a Forest Engineer and Professor at University of Brazilia (UnB), explore the potential of Brazil’s New Forest Code to reduce greenhouse gas emissions, and while highlighting Brazil’s global leadership on this front of climate change, provide concrete proposals for improving the forest code and making control mechanisms more effective, and to create incentives for forest conservation. The implementation of the valuation of ecosystem services by the PES, REDD+ and CRAs, among other mechanisms, are some of the possible governmental strategies to promote and warrant that the future targets for GHG reduction are met, along the lines of the SDGs.

The final chapter, Chapter Ten, is the work of Vanessa Lemgruber, who holds her Masters in Environmental Law from the Escola Superior Dom Helder Câmara, and graduated in Law from Universidade Federal de Minas Gerais, Brazil. Her research addresses the phenomenon of “biopiracy” – the misappropriation of biodiversity resources with or without access
to associated traditional knowledge – encouraged by the development of biotechnology and a growing green market, where maximum profits are sought from of natural resources, encouraging the plundering of nature and making access to existing genetic variability irregular. Lemgruber explores the frameworks for monitoring and traceability of genetic resources under the United Nations Convention on Biological Diversity (CDB), the Nagoya Protocol and legal measures in Brazil and EU regulations. The objective is to identify the gaps in Access to Genetic Resources and Benefit Sharing (ABS) legislation between EU Member States and Brazil, and to identify regulatory and policy solutions. She promotes the use of a persistent global unique identifiers for long-term ABS tracking, as well as the simplification of existing procedures so as to maximize benefits to Brazil, traditional communities as well as EU partners. Brazil’s ratification of the Nagoya Protocol necessary in order to combat biopiracy.

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PART 1. BRAZILIAN PERCEPTIONS OF THE EU AND BRAZIL’S RELATIONS WITH IT
Chapter 1

Inaugural Speeches of Brazil’s Ministers for Foreign Affairs and Brazil-EU relations: Reading Between the Guideline

Rafaela Marinho Silva and Thiago Mattos Moreira*

1. Introduction

In his inaugural speech as Brazil’s Foreign Minister in 2016, José Serra announced the “modernization” of Brazil’s foreign policy. This paper sets out to test whether there has been any consequent rupture in Brazilian Foreign Policy perception towards the EU? Through the prism of an analysis of the twelve inauguration and farewell speeches of the six previous Ministers of Foreign Affairs over the last fourteen years, conclusions are drawn on the perceptions under their respective administrations within Itamaraty (Brazil’s Ministry for Foreign Affairs). In so doing, this article aims to identify ruptures and continuities in Brazilian foreign policy discourse vis-à-vis its relations with the EU, reflecting on possible outcomes. It emerges that Itamaraty’s ideational perception of a Globalist/Universalist comprehension of Brazil’s foreign policy that developed during the early years of the Brazilian workers’ party (translated from the Portuguese, Partido dos Trabalhadores and abbreviated as “PT”) and which had characterized Celso Amorim’s leadership of Itamaraty from 2003 to 2011, had already been undergoing an important shift since before Serra’s appointment in 2016. This shift will necessarily impact on the EU-Brazil relationship.

In Brazil, on 18 May 2016, amid what has been labeled by mainstream national and international media as one of “Brazil’s biggest institutional crises”¹, for an important moment all media attention turned towards the

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Itamaraty headquarters. That day, José Serra took over the Ministry of Foreign Affairs as a direct consequence of the impeachment of Dilma Rousseff, Brazil’s President at the time, who had been elected in 2014. Leader of the center-right “PSDB” party (Party of Brazilian Social Democracy, translated from the Portuguese), he ran for the Presidency competing against both Presidents Lula da Silva and Rousseff, who took office in the 2002 and 2010 elections respectively. Rousseff’s impeachment resulted in Michel Temer – Rousseff’s Vice-President and leader of a center-right party (Party of the Brazilian Democratic Movement, or ‘Partido do Movimento Democrático Brasileiro’ on the original Portuguese or PMDB) – being appointed Interim President. In his inaugural speech, Serra promised the “modernization” of Brazil’s International Affairs and to “get rid of any ideological aspects” of its Foreign Policy: a clear reference to the 13 years of the Workers’ Party (PT) leadership of the Brazilian State and its external affairs.

The speech caused some turmoil, with certain analysts pointing out that Serra’s administration would Union and Japan, to the detriment of the close relationship that Lula, Dilma and their respective ministers had built over more than a decade with actors such as the Latin American, African and BRICS countries. However others argued that the new guidelines would produce a more “rational” foreign policy and help the Brazilian economy to present better results after two consecutive years of almost total stagnation. Serra was forced to resign on health grounds only some nine months later but echoes of his speech have lingered in Itamaraty circles, and his successor, Aloysio Nunes, has vowed to uphold Serra’s brief legacy even in the face of the tides of internal political crises. To explain, Nunes is also a career politician and from the same party as Serra, and was selected by Temer.

The methodology developed for this work started from prioritizing official speeches. The number of speeches that a political actor produces is massive; especially those dealing with high-level diplomatic praxis, and

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3 STUENKEL, Oliver “Brazil: Towards a New Foreign Policy?” <http://www.postwesternworld.com/2016/05/20/brazil-towards-foreign/> Accessed on 06/05/2016.
it would be near impossible to absorb all this production on a coherent and comprehensive reading. Thus, the prism of the inauguration and farewell speeches of the Brazilian Ministers of Foreign Affairs offer a workable basis for this analysis, as much for strategic and analytic reasons, and more particularly:

1) inaugural and farewell speeches are given on a regular basis respecting a format that facilitates comparative analyses.

2) they are expressly designed by internal institutional tradition of Itamaraty to give form and direction to the goals and ideals of Brazilian foreign policy during each respective administration, how it is funded and also, to provide a retrospective of each Ministers own perception of victories and regrets.4

3) Serra’s 2016 speech has had repercussions both within Brazil and abroad, making it useful to compare it to previous speeches in order to ascertain whether there is indeed any real substance to the perception of ‘radical changes’ emanating from such a relatively short pronunciation.

2. Understanding the study options

“Ideas matter” is the celebrated phrase by Robert Keohane and Judith Goldstein (1993) and is as true in Brazil as it is anywhere else. If that was not the case, the matter of ideology for example, would not be so central to debate as a tool of politics in general, making it unconvincing for ideology-free administration such as Itamaraty to dismiss it as such. The problem is that ideas are not as easy to identify and quantify as, say, commercial transactions or the number of nuclear weapons a State may have. Rather, ideas can be ethereal and pervasive. Speech or discourse analyses, provides an alternative for comprehending the ideational space in which a political actor perceives itself and their peers.

4 Celso Amorim himself points out the relevance of those speeches as a guide to Brazil’s foreign policy when, in the occasion of his farewell ceremony, he claims: “Whoever has the patience or the apathy to read the inaugural speech that I made – (…) - will see we’ve done what we promised.”
But, what is it in concrete terms? Since the 1990s, the application of Discourse Analytical Approaches (DAAs) has boomed in International Relations (IR). DAAs suggest that ‘things’, understood to include “objects, subjects, states, living beings, and material structures” are given meaning and endowed with a particular identity” through language (Hansen, 2006). Accordingly, discourse is seen as an inescapable medium through which we make sense of and reproduce in reality. Even more, they challenge the neutrality of science. In this sense, it enables us to be critical even of empiricist perspectives (Ashley and Walker, 1990). Those that think of discourse as something given, may easily fall into its traps.

Therefore, diverse DAAs have criticized the ways in which “dominant forms of representations in International Relations participate in and serve to reproduce the very realities they claim only to explain” (Laffey, 2000). In other words, such discourse creates a reality where the political can operate. Speeches are, of course, just one manifestation of discourse and a source of ideational matter. There are multiples techniques of analyzing a discourse/speech by highlighting different linguistic elements of it. It is a matter of the analyst’s subjective choice as to which interpretations of the texts should be brought to the readers’ attention, and also of the material data to which it should be compared.

The methodology follows the principles elaborated by Lakatos and Marconi (2003), undertaking a substantive content analysis of each Minister’s inaugural or farewell speeches in order to interpret the value of these diplomatic speeches in terms of their political relevance. To do so, the authors first explain the motivation and meaning behind each of these diplomatic speeches and their (historical) context, and then elaborate on their consequences in terms of the proliferation of ideas and their impacts, while all the while paying attention to the limits of that intention.

As for EU-Brazil relations specifically, any direct reference to the European Union (or obvious lack thereof) has been identified for each speech, together with key terms associated with that reference. Topics that are of high profile relevance to Brazil-EU interaction are picked out, also in relation the literature. In this way, specific subjects – such as business transactions or physical political presence – are identified as concrete examples in practice, against which this ideational perception of the Brazil-EU relationship can
be tested. Additionally, given the typically idiosyncratic character of political speeches, a brief biography of each of the Foreign Ministers concerned is provided, which gives a certain depth to the interpretation of their ideals and goals. A tentative timeline of the role played by the European Union within Brazil’s ideational understanding of the international system is provided, starting from the initial election of the PT in 2003 and leading up until 2017. The below chart explains our findings as they emerge in subsequent sections.

**Timeline of Brazilian Ministers of Foreign Affairs***

This timeline aims to provide a sense of the priority dedicated to the European Union in the ideational discourse of Brazilian Ministry of Foreign Affairs
3. Inauguration and farewell speeches analysis

3.1. Celso Amorim: Respect and Confrontation

The first speech analyzed in this work was given by Celso Amorim, the Minister of Foreign Affairs under Lula’s government, during eight years from 2003 to 2011. A career diplomat, who served as Chancellor/Minister of Foreign Affairs twice, both before and after the era of the PT, his first tenure was in the early 1990s under Itamar Franco’s mandate, who took up the Presidency after the impeachment of Fernando Collor de Mello in December 1992 the first impeachment in Brazil’s history.

Amorim’s time at the helm of this very traditionally Brazilian institution was the longest in the history of Itamaraty, even longer than Barão do Rio Branco’s⁵ administration, the father of Brazilian diplomacy. Amorim was

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⁵ The Baron of Rio Branco, named José Maria da Silva Paranhos, Jr. (April 20, 1845 – February 10, 1912) was a Brazilian diplomat, monarchist, politician and professor, considered by many to be the “father of Brazilian diplomacy”. Brazilian diplomats look up to him and often use his figure as an allegory of the institution’s traditions and values.
also Brazil’s ambassador to the United Kingdom for a time. During his years heading up Brazil’s foreign policy, as becomes clear again further on, he laid down the main pillars for the approaches of the three following Chancellors/ Ministers of Foreign Affairs and remained a constant reference throughout.

In his inaugural speech, Amorim only directly mentioned the EU twice. However, he did dedicate an entire section to Brazil’s relations with the EU, putting it on an equal footing with Japan. Nevertheless, the first direct reference to the EU only appears in the second part of the speech, and any reference to the EU is by way of an aside. As a general assertion, for example, he says that:

“We need to persistently convert our interests and values into topics on the international agenda. The scenario in which we will need to put this into practice is complex and not always friendly. The world’s economy is stagnated. The financial flows behave erratically and under the perverse logic that penalizes the developing countries. In spite of the many promises, the developed countries’ markets are still closed to a great amount of our products. Predatory practices of the wealthiest countries deprive us of the benefits of our competitiveness.” [Authors’ own translation from the Portuguese original]

This short passage demonstrates that his stance is one of criticism, accusation even, towards the protectionist policies for world trade operated by the developed countries. The EU and its Common Agricultural Policy (CAP) is obviously implicated here, and remains today one of the most controversial sticking points in EU-Brazil relations (Massot, 2014). Brazil is a leading global exporter of agricultural commodities and products, and has been actively pressing for full agricultural trade liberalization hand in hand with multilateralism, and Brazilian Foreign Policy firmly stuck to this approach throughout the Worker’s Party (PT) government.

In January 2011, during his inaugural address, which will be also analyzed ahead in this paper, Antonio Patriota says, “it was in the management of Your Excellency (Celso Amorim) that Brazil was consolidated, at the same time as a South American country and an actor of world influence”. He concludes “His legacy will be essential reference in our diplomatic history.”. Again in 2013, Patriota acknowledges that “the foreign policy of your Government (President Dilma Rousseff) was built on the solid foundation inherited from the period 2003-2010.”.
Later on in his speech, Amorim was even more explicit on this subject, referring to the issue as a “struggle”, “fight” and “battle”:

“We will fight protectionist practices that harm our agriculture and our industry. […] We will have to deeply engage in the real battle for the elimination of barriers and subsidies that distort trade today brutally and deprive developing countries of their comparative advantage (natural or those obtained through the creative ingenuity effort).” [The authors’ own translation from the Portuguese original]

Finally, in his first directly mention to the EU he asserts:

“We do not want a Brazil that is closed in on itself, immune to the winds of progress and competition. In the FTAA7, the European Mercosur-EU negotiations and the World Trade Organization we will try to expand markets for products and services that are competitive, trying to correct past distortions and avoiding excessive restrictions on our ability to foster social, environmental, industrial policies and technology.” [The authors’ own translation from the Portuguese original.]

All in all, Amorim’s inauguration speech adopts two stances vis-à-vis the EU. First, there is a sense of confrontation in his approach towards Brazil’s (mostly trade) relations with the EU. He challenges the international economic order, questioning the very basis – in the broadest sense – for global commercial relations. Without quoting the UE explicitly, he places Brazil as a singular actor playing a revisionist role. When he does make direct mention of the EU, he defines MERCOSUR8 as the platform for negotiating with the EU countries, determining that Brazil’s trade relations with the EU will follow Bhagwati’s “building blocks” logic (2008).

Secondly, “respect” features heavily in Amorim’s thinking. The EU inspires his respect at a political and ideological level, which is demonstrated in his intention that “Brazil will maintain a close and constructive relations

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7 The Free Trade Area of the Americas (FTAA) was an effort to unite the economies of the Americas into a single free trade area. The proposed agreement was highly discussed in the 90’s, but the terms under which it was being negotiated did not correspond to Brazilian interests at the time.

8 The Common Market of The South organization.
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with the EU” and that he “recognizes the successful long history of the EU in building peace and prosperity through integration”. Thus, he also reinforces his support for the process of integration as well as of multilateralism. That is reiterated in his next and final sentence quoting the EU: “Politically, the dialogue with the EU and the countries that constitute it is also important to strengthen the elements of multipolarity in the international system”. It cannot be said however, that the EU is afforded a particularly high priority in Amorim’s speech. What is conveyed in his ideational message seems to be quite the opposite. The EU seems to be in the same level of priority as other actors directly quoted such as China, Russia, India, Mexico, South Africa, Angola, Mozambique, East Timor and the Middle East countries and the United Nations (UN), all of which are listed in this order. Amorim’s long administration came to be coined as “globalist” or “universalist” and essentially giving equal priority to relations with all countries. In Amorim’s own words, if there were to be any one region of the world that should be afforded priority, it would be South America.

Before referring to the EU, Amorim is straightforward in affirming: “Under the Lula government, South America will be our priority”. Argentina and the United States also are directly listed – before the EU – and Amorim makes specific declarations with them in mind. Curiously however, when he refers to the US, he describes a characteristic that is often assigned to Brazil-Europe relations: shared values and interests. No such acknowledgement is made in the context of relations with the EU. It would seem that for Amorim, the EU is a partner with which Brazil operates in mutual respect and offers an opportunity to change standards to adopt a more multipolar international regime. While the EU is referred to with respect, shared interests are not apparent, pointing to a lack of greater proximity between Brazil and the EU.

In his farewell speech, Amorim does not even mention the EU. He presents, with pride, the final account of a successful period where globalism was an imperative. There is a notable absence of the EU in his farewell speech given that other regions and actors were specifically referred to, including, in order, MECOSUR, South America, Africa, Middle East, India, China, IBSA, the BRICS. Europe appears only implicitly, as being the geographical region where London is located, when he boils down his legacy with an illustrative sentence: “I was more often in Port au Prince than London, and I was in Sao Tome and Principe as well as in Washington.”
3.2. Antonio Patriota: Courtesy and Distancing

Antonio de Aguiar Patriota is also a Brazilian career diplomat and Chancellor Celso Amorim’s successor. He took office as the first Minister of Foreign Relations under Dilma Rousseff government on 1 January 2011. He worked Ambassador of Brazil to the US (2007-2009), served at Brazil’s Permanent Mission to the International Organizations in Geneva (1999-2003), at the World Trade Organization (WTO) and at the UN (1994-1999), in New York.

In his first speech heading up Itamaraty, Patriota spoke about Brazil’s relations with developed countries and asserted that Brazil needs to do more for the “promotion of more balanced relations around shared interests” but, significantly, without making any explicit mention of the EU at all. While he does mention “Europe” in the form of the geographical continent, Patriota did no more than to acknowledge the attendance of politicians from that region at the Rousseff’s inauguration ceremony, leaving no scope whatsoever for any policy approach towards or objective vis-à-vis a specific country in Europe or indeed, the entire regional integration:

“The presence of senior representatives from a variety of countries at the inauguration of President Dilma, many of whom are here today – be them either from our region, Europe, Africa, the Middle East or the Far East – can only be seen as a manifestation of the mutual interest of governments from all over the world and from all levels of development to strengthen their ties with Brazil.” [The authors’ own translation from the Portuguese original.]

Besides the etiquette applicable to all such formal addresses at the level of Heads of State and Government, this passage is characterized as pro-globalism (not be mistaken with globalisation, a different concept) continuing in the tradition established by Celso Amorim.

Based on this ideational absence of the EU and the permeating reformed globalist tone throughout his discourse, we argue that for Patriota, Brazil’s interest in partnering with other countries from the global south and continuing dialogue through forums such as IBAS, BASIC, the G20, the BRICS, ASPA, UNASUL, CELAC, served to push the EU further down Brazil’s list of foreign policy priorities (Saraiva, 2016). Hence our This lack in ideational priority can be described as a relation based merely on ceremonial and distancing.
Then, when leaving of office, Patriota again paid little attention to EU-Brazil relations, mostly due to an institutional crisis of Itamaraty, see below. However, Patriota used this opportunity more to define institutional change within Itamaraty as standard practice, using the term “replacement” in such a way as to imply benign continuity at the reigns of Itamaraty, reaffirming that the next Chancellor would share the same principles: “What happens today amounts to a replacement of a professionals of a same career ranking inside a government in which external affairs continue to develop under the orientation of President Dilma Rousseff.” [The authors’ own translation from the Portuguese original.]

3.3. Luiz Figueiredo: Negligence by Introspection

If Patriota’s speech amounted to a distancing between Brazil and the EU, Figueiredo’s inaugural speech has been emblematic of negligence. Again, Luiz Alberto Figueiredo Machado is also a career diplomat, was acting as the Executive Secretary of the Rio+20 National Committee.

In Figueiredo’s speech, no mention is made of the EU – neither in the form of Europe as a continent, nor as the regional integration. Figueiredo does make mention of the WTO, the FAO (Food and Agriculture Organization of the United Nations), RIO+20, and others. However, the focus is predominantly dedicated to discussion of the Foreign Ministry, explaining the importance of the Itamaraty structure, hierarchy and the necessity of respect for institutions. Traditionally, all Chancellors have dedicated a final space in their inaugural speeches to this subject, the unique context here was that Figueiredo had taken charge of the institutional crisis in Brazilian diplomacy, making his inaugural speech a singular one. Serra would later take up and explore the same theme.

Figueiredo took up the office vacated by Antonio Patriota after his resignation. The latter’s withdrawal helped Brasilia avoid a diplomatic wrangle with neighbouring Bolivia, where the government of President Evo Morales was fuming over the escape to Brazil of an opposition Senator. In August 2013, during Patriota’s cabinet, Eduardo Saboia, a Brazilian diplomat who had disobeyed the rules of hierarchy and helped Senator Roger Pinto escape the country. At the time, Pinto had accused the Bolivian government of having links to drug traffickers. He avoided being arrested by seeking refuge in the Brazilian embassy in La Paz. Brazil granted him asylum but the
Bolivian government denied him safe-conduct to leave the country, accusing him of involvement in corruption. He then lived strictly within embassy walls for 15 months. Bolivia finally claimed that the Brazilian diplomat had violated national and international rules by fleeing the country. The whole situation, plus a case of moral and sexual harassment by a consul with his staff in Sydney, that year, was an embarrassment for Itamaraty, generally known for its high standards of obedience.

In this sense, Figueiredo’s speech is characterized here as a distancing in the relations between Brazil and the EU, a process begun by Patriota before. However, this was not only attributable to Brazil’s diversification in its globalist relations but also because the Ministry of Foreign Relations’ need to improve its outward image. Precisely, Figueiredo was the substitute in charge of taking internal measures, so his speech intentionally addressed his subordinates.

3.4. Mauro Vieira: Revisionism and Interruption

Mauro Vieira took office in 2015 after Dilma’s second victory in the 2014 general election. Vieira is a career diplomat who served at the Brazilian embassy in Washington, D.C. between 1978 and 1982 and then with the Brazilian Mission to the Latin American Integration Association (ALADI) in Montevideo from 1982 to 1985. After a period back in Brasília, he then served at the Brazilian embassy in Mexico City (1990-1992) and at the embassy in Paris (1995-1999). He was then nominated Ambassador of Brazil to Argentina in Buenos Aires from 2004 to 2010 and then served as Ambassador of Brazil to the United States up until President Dilma Rousseff announced his nomination as Foreign Minister.

Vieira was briefly Head of the Ministry of Foreign Affairs for some 17 months, but had the hard task of operating within a government that was under collapse, while still maintaining an image of prosperity abroad. Most of his inaugural speech reiterated Dilma’s strategic guidelines, to give a more ‘pragmatist’ sense to the new administration, which in itself could be interpreted as a tacit acceptance or forewarning of what was yet to come. As he phrased it:

“In her inaugural address to the National Congress yesterday, the President traced the outlines of the foreign policy she wishes to see carried out in her
second term of office. More than that, the President traced the outlines of the public policies she aims to develop, making clear to Brazil’s diplomats the role we should play in assisting the Government’s efforts in the domestic sphere, making Brazil’s international relations an instrument for supporting domestic policies and driving them forward, starting with macroeconomic policy. It is a discourse that values Brazil’s international agenda, regarding it with pragmatism and with the sense of a national project. This will be our plan of action; the basis on which we will consolidate or revise our operational strategies so as to act in total harmony with the Government’s objectives”. [The authors’ own translation from the Portuguese original.]

In fact, Vieira inaugural speech was still much more focused on dealing with internal dissent than to reformulate Brazil's external policy. Calming down Itamaraty’s Internal afflictions (such as salary delays and prevarication of consular posts and activities), for example, was certainly a priority:

“Together we will seek practical solutions to problems that are specific to the Foreign Service because of its unique position within the Government. The central issues of selection, training, career progression, pay, movement between posts and professional development must be addressed in the light of the objectives and scope of foreign policy […] I will pay particular attention to the concerns of younger colleagues, whose enthusiastic dedication has always been one of the fundamental pillars of Itamaraty and without which we would not have the workforce and the rejuvenating spirit which so distinguish us. […] I want to say a special word to my Foreign Service colleagues around the world, out there in the trenches of our diplomacy, often working under the pressure of great difficulties and feeling distant. […] I will seek to support them in every way I can so that they are able to meet the permanent material challenges faced by our posts abroad. […] I will always be aware that it is not enough just to be present in the world: we must also be active. The valuable symbolism of our presence is no substitute for a results-driven diplomacy. And results, which are measured with numbers, are obtained through being aware of our mission, through action, through engagement, through tools.” [The authors’ own translation from the Portuguese original.]

This prevailing situational crisis generally explains the welcome for the transition by some sectors within the Ministry of Foreign Affairs, without too much internal protest.

Brazil and European Union relations are only cited only once, in a very generic manner, in his ceremonial speech:
“The agenda that awaits us in 2015 and beyond is broad and promising, as indicated by the President in her inaugural address. In accordance with our traditional line of action, both regional and universal, we will endeavor to [...] consolidate our ties with the developed world – the United States, the European Union and Japan”. [The authors’ own translation from the Portuguese original.]

Equal attention was paid to other strategic partners, perhaps even in a friendlier tone given the use of the expression “our brothers”:

“We will endeavor to consolidate South American integration in every field and to expand our efforts in the same direction with the rest of the region; our relations with the BRICS and the emerging countries; with our brothers in Africa and the Middle East, especially with the Portuguese-speaking countries; with all the members of the international community.” [The authors’ own translation from the Portuguese original.]

Specific agenda-topics that stirred much discussion were no more than side-notes:

“We will continue to work with great commitment in the United Nations, in the WTO, in the G-20, in the negotiations regarding the climate and internet governance, and on many other fronts.” [The authors’ own translation from the Portuguese original]

As much Europe has taken back some of its ideational space amongst Brazilian foreign policy priorities, its main empathy still seems to rely someplace else. Certainly, the economic agenda had to represent some space in Vieira’s speech given the spotlight the so-called economic crisis was given. However, the topic was presented on a much lighter manner than it was expected, mostly focused on Trade:

“It is necessary for our foreign trade agenda to reflect this reality. We will redouble our efforts in the area of international trade, seeking to develop or enhance relations with foreign markets – all foreign markets. A central objective for Itamaraty during President Dilma Rousseff’s second term will be to work hard to open, expand or consolidate Brazil’s access to all foreign markets, promoting and defending the Brazilian productive sector, assisting it in its own initiatives, and helping wherever possible to attract investment.” [The authors’ own translation from the Portuguese original.]
Both Vieira’s Inaugural speech and administration was largely funded on the falling prestige of past times:

“The governments of President Lula and President Dilma Rousseff have been instrumental in reaffirming this identity and our aspiration to be a great country, a respected and influential country – but without ever losing sight of other countries’ perspectives, which is the only way to face our challenges with balance and wisdom.” [The authors’ own translation from the Portuguese original.]

Vieira’s speech during José Serra’s Inaugural ceremony, however, presented a much more evident “ideational turn” than one could expect. First, even though it contained a diplomatic tone in which the passage to the following administration tried to be discursively normalized, it contradicted almost everything that Serra’s speech pointed out as “abnormalities” of the last 13 years of Brazil’s handling of foreign affairs. In fact, it must be noted that there might have been an attempt of Itamaraty to muffle the repercussion of Vieira’s farewell speech as it was the only speech used as material for this research that was not available in the Ministry’s official website, nor had the usual official English translation, and it was accessed through alternative media sources.9

Vieira’s last speech as Head of Itamaraty while awkwardly welcomed the new Minister, heavily denied any party-oriented or ideological aspect of his administration. He also affirmed to have followed pragmatism, evoking (again, reinforcing an idea of continuity in Brazil’s diplomacy through its administration) the image of Itamaraty’s spiritual patron, Barão do Rio Branco:

“On the eve of assuming the post of Foreign Minister, the Baron of Rio Branco, father of our diplomacy, said: I do not come to serve a political party. I come to serve our Brazil, which we all want to see united, strong, sound and respected. There is nothing to add to the clarity and integrity and continuity of these words. We all aspire to a Brazil even more present and always respected in the world, with full capacity to defend its interests and to enforce the guiding principles of our international relations, as set out in the Federal Constitution.” [The authors’ own translation from the Portuguese original.]

9 Upon contacting Itamaraty, a Portuguese transcription was later provided and uploaded, but an English version was still missing, when this chapter was written in 2016.
There was also a clear nod to Celso Amorim’s universalist claim, a revitalization of the ideal of equalitarian attention in the international field and mainly the idea that Brazil is a central global player that can’t afford anymore to be indifferent to great diplomatic matters:

“[...] Throughout this process, we look for one of the basic principles of our foreign policy: universalism. We try to diversify partnerships with countries of the different levels of development and from different regions of the planet. Brazil is now a global player with the capacity to influence the world destinations [...] If there is a country that no longer has space for a selective partnership, it is Brazil.” [The authors’ own translation from the Portuguese original.]

The most prominent aspect of this speech for the subject we now focus on is the reappearance of the European Union as a central element of the Brazilian diplomacy, potentially on a preemptive move to the critiques that would follow his statement:

“[...] the revitalization of our relations with the United States and Germany and the major breakthrough in the negotiations between MERCOSUR and the European Union, with whom we have just made trade offers that we hope will pave the way for a comprehensive and balanced agreement, and consolidation of our partnership with China.” [The authors’ own translation from the Portuguese original.]

Certainly, one of the most critical parts of this passage is that EU relations are associated with MERCOSUR, and at an interregional level rather than a Brazil-EU level, while Brazil’s interaction as a unitary actor in Europe is delegated to interaction with other unitary actors (Germany, in this case). Serra, as we will see further, will criticize this reasoning ideationally. In this sense, Vieira’s time in office does represent an attempt to reformulate Itamaraty’s dynamics. However, the somewhat abrupt interruption of that effort has led to frustration, even if disguised in his diplomatic tone.

3.5. José Serra: Approximation and Disruption

José Serra is the first Head of Itamaraty in decades not to have been a career diplomat, but in a break with tradition at Itamaraty, began as a politician, albeit with recognizable experience with International Affairs. That Serra
was tipped to run again for President on the 2018 elections\(^\text{10}\) was seen as a sign of hope by some Itamaraty diplomats who believed that the ministry would benefit from some much-needed global attention as Serra would use it to project himself in his political career. Against this backdrop, the attention given to his speech is almost no surprise. In contrast to his predecessors, José Serra’s controversial inaugural speech not only anticipated welcome changes to the country’s economic future in light of the prevailing sense of crisis, but it also followed a clear structure and direction, classifying Brazil’s new priorities for its foreign affairs in eleven thematic Guidelines. While Europe is only once specifically cited in these guidelines (although reiterated 3 times), five of the guidelines either actually or potentially implicate the European Union in the redesign of Brazil’s foreign policy – Guidelines 1, 3, 5, 8 and 10 – which are explored here in turn.

**Guideline 1. Ideology**

“Diplomacy will again reflect, clearly and uncompromisingly, the legitimate values of Brazilian society and the interests of its economy, at Brazil’s service as a whole, no more at the convenience and ideological preferences of a political party and its allies abroad. Our foreign policy will be governed by the values of the State and the Nation, not of the Government and never of a political party. This new policy will not break the good traditions of Itamaraty and of Brazilian diplomacy, but will, on the contrary, put them to a better use. Measures that, in other times, might have served the national interest, may not be compatible with the new reality of the country, and with the deep changes taking place in the international arena.” [The authors’ own translation from the Portuguese original.]

Serra essentially establishes his departure from the approaches and ideology set by his predecessors. However, just as Vieira had done immediately before him, he is careful to evoke Itamaraty’s traditional credibility as a stabilising factor in the new government as well as his own new political position. Of course, ideas and pragmatism are central to diplomacy just as with

any manifestation of politics, but Serra’s vision presented a new pragmatism in Brazil’s foreign affairs.

Guideline 3. Ecology/ Environment

“Brazil will assume a special responsibility in respect of environmental issues, having, in the Amazon, the largest rainforest in the world, one of the largest reserves of freshwater and biodiversity on the planet, as well as clean and renewable energy sources, in order to play a proactive and pioneering role in the negotiations on climate change and sustainable development. It reminds one that, if we do our homework well, we may receive considerable resources from international organizations interested in helping us preserve the world’s forests, water supplies and biodiversity, as Brazil makes a difference in this matter.” [The authors’ own translation from the Portuguese original.]

While an ecological and environmental dimension would appear beyond concerns raised in the predecessor speeches, this guideline inevitably brings the EU into the epicenter of Brazil’s foreign affairs. The idea that the Amazon and its biodiversity is a key element of Brazil’s responsibilities at international level is not new, but in the context of the inaugural and farewell speeches that are the focus of this study, the intent to secure capacity building and financial support from international organisations – such as the United Nations and the EU, as well of course as individual counterparts such as the USA and Japan heading up these institutions – is a first. It marks a shift from Brazil’s ideational self-image as a environmental leader (Ferreira, 2014), to a recipient of international support and financing, and more of aligning itself to external norms rather than itself the lead in determining their form. This represents a sizeable departure from Brazil’s approach in the context of the Rio +20 Summit, and as proffered by Figueiredo: see above.

Guideline 5. Trade (WTO)

“Brazil will no longer restrict its freedom and the extent of its initiative due to an exclusive and paralyzing accession to the multilateral efforts within the scope of the WTO, as happened in the past decade, to the detriment of the interests of the country. There is no doubt that the multilateral WTO negotiations alone could effectively correct the relevant systemic distortions, such as those affecting the trade in agricultural products. But unfortunately these negotiations have not
flourished with the necessary speed and relevance, and Brazil, by attaching exclusively to them, remained in the margins of the multiplication of bilateral free trade agreements. The multilateralism that did not happen has damaged the bilateralism that transpired all around the world. Almost everyone invested in this multiplication, except us. We must and we will catch up on this delay and make up for the lost opportunities.” [The authors’ own translation from the Portuguese original.]

Multilateralism has ever been a core ideational pillar in Brazil’s actions within international organizations, but Serra’s multilateralism is more insipid than the multilateralism of his predecessors. With Brazil-EU relations, particularly as concerns the WTO, Brazil has relied on this ideational pillar to its benefit in multiple disputes. Further on, we explore whether this guideline might express a change in Brazil’s position on WTO negotiations, as well as the general support for multilateralism within the new administration. Serra is lending towards achieving more short-term results than gambling on a more favorable outcome for the longer term.

Guideline 8. Preferential Partners

“We will expand trade with traditional partners such as Europe, the United States, and Japan. The exchange of offers between MERCOSUR and the European Union will be the starting point to advance the conclusion of a trade agreement that promotes further expansion of commerce and of reciprocal investments, without detriment to the legitimate interests of various productive sectors in Brazil. As Minister Mauro said, there has been an exchange of offers and we will now examine the offers of the European Union. With regard to the United States, we rely on short-term practical solutions for removing non-tariff barriers, which is, in today’s world, essential. In today’s world, from a commercial point of view, protection is not achieved with tariffs, but with non-tariff barriers. I want to state that Brazil, in this sense, is the most open country in the world, for we do not have any non-tariff barriers, unlike all other countries presenting themselves as champions of free trade. With regard to the United States, we rely on short-term practical solutions for removing regulatory and non-tariff barriers, which curbs trade. We will also emphasize the immense opportunities of cooperation in energy, the environment, science, technology and education” [The authors’ own translation from the Portuguese original.]

Serra controversially gives preference to partnerships with wealthier western nations over south-south cooperation, counter to Celso Amorim’s
approach. Serra’s preference is mostly economy-based, but he evokes an element of “tradition” that marks the diligence of the past years over the foreign affairs were a detour from its historical roots. However, because Serra overtly dismisses Mauro Vieira’s comments concerning the MERCOSUR-EU negotiations, the future of interregional cooperation is called into question. This administration commits to finding new ways of relating to the EU and is forging a new discourse in order to do so.

Guideline 10. Trade (Production and “Brazil Cost”)

“In regard to foreign trade policies, the Government will always pay attention to the warning signs, stemming from good economic analysis, based on solid and broad consultation with the productive sectors. It is an illusion to assume that free trade agreements necessarily mean automatic and sustained increase in exports. There is only one factor that ensures an enduring increase: the steady increase in productivity and competitiveness. It would be a mistake to think that making an agreement and opening the market are necessary and sufficient conditions. We must invest in the steady increase in competitiveness and productivity. Hence the emphasis on reducing the cost of doing business in Brazil through the elimination of tax distortions which increase sales abroad and the expansion and modernization of infrastructure through partnerships with both the national and international private sector. […] Imagine the challenge that we face ahead. And as I took office in the Ministry, I was aware, talking to our Ambassador to China, Roberto Jaguaribe, of the efforts of our embassies to attract investments for these basic sectors of the economy. Roberto was making efforts to bring Chinese capitals to Brazil, to invest in partnership with the Brazilian government in infrastructure projects.” [The authors’ own translation from the Portuguese original.]

Lastly, while in this section Serra might not directly address Brazil’s stance vis-à-vis the EU, generally speaking, Serra affirms Brazil as being “open for business” – to make the Brazilian import and export markets and internal market competitive – and is open to alternatives to regional integration methods in order to enhance international trade. Obviously this can be expected to impact on EU relations. However, the power of decision on matters such as taxation does not lie within Itamaraty’s hands, and given Brazil’s strong industrial and rural sectors, this is not likely to change anytime soon. Also relevant is that, despite Serra’s apparent preference for North-South relations, China is firmly within the sights of Serra’s economic
discourse, and provides a note of policy continuity dating back to policies under Amorim’s era.

**The Advancements in Serra’s Farewell Speech**

In his farewell speech, Serra adopted a slightly different tone from his groundbreaking inaugural speech. He did continue to follow the guideline structure, but instead concentrated on the progress made under each Guideline by referring to each as “advancements”. The Advancements that equate to the same Guidelines that are pertinent to Brazil-EU relations, are Advancements 2,3,5,6,7 and 8 respectively. Serra himself confirms the progress made during his tenure at the helm of Itamaraty served to get Brazilian foreign policy “back on its tracks”, a place it “should never have left”.

**Advancement 2. Internal and External coherence for Trade**

Serra claims to have brought back an alignment between Brazil’s internal commercial needs and Itamaraty’s actions abroad, blaming the previous administrations for acting out of charity or ideology instead of national interest, and concluding that Brazil’s geopolitical interests had changed for the better.

“We have made structural changes that impose greater harmony between foreign policy and foreign trade policy. Modern foreign policy is not only about discourse or good intentions. It has to help the country gain space in a world economy almost on the brink of a war.” [The authors’ own translation from the Portuguese original.]

Serra also highlights his efforts to instill greater complementarity between domestic and international policies, not least by means of his initiative to hand over the administrative oversight of both the Brazilian Agency for the Promotion of Exports and Investments as well as the Executive Secretariat of the Foreign Trade Chamber to the internal jurisdiction of Itamaraty.

**Advancement 3 – Pragmatism in favour of Regional Integration**

An innovation of his mandate as announced in his inaugural speech – and certainly the most relevant for Brazil-EU relations – was to criticize
MERCOSUR as being ineffective and paralyzed by the ideological posturing of its policy making apparatus. In his farewell speech, he goes so far as to assert that MERCOSUR has been “reformed”. With the secession of Venezuela under the democratic clause of MERCOSUR Charter, combined with the support of the new liberal President of Argentina, Maurício Macri, Itamaraty would be now able to employ MERCOSUR as a platform for its mainly commercial – although not exclusive – international interests. For the EU represents signal of a new willingness in Brazil to negotiate proceed with the multilateral relationship between the EU and Latin America.

“[…] MERCOSUR was virtually paralyzed because of the lack of clear objectives and institutional problems. We seek to restore the convergence of views among the founding partners, who today share the conviction that we must take up the bloc’s original vocation: to promote free trade, by removing barriers and stimulating regulatory convergence, and to defend democracy, which is a shared value and the founding base of the bloc. We have taken the difficult but necessary decision to suspend Venezuela from MERCOSUR’s work. We are on the side of the Venezuelan people, who have lived through tough times. Our supply of humanitarian aid is ongoing. We hope that Venezuela will return to conciliation and democracy, the only way to overcome the serious challenges faced by the country. Argentina will continue to be, of course, our main strategic partner. We have developed a great harmony with the government of President Mauricio Macri. […] I am proud to have reinstated the alliance between Brazilians and Argentinians at the center of our foreign policy.” [The authors’ own translation from the Portuguese original.]

Thus, since his inauguration, Serra’s enthusiasm for Latin American relations had obviously grown. However, this is not to say that he changed either in his focus or his desire to sustain a larger dialogue with developed economies.

**Advancement 5 – Strengthening international negotiations in the economic-commercial plan.**

Advancement 5 for the first time explicitly defines MERCOSUR as the preferential platform for negotiations with the EU, in something of departure the bilateral impetus he advocated in his inaugural speech.
“[…] Finally, we have given impetus to MERCOSUR’s international relations agenda, in search of balanced agreements that are convergent with national interests. Negotiations with the European Union have picked up speed again, and I am hopeful that the agreement will be concluded soon. Due to the historical affinities, the sharing of values and the economic weight of the two blocs, I am convinced that the association between Mercosur and the European Union will bring economic and political benefits to Brazil.” [The authors’ own translation from the Portuguese original.]

More relevant again is the passage in which Serra defines barriers to access for Brazilian agricultural products to developed countries’ markets: for him, sanitary barriers imposed by developed economies (as the ones in European Union) are an attack on free trade ideals and lacked “scientific” basis:

“The rhetoric of free trade is often belied by the imposition of barriers to the products of developing countries, especially agricultural products. We made the criterion [imposed the pre-condition]: commercial concessions yes, but only with reciprocity. Brazil is one of the countries with the most sustainable and competitive agriculture on the planet, thanks to investments in productivity and technology. We cannot resign ourselves to sanitary and phytosanitary barriers that lack a scientific basis”. [The authors’ own translation from the Portuguese original]

Only one week after Serra’s farewell speech, an international scandal broke involving the leading names in Brazilian Meat industry who had been targeted by a Federal Police investigation into the adequacy of their products and production standards and processes. Known as the “Carne Fraca” or “Weak flesh” scandal, reports surfaces revealing criminal activities undermining food safety and hygiene in the food chain, including the injecting of water into cattle and the use of rotten meat in their industrial processor. Restrictions by several key importers of Brazilian meat, ranging from China to even European Union, caused a 22% drop in weekly average exports of pork and poultry and dealt a hard blow to the “commerce first” strategy of the current diplomatic administration.

Advancement 6. Vocal proponent of sustainable development

While Brazil cannot be accused of being a lazy or reluctant student as concerns the environment agenda and to Serra’s mind is even something of a “protagonist” here, on this farewell speech Serra sets certain limits to Brazil’s interest in sustainable development, notably that they go as far as they might be profitable, which will be a challenge to marry with the ambitious EU global environmental agenda.

“Thanks to the speed and interest of the National Congress, Brazil was one of the first major economies in the world to ratify the Paris Agreement. I personally managed to achieve this goal. For our diplomacy, there can no longer be room for predatory visions of the environment or skepticism about climate change, which puts the future of all into question. […] Creating a dynamic market for this sector is fundamental for Brazil, because we will attract investments and export goods and services in a segment where we have recognized expertise. We have also made progress in implementing the United Nations Development Agenda 2030, an initiative that helps bring development to the forefront of international debates. The National Commission has already been set up to coordinate the efforts of the various levels of government, including the collection of key resources for eradicating poverty, promoting education and health, and protecting our environment.” [The authors’ own translation from the Portuguese original]

Advancement 7. Brazil as a Global Actor

It is slightly surprisingly that Serra seems to make an indirect reference of Celso Amorim’s ideals of a globalist approach for Brazil in its International Affairs, by alluding to Brazil’s role in other international formations such as the BRICS and the G-20. This is possibly a mea culpa under Serra’s previous interpretation of international affairs that caused concern about the self-perception of Brazil’s leadership in International forums. Traditionally Brazil’s diplomatic claims to reforming the UN Security Council for example, or the Bretton Woods Institutions, reappeared and are a cause for relief for some analysts. Serra also praises his own administration for paying the debts owed by Brazil to several international organizations (such as OAE and WTO) and how it handled humanitarian matters in the context of the current refugee crisis.
“Here I speak of a global actor in the fullest sense: a country open to partnerships and having a voice on the great issues that affect humanity. President Michel Temer and I actively participated in the meetings of the main global forums: the United Nations General Assembly, the G-20 China Summit and the BRICS India Summit. […] We support the need for urgent reform of governance institutions, including the United Nations Security Council and the Bretton Woods organizations. It is not acceptable that, after 70 years since its creation, some of these organizations do not reflect the new reality, where developing countries account for 44% of GDP and 85% of the world’s population. […] At the initiative of the Executive Branch and with the support of the National Congress, we approved a supplementary credit of B$ (Brazilian Reais) 3 billion to fulfil Brazilian commitments to important international organizations, among them UN, UNESCO, OAS and WTO, avoiding a default situation that would risk their right to vote and the defense of their interests.” [The authors’ own translation from the Portuguese original.]

Advancement 8. Universalism

Again, in apparent contradiction of his inaugural speech, in his farewell speech Serra provides a universal take on Brazil’s foreign affairs, listing Brazil’s top priorities world-wide. This could be another strategy to dismiss the lead concerns espoused in his initial speech, but this nonetheless reinforces certain preliminary conclusions as to the role for the EU in Brazil’s international agenda, presenting Brazil as a protagonist in world affairs if it brings economic gains:

“I have visited countries from the most diverse regions: Latin America, North America, Africa, Asia and Europe. The work agenda has always has as its objectives: to strengthen cooperation, strengthen political ties and foster trade and investment.” [The authors’ own translation from the Portuguese original.]

3.6 Aloysio Nunes: Expansion and adaptation

Aloysio Nunes Ferreira Filho is a Brazilian lawyer, politician, former senator and currently, Brazil’s Chancellor or Minister of Foreign Relations. His selection as successor of José Serra also attracted controversy. Just as Serra before him, he is not a diplomat but rather, a career politician. Nunes is a central figure in the PSDB party and even ran for the Vice-Presidency alongside Senator Aécio Neves, although he was defeated by the Dilma and Temer coalition in the 2014 general election. In their speeches, the politician
Chancellors Serra and Nunes, reveal many shared world views and desires for Brazil’s foreign policy, but certain differences in their approaches towards Brazilian diplomacy are apparent.

Nunes’ time in office to date has been more apparently turbulent than Serra’s. Several signals that Temer’s government is more instable than it first appeared include the *Operation Weak Flesh* scandal in the first place, and then only a matter of months after Nunes had taken office, the Federal Police launched investigations into Temer himself, implicating the latter in systematic bribery schemes as a bid to retain his power-grip on the Presidency.

Nevertheless, one-third of Nunes’ inauguration speech is dedicated to praising his political network. Nunes starts his inauguration speech talking about his relationship with Serra in a friendly and reminiscent tone. Then, as Serra had done in his farewell speech, Nunes also chooses unusual Portuguese words and quotes from prestigious Brazilian literary authors, demonstrating his erudition and departing from Amorim’s colloquial tone.

At a certain point, Nunes reminisces about the past and his relationship with Michel Temer, explaining how they met in the 60’s and then became friends. When talking in the present tense he underlines his election campaign for the Vice-Presidency, alongside Senator Neves, who he Nunes describes as an “extraordinary political leader” to whom he is “bound by friendship and admiration that has only grown”. By the time of Nunes’ speech, Neves was already the target of corruption accusations by the same anti-corruption task force operating *Operation Weak Flash*. Two months later, Neves was to be suspended by the Brazilian Supreme Court from his position as a Senator and his arrest to be officially requested. By implication, some expected Nunes to resign as well, although as at the time of this publication this has not transpired.

While referring to his political colleagues, the new chancellor keeps the motto brought by Serra and affirms that “foreign policy must be at the service of the country and not the objectives of a party, whatever party may be in power”. He links this principle to the Brazilian position towards Venezuela, asserting that the Brazilian “position vis-à-vis Venezuela is emblematic of the role we want to play in Latin America and in the world.” He declares an “unrestricted solidarity with those who fight for freedom in this brother country”, and reaffirming “the constitutional principle of the prevalence
of human rights in the international relations of a democratic Brazil”. To a certain extent, this justifies and reinforces Serra’s vision of a “reformed” MERCOSUR, although Nunes clearly states this change by asserting that:

“in our region [South America], coinciding political views and economic practices favours a significant expansion of our trade and investment exchange. It signals an essential renewal of MERCOSUR”. [The authors’ own translation from the Portuguese original.]

He understands MERCOSUR, as a commercial trading bloc albeit with Venezuela having been suspended, once again to be the appropriate platform for the negotiation of the trade agreement with the EU.

Equally clear from this speech, given the context of the only direct mention of the EU, is the understanding of a change in Brazil’s relationship with the European bloc. With the developments at the level of MERCOSUR, the Brazil-EU relationship with the EU may also then progress. Nunes’ personal support for progress in Brazil-EU relations is undeniable:

“[Our] relationship with Europe is, I hope, about to take on a new dimension. The agreement between MERCOSUR and the European Union is on the agenda and could provide a qualitative leap forward in our relations with Europe and, therefore, cannot be seen merely as the reduction of some tariff lines”. [The authors’ own translation from the Portuguese original.]

For the rest, the traditions and customs from Brazilian Foreign Policy remain settled, such as the need for a UN reform, and Nunes’ first foreign trip as the new Chancellor being to Buenos Aires.

4. Conclusion:

Thirteen years ago, when Worker’s party took the helm of the Brazilian State, most analysts identified a significant change on the country’s foreign policy, whether for better or for worse. Under the guidance of the often idiosyncratic figures of Lula (President) and Celso Amorim (Chancellor/Minister of Foreign Affairs), Brazil has focused on opening up international cooperation possibilities in a multitude of areas. As a direct consequence,
and our narrative demonstrates, the European Union has been progressively neglected as a central counterpart to Brazil in the latter’s ideational perception of a Globalist/Universalist comprehension of Brazil’s foreign policy, which has been developed in the aftermath of Lula’s Presidency. Today’s new administration represents a fresh overture towards a different and more progressive relationship for Brazil and the EU.

However, this overarching conclusion must be read in conjunction with other considerations beyond the scope of the research. Important parallel research questions include whether EU actors are indeed willing to establish dialogue with this new government, whether the Serra’s Guidelines will survive and be perpetuated, and just how viable and deep are the dialogues between Brazil and the EU in the absence of EU-MERCOSUR progress on trade matters.

When it comes down to numbers, it must be said that the EU was never on the periphery of Brazil’s interests, and nor could it be: the EU is one of Brazil’s biggest commercial partners and has been since colonial times. In fact, between 2003 and 2013, the commercial trade among EU and Brazil tripled its size, the EU and its Member States turning out to be Brazil’s principal commercial partner (Itamaraty, 2016). This puts the finger on the extent of political and diplomatic interdependence even if this has not always been reflected in the pattern of the relations between those actors, something which is worth analysis in its own right.

Consequently, it is not that the ideational field is the only indicative manifestation of the future between Brazil and EU, but the ideational dimension ought to be taken into consideration when elaborating new concrete guidelines for the relationship. Above all, these findings hold up a flag to European diplomats and policy makers that something is changing. This moment in time may well provide a window of opportunity for recognizing Brazil’s ideational change within the EU’s own ideational perspective and ongoing implementation of its Strategic Partnership as well as their future trading relations. For sure Brazil will not be able to sustain its previous posture of confrontation or disinterest towards the EU. Broader research into diplomatic discourse, and incorporating EU actors into the research, will help to establish a true picture of this political shift.
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Chapter 2

How Brazilian Press Frames EU-Brazil Relations After Brexit

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Leandro Almeida Lima

Introduction

In the referendum held in the United Kingdom on 23 June 2016, the UK public voted for the UK’s secession from the European Union. Referred to as “Brexit”, the process of UK withdrawal from the 60 year-old regional integration has unleashed considerable debate and analysis, not only regarding its impacts on the future relations between the European Union (EU) and the United Kingdom (UK), but also on their relations with their key global partners. Brazil is one of a few select Strategic Partners for the European Union globally speaking, and these two partner countries are long standing pre-eminent trade and investment partners for each other. For the EU, Brazil is the sole Strategic Partner in South America and its largest partner in the region. For Brazil, the EU has been a very important partner throughout previous decades as part of Brazil’s political agenda to consolidate its position as a country of consequence in the international arena (Ferreira-Pereira, 2010). Today, the Brexit process comes just as EU-Brazil relations have entered a renewed phase of momentum with the recent launch of fresh talks for the conclusion of the MERCOSUR agreement, a bilateral preferential trade agreement (PTA) between the EU and its Member

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States on the one hand, and the Southern Common Market and its Latin American Member States on the other. Brexit adds another uncertainty to the backdrop of current political instabilities and crises even, being experienced both by the European Union together with its Member States and Brazil.

The Brexit referendum, what it actually means in practice and its actual and potential impacts on EU-Brazil relations, is a topic of fascination today in Brazil among political actors and notably the press. Media outlets occupy a central position in the country’s contemporary society (Gomes, 2005) and are capable of framing the facts within the public debate in a particular way, which is capable of considerably impacting the public opinion (McQuail, 1990; Gomes, 2011).

The Brexit referendum in the UK – through which the UK public voted for the UK withdrawal from the entire EU under Article 50 of the Treaty on European Union – introduces a new set of variables to the historical, economic, political and legal landscape in EU-Brazil relations14. Globally, political and economic actors immediately began speculating about the Brexit consequences. Although the procedures to definitively leave the EU are still ongoing, and will inevitably take years to be completed even after the formal cut-off date of end-March 2019, there is no precedent for secession of a Member State from the European Union and ongoing near-daily wrangling over the process between EU and Member States representatives on the one hand, and UK politicians on the other, underline the lack of foresight or certainty with the bloc itself. At the same time as the EU and UK are negotiating the Brexit deal, actors outside the European Union are

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14 The “in-out” referendum was firstly mentioned by the then UK Prime Minister, David Cameron, back in January 2013, and references to real changes in the British relationship with the EU arose frequently in Cameron’s speeches and in manifestos of the UK Conservative Party in the following years. London and Brussels spent months between 2015 and early 2016 negotiating a common position regarding the UK’s place in the organization (Walker, 2017). In February 2016, Cameron finally sets the date for the referendum, which took place on June 23, 2016 after a harsh dispute between the ‘leave’ and ‘remain’ campaigns. The day after the consultation the results were divulged showing the majority of voters choosing the leave the EU (51.9%), which led to Cameron’s resignation and high levels of uncertainty concerning whether the relations among the UK, the EU and their global partners would be reshaped.
questioning the impacts on future of the EU’s international relations as well as those of the UK, in the run up to and in the aftermath of Brexit.

It has been no different in Brazil. Leaders in government and society have been assessing the broader implications of Brexit as well as its specific impacts on Brazil. At the time of the Brexit referendum itself, the Brazilian government was reluctant to publicly comment on the issue and emphasized the economic concerns only. Directly following the results of the Brexit referendum, President Michel Temer stated that he would make no comments in relation to the British political decision of leaving the EU, but stressed that his cabinet was debating any consequences for the Brazilian economy (O Globo, 2016). The Minister of Foreign Affairs José Serra was also discreet when mentioning Brexit. According to him, it could eventually increase the chances of reaching a bilateral trade agreement between ‘Europeans and South Americans’, which is a reference to the EU-MERCOSUR trade talks (Agência Brasil, 2016).

However, in contrast, Brazilian industry is apparently not so optimistic. The director of International Relations and Foreign Trade of the São Paulo Federation of Industry (FIESP), Thomaz Zanotto, believes that Brexit may further slowdown negotiations between MERCOSUR and the EU, pointing to the fact that the UK was has been one of the most favourable of the EU Member States towards the MERCOSUR Agreement (FIESP, 2016).

This contribution examines the nature of the analysis undertaken by key media outlets in Brazil as concerns perspectives for EU-Brazil relations since the Brexit referendum. First, the highlights of the EU-Brazil Partnership are reviewed. Next, the expectations of that relationship are explored through the lens of media in Brazil through a content analysis. The research findings conclude that news outlets have been primarily concerned with the potential economic impacts of Brexit in Brazil, particularly the chances of reaching trade agreements with the EU and the UK individually, with few references to political issues for example.

The EU-Brazil Relationship

Several political actors in Brazil offer their own insights into the historical, political and economic relations within the EU-Brazil relationship
and evaluate the strategic importance of EU-Brazil relations laying out their predictions and expectations as to how they may and should be developed in the future. In Brazil, mainstream media is central to the overall public debate and is a political actor in its own right, see further.

In current economic terms, the EU is one of Brazil’s most important trading partners, which marks an indispensable opportunity for the Brazil’s international insertion. According to the Brazilian Ministry of Development, Industry and Foreign Trade (MDIC), the EU was the Brazil’s single most important trade partner in 2016, whose bilateral trade accounted for US$ 58,497,584,653.00 and US$ 64,419,652,816.00, respectively. Between January and June 2017 their total bilateral imports and exports amounted to US$ 37,101,133,526.00, a figure that dramatically surpasses Brazil’s other traditionally relevant partners, including the United States of America (approximately US$ 30 billion). However, in the same six months of 2017, China emerged as the important bilateral partner for Brazil, when Brazil’s bilateral trade with China surpassed its bilateral trade with the EU. From the European Union’s perspective, Brazil is a strategic economic partner, not only because of the considerable bilateral trade, but also because it is by far the largest economy in Latin America, accounting for 33.6% of the EU’s trade with the region in 2014, with Brazil hosting 55% of all EU investments in the region (European Commission), making Brazil the top trading partner for the European Union in Latin America.

Historically speaking, initiatives to foster the partnership between Brazil and the European Union date back decades and have been more recently developed in the context of both bilateral Brazil-EU negotiations as well as multi-lateral inter-regional negotiations. A landmark in the EU-Brazil relations was the establishment of the Inter-Regional Framework Cooperation Agreement with MERCOSUR in 1995, which came into force to all Member States four years later. It is a free-trade agreement, an FTA, that covers investment as well as trade matters, between the two common markets of MERCOSUR and the European Union. Moreover, the EU-MERCOSUR Agreement further deepens the overall bilateral relationship, by laying down the foundations of the inter-regional association by establishing formal channels for political dialogue, and importantly also, expressly provides the legal bases for co-operation in areas of common strategic interests, such as
security and organized crime, for example, and ICT. Although negotiations were suspended in 2004, they were relaunched during the 2010 Madrid Summit (Thortensen et al., 2014). Since then, both blocs have been struggling to reach common positions in a variety of issues, notably on market access, and negotiations slowly advance due to the lack of common trade policies preferences particularly among MERCOSUR members – Argentina has been especially reluctant to open its market – and to divergent standings regarding the European Common Agricultural Policy (Saraiva, 2004).

Bilaterally speaking, more generally in the region, the European Union has bilateral Association and Co-operation Agreements with Argentina, Brazil, Paraguay and Uruguay. In 2007, EU-Brazil bilateral relations were further strengthened politically when Brazil joined a select group of EU bilateral strategic partners in the world during the 1st EU-Brazil Summit held in Lisbon that year. The various summits that have taken place since then have concentrated on coordinating and deepening common actions according to bilaterally agreed short-to-medium term Action Plans (beginning with the first, adopted at the Rio Summit in December 2008 on series of policy issues, such as peace promotion, security issues, cultural exchanges as well as advances in the EU-MERCOSUR agenda (Delegation of the European Union to Brazil).

Brexit puts at stake not only the future of the Brazil and the MERCOSUR relations with the EU. Another emerging issue brought by Brexit concerns the future of their relations with the UK individually, namely the chances of reaching trade agreements with the British. This is a hypothesis already discussed among Brazilian officials, which have been unofficially stating that although the agreement with Brussels is a top priority, Brazil is attentive to new trade opportunities such as a bilateral deal with London. José Serra, the former Minister of Foreign Relations, made public his wish to take advantage of the UK tradition in free trade to reach good agreements with it. In addition to such tradition, the agriculture is not a key economic activity in this country, which may increase the British interest for a related deal. From the UK perspective, officials have also been discussing the topic. According to Philip Hammond, the UK current Chancellor of the Exchequer, the country is eager to relaunch trade agreements and it could close a very ambitious one with MERCOSUR after its negotiations with Brussels. As there is a common
EU tariff that takes away any UK discretion to define its own tariff rates on external trade, Brexit means the need to renegotiate all its trade agreements.

The centrality of the media in Brazil

Since the emergence of the printing press in late 15th Century, in the political field the media has become an actor of great importance (Poe, 2011). It is undeniable that today, communication outlets – from traditional media to emergent social networks – are not only tools for finding and researching information or simply communicating with others: social media has become a game changer in contemporary societies, especially in the way citizens form their relationship with their governments (Haswani, 2013). From the Chicago School of thought about communication to the Frankfurt School where the media itself is a central element to be studied, given its role as connector of a variety of political actors (Gunther and Mughan, 2000). One can talk about the persuasion power of media discourse (Laswell, 1957) or the own communication power that is the core of contemporary politics (Castells, 2009). With the emergence of mass communication in the West, the point now is that its purpose has not only been to spread information but also to contribute to shape public opinion by influencing the public discourse (Haswani, 2013), thus reinforcing the role of the media as a major player in politics nowadays. Jean-Marc Ferry corroborates the force of media in society when he states that, “the subversion of the juridical principle by the mediatic principle tends to destabilize, in the internal level, the classical political representation.” (1998, p. 5), thus establishing change for the political field that media has brought with it.

The central role of the media according to Bucci (2005) is in the fact that the meaning of events and elements has been monopolized by the media in modern societies, which leads us to a line of studies that considers the media one of the key elements of analysis when trying to have a full perspective of events, such as the impact of Brexit on Brazil.

Among the media effects theories reflecting on the impact of media in society, the agenda-setting theory stands out. Based mainly on the work of McCombs and Shaw (1972), according to which the debates circulating
in society are a product of what is published by the press and approached by the media as media outlets, and these form people’s most efficient and relevant source of information. In other words, the media sets the tone of the public discourse. Another important theory of media effects is the *issues framing* theory, which takes the perspective that information can be framed in very different ways because certain aspects of reality can be highlighted or omitted, which fosters particular definitions, interpretations, evaluations and recommendations (Entman, 1994). Further definitions or framings have been developed in different social sciences spheres, such as sociology. Goffman (1986) states framings are socially built interpretative frameworks that give sense to events, while Tuchman (1978) argues framings define and build realities.

When it comes to foreign policy, the place of the media has been also growing steadily as an important voice beyond its role as a source of information for individuals. In the US, scholars have been debating “the CNN effect”, according to which policy makers’ responses to foreign crises and humanitarian issues could be influenced by the live media coverage (Robinson, 1995). Soroka (2011), for example, empirically demonstrates the effect of media content on the salience of foreign affairs for the public. Similar studies in Brazil are scarce but those that do exist note the permeability of decision makers when it comes to media pressures. What was once an example of a highly insulated bureaucracy, the Brazilian diplomatic arm has become increasingly permeable to the influence of other social actors, including the media and public opinion (Faria, 2008; Cason and Power, 2009). As an important political issue in international affairs today, Brexit has certainly impacted not only in international relations at the level of Brazilian foreign affairs and this has been echoed in the media in Brazil.

EU policy makers too are obviously attentive to the influence of media. The European Commission’s Service for Foreign Policy Instruments (FPI) ordered in 2015 a report entitled “Analysis of the Perception of the EU and EU’s Policies Abroad”, the central objective of which was declared as being to provide:

> “a thorough analysis of the perceptions and images of the EU and Europe, and of the EU’s policies in several regions of the world (…) with a specific emphasis on the EU’s Strategic Partner (SP) countries”, (Public Policy and Management Institute et al, p. 12, 2015).

The final report dedicated an entire section to Brazil to analyse how news outlets framed the EU in their coverage. The sample included covers
pieces of news published between April and June 2015 by a selected number of newspapers of the highest national circulation, Folha de S. Paulo and O Globo, and the most important national business newspaper Valor Econômico. The researchers showed that how the EU has a relatively low visibility in the eyes of the general public and that this may be caused by the kind of media coverage undertaken: the newspapers were completely silent about EU’s policies, programmes and initiatives developed in Brazil, having focused only on the Greek debt crisis, migration issues and the British general elections. EU initiatives were framed as projects dealing exclusively with European issues, without a local hook. The report concludes that the EU-Brazil relationship was not very significant in media representations (Public Policy and Management Institute et al, 2015).

The justification of the relevance of media on the political ground, the article moves forward by discussing the methods and data from which the media analyses in relation to the Brexit impacts on Brazil will be undertaken.

Methodology and Data of this Study

The rationale of this study is to examine the nature of the analysis undertaken by key media outlets in Brazil as concerns perspectives for EU-Brazil relations since the Brexit referendum. The above review of the EU-Brazil Partnership sets the context for the data collection and the method of the analysis of that data, primarily to explore the expectations in Brazil of this relationship through the lens of media in Brazil. To get a good grasp of the positions of the Brazilian press, the data is sourced from the three largest national newspapers in Brazil, a selection that is based on the annual paid circulation according to the National Journalism Association (ANJ) in 2015.15

Consequently, the data collected as part of this study are restricted to: O Globo (193,079 units); Folha de S. Paulo (189,254), and; O Estado de S. Paulo (157,761). It is important to mention already that tabloid news outlets have been excluded from this study, on the basis that they are primarily

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15 The most recent data refer to 2015.
concerned with entertainment and individuals’ private lives and not with “hard news” (Uribe and Gunter, 2004) and are generally received as not being governed by such ethical and professional journalistic standards as govern their broadsheet counterparts. For the purposes of this study then, the articles examined were published in the online portals of the mentioned newspapers, being collected only the ones which covered the Brexit impacts on the EU-Brazil relations through the search of key words such as “European Union”, “Brazil” and “Brexit”. The content analysis allows the coverage of pieces of news, columns as well as editorials texts from February 20th, 2016 – when the referendum was officially announced by Cameron – until December 31st, 2016, covering the whole year of 2016.

The method of this study is transposed from the method that first appeared in the United States at the beginning of the last Century, which aimed at collecting and analyzing journalistic material, and encouraged by researchers interested in political language and symbols (Campos, 2004). At the time, the theorist Harold D. Lasswell brought contributions of his research to the method, precisely because he also studied the communicative process and characteristics of messages in the social environment16. The author also states that

“The contents of the mass media are indicators of two very different and even opposing social phenomena. The contents of the mass media are a reflection of the social organization and value system of the society or group interest involved. Simultaneously, the contents of the mass media are purposive elements of social change, agents for modifying the goals and values of social groups”. (Janowitz, 1968, p. 648).

Hence, the content analysis can apprehend both indicators. It can be both quantitative and qualitative, the latter “trying to describe the content emitted in the communicative process, whether in the form of text or speech” (Cavalcante, Calixto & Pinheiro, 2014). Since this theoretical framework is based on theories that consider the press and the media as actors capable of impacting public opinion, the analysis of content here offers insight into both the framings of the press and the kind of message is transmitted to society.

16 Lasswell had as his central substantive concern the analysis of the “symbolic environment” and its consequences for human behavior and political morality” (Janowitz, 1968, p. 646).
To conclude, in order to thoroughly understand the perspectives of the press on the given subject, this study adopts an analysis approach based both on the quantitative (supported by the lexicometry software IRaMuTeQ\textsuperscript{17}) and qualitative content. That is to say, the content of the texts being analysed is prioritised in order to reveal the position taken in each text, either from:

(1) a positive perspective;
(2) a negative perspective, or;
(3) an unclassified perspective between the preceding two classifications.

This approach also accounts for how many articles were published, and differentiates between them in the categories of “News” or “Editorials”. Such differentiation is necessary because informative and opinionated journalistic articles serve different objectives and are also demonstrate different writing styles. According to Melo (2003), editorial are texts mostly aiming at a dialogue with the state: essentially, editorials express a position on a subject more directly, presenting to the government and political leaders which position would be supported, defended or criticized by that newspaper.

By selecting both news and editorials, this study sets out to provide a more complete overview of the editorial lines of the selected newspapers. Another style of opinionated journalistic discourse is apparent in the columns drafted by columnists, portraying visions of collaborators that do not necessarily represent the stand point of the newspaper they are contributing to.

**Brexit impacts on Brazil according to the press**

The parameters of the articles analysed here are published by the daily newspapers *O Globo*, *Folha de S. Paulo* and *O Estado de S. Paulo* published between 20 February 2016 and 31 December 2016. This time frame begins from when the then British Prime Minister, David Cameron, gave his speech to the UK House of Commons on 22 February 2016 formally setting the date for the Brexit referendum as 23 June 2016. The cut-off date of 31 December 2016 ends before the formal triggering of the procedure for the UK’s

\textsuperscript{17} software based on R software and on python language that provides users with statistical analysis on text corpus.
withdrawal determined by the relevant EY constitutional legal basis contained in Article 50 of the Treaty on European Union (TEU).

Articles were classified in three categories: positive impacts, neutral and negative impacts. We understand as positive the articles that have a positive perspective of Brexit in terms of impacts for Brazil and/or the EU-Brazil relations. The same logic applies for negative impacts, as in, articles that transmit a negative point of view of the consequences of Brexit for Brazil relations with the EU. Concerning the neutral category, we understand that articles that only state facts, figures and dates without really providing any kind of value judgment. The distribution of articles according to sentiment reveals no general predominance of any particular view of the Brexit impacts, as follows.

![Table 1 - Articles per sentiment](image)

Source: newspapers websites, Table prepared by the authors.

In total the paper considers 38 articles, which are distributed among the analysed newspapers as follows:

- *O Globo*, respectively published: 12 news articles and 3 opinion articles;
- *Folha de S. Paulo* published 9 news articles and 5 opinion articles, and;
- *O Estado de S. Paulo* 3 news articles, 5 opinion articles and 1 editorial.

As for the main difference between the reporting of these newspapers:
- The *O Estado de S. Paulo* tended to deal more with Brexit impacts on Brazil in its opinion sections and not so much in the informative sections.
- The articles of opinion in *O Globo* were contained within the “Blogs” section, in which columnists write about a variety of issues of public interest.
- The *Folha de S. Paulo* opinion articles are published in the “Columns” section, while the opinion articles in the *O Estado de S. Paulo* correspond directly to the section entitled, “Opinion”.
- The number and distribution of articles is summarized in Table 2 below.

![Table 2 - Articles published per section](image)

*Source: newspapers websites, Table prepared by the authors*

In terms of the dates of publication of the articles throughout the reference timeframe, overall coverage by all newspapers reach a peak between 24 and 25 June 2016, which is a result naturally to be expected given that these were the days immediately following the Brexit referendum itself as well as the
issue and dissemination of the results. Some 60.5% of all of these articles were published in this period as Table 3 illustrates. This behavior is observed in *O Globo* and *O Estado de S. Paulo* since there was no article published until the month of June addressing the theme: there was a minimal coverage in the run up to the referendum itself. Moreover, it is also important to highlight that very few articles were published in the following months, revealing that Brexit was not really considered an important issue to be closely followed. Therefore, the impacts of Brexit on Brazil were basically only debated on or in the immediate aftermath of the ‘leave’ victory.

![Table 3 - Distribution of articles in time](image)

*Source: newspapers websites, Table prepared by the authors.*

Regarding the content of the coverage, the most important finding is that *O Globo, Folha de S. Paulo* and *O Estado de S. Paulo* all focus on the economic dimension of Brexit, failing to provide and depth of analysis of the broader impacts on EU-Brazil relations terms of other areas of co-operation and joint actions, including the political dimension. Brexit is portrayed more as a matter for concern insofar as it may represent a source of risks or benefits for the Brazilian economy; there are few arguments about the Strategic Partnership between the EU and Brazil or the political impacts that might result from it. Those few articles that do bring these perspectives into play are merely replicated from publications taken from other national European portals, notably the *BBC* and *Deustche Welle* Lastly, it is clear that there is no
common stance among the three newspapers on how the Brexit vote might affect aspects of the EU-Brazil relationship, except for the economic dimension. This explains why the majority of articles were published in the economic sections of these three newspapers. In the case of *O Globo*, all informative pieces of news deal with the economic aspects appear in the section “Economy”. However, there are references to the EU-Brazil strategic partnership in a few of them. The three editorial articles expressing points of view on political effects, denote a positive view of Brexit regarding the possibilities of direct negotiations between Brazil and the UK. The analysis published by *Folha de S. Paulo* shows a majority of news articles does not point to a positive or negative positioning by the news outlet itself in relation to Brexit: *Folha de S. Paulo* is characterized as being the most neutral of the three news outlets under consideration here.

For the rest, *Folha de S. Paulo* expressed concern regarding the situation of Brazilians living in a post-Brexit United Kingdom. The *O Estado de S. Paulo* contains the lowest number of articles published with the reference period but, interestingly enough, opinion articles outnumber news articles. This indicates that the positioning transmitted by the texts is that of negative message – concerning Brazilian interests - where the article anticipates a protectionist position that would be adopted by the European Union in the matter of trade negotiations with both Brazil and MERCOSUL. This stands out as being a unique behavior in comparison to the other two newspapers. The content within the sections also vary, with only two articles published in the section “Economy”, marking a considerable divergence compared to *O Globo*.

The below table, Table 4, illustrates the predominance of economic news:
All three of these newspapers reported on the Brazilian government’s reaction, referring to both President Michel Temer and the former Minister of Foreign Affairs José Serra, stating that Brazil would respect the decision and maintain its regular ties with the UK. The speech of President Temer asserting that “A política externa brasileira é orientada pela soberania nacional” is highlighted in all three, but no express mention is made of the EU, nor even any mention of the issue of international integration. This brings us to the last important aspect of the results.

As mentioned earlier, at the peak of publications in the month of June 2017, and specifically 20 to 27 June 2017. In the days leading up to the referendum, anticipated repercussions portrayed the national event in the UK as a source of financial instability in stock markets around the world. Only after the disclosure of the results of the referendum did articles begin to focus on EU-Brazil relations in these three newspapers. However, all of

18 “Brazilian foreign policy is oriented to national sovereignty” (Author’s translation).
these newspapers tended to emphasize more often the position of the UK in the international scenario concerned, and possibilities for establishing or enhancing the UK’s relationship with Brazil, not mentioning the EU directly. At this point, there was a certain convergence between the articles focusing on the UK when referring to Brexit, which tended to see it as something positive for the Brazilian economy, as it would be easier to negotiate bilateral agreements between both countries. This position is interesting because the EU-Brazil Strategic Partnership is not mentioned even once, and the potential benefits are assessed only in terms of the UK. Thus, the EU is portrayed as a low-impact or even secondary actor in the coverage.

The similarity analysis\textsuperscript{19} below showing the words co-occurrences in all articles considered illustrates how the UK is a central element in the coverage. It is noteworthy that the term ‘reino_unido’ (UK, in Portuguese) is the central node in the graph, which also reveals that other two important nodes, whose centers are the terms ‘brasil’ and ‘união_europeia’ (Brazil and EU, respectively), do not have a direct lexical connection.

\textsuperscript{19} Analysis provided by the previously mentioned software IRaMuTeQ. Only the 15% most frequent nouns and adjectives were considered as graphs containing all words are not interpretable.
As far as MERCOSUR is concerned and the integration debate generally – in which the EU is the main example of regional integration that transcends the economic sphere – scarce mention is made in the press articles of MERCOSUR or regional integration as elements to be considered in light of a possible crisis within the European Union’s integration project.

O Globo sees Britain’s exit from the EU as a threat to such a deal, as the British are perceived as more prone to free trade within the European Union.
In addition to this, *O Estado de S. Paulo* considers Brexit as only negative, precisely because it believes the EU would take a more protectionist position on the negotiating table in the absence of the UK participating as an EU Member State in those negotiations. *Folha de S. Paulo* can be perceived as neutral, since it does not attribute negative or positive values to the fact. Overall, the UK is framed as the most willing to sign up to free trade agreements based on its history of positioning itself in international trade negotiations, especially compared to other European countries. This is the main argument presented in the articles that bring a negative view on the MERCOSUR-EU agreement in a post-Brexit context. As stated earlier, once again the European Union is not the main actor upon which the prospects of the bilateral UK-Brazil relationship would depend. In addition, it is also said that the new Argentinian government is more open to negotiate the agreement between MERCOSUR and EU, but that Brexit is not a consideration to be taken into account. According to the press, there will be an impact, since two thirds of the articles are classified as negative/positive/concerns as seen in Table 1.

The content analysis above shows us that the key message of the Brazilian press about EU-Brazil relations in a Brexit context is essentially economy oriented and lacks a deeper analysis of the political dimension and the ongoing Strategic Partnership. It can be easily seen in the similarity analysis presented in Graph 1. Economic terms such as ‘investimento’, ‘comércio’, ‘financeiro’, ‘importações’ and ‘exportações’ (‘investment’, ‘trade’, ‘financial’, ‘imports’ and ‘exports’, respectively) gravitate around all three main lexical clusters observed. In the content of the articles, the relationship with the EU is not seen as a priority in itself. It is a priority only as part of economic concerns. Expectations for a EU-MERCOSUR trade agreement, which is a key issue for the current Brazilian administration, have been high lately as negotiations have been advancing despite the persistent impasse on agricultural liberalization. In addition, it is noteworthy that both negative and positive impacts of Brexit towards Brazil are assessed more in terms of the role of the UK rather than the EU, revealing that the EU is not the focus of attention of the Brazilian press, a curious matter indeed considering the importance of the EU for Brazil in trade terms as well as in terms of its political important position in the international system.
Final remarks

In Brazil as in contemporary societies generally, the press has established itself as a key political actor, a fact that applies equally to matters of Brazilian foreign policy. This content analysis contributes to filling gap in current research into the relative scarcity of analysis of the impact of Brexit on Brazil’s relations with the European Union from the perspective of the media. EU-Brazil relations are strategic for Brazil’s international insertion, and Brexit has brought the factor of uncertainty into play, especially with regard to the negotiations of the trade agreement between the EU and MERCOSUR. Although it is not possible to say that there is a clear position of the press in this point, findings point to economic concerns. O Estado de Paulo is clearly pessimistic about the bloc, with the other two being more neutral, particularly Folha de S. Paulo. The issue of political consequences of the event or the Brazil- EU Strategic Partnership is barely touched upon in the news articles analysed here. Only O Globo reports upon it, but significantly, failing to adopt an explicit position in relation this matter.

Generally, Brexit is mainly seen by a bilateral UK-Brazil economic issue, that is to say, in terms of possibilities for Brazil to negotiate directly with the UK. There is no common position among the three newspapers beyond this elucidated economic trend. Therefore, it cannot be said that the Brazilian press has a vision about what Brexit would mean for the EU- Brazil relations. This leads to other questions, such as the absence of an editorial agenda about the relationship between them and what the possible causes might be. Finally, it is noteworthy the complementarity between our findings and those of the ‘Analysis of the Perception of the EU and EU’s Policies Abroad’ report commissioned by the EU and published in 2015. The low visibility of the EU as well as the lack of references to the EU-Brazil strategic partnership and to the political dimension of the bilateral cooperation are once again verified, which is an alert for the EU public diplomacy in terms of adjusting its strategies in order to raise the EU’s profile in Brazil.
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# Part 1. Brazilian perceptions of the EU and Brazil’s relations with it

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Part 1. Brazilian perceptions of the EU and Brazil’s relations with it

Folha de S. Paulo 6/21/2016 Como uma eventual saída do Reino Unido da UE afetaria a América Latina

World Folha de S. Paulo 6/24/2016 Embaixador diz que Reino Unido quer reforçar laços econômicos com Brasil

Market Folha de S. Paulo 6/24/2016 Brasil espera manter cooperação com Reino Unido e UE após referendo

World Folha de S. Paulo 6/24/2016 Fazenda vê Brasil preparado para enfrentar crise externa

Market Folha de S. Paulo 6/24/2016 Como a saída da União Europeia afetou os brasileiros no Reino Unido

World Folha de S. Paulo 6/25/2016 Serra quer negociar acordos com britânicos após Brexit

Market Folha de S. Paulo 6/25/2016 Blocos e lógicas

Column


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Chapter 3.

Good Neighbourly Relations in Regional Integration: Europe and Latin America Compared

Lívia Radaeski*

1. Introduction

Good neighbourliness is a core principle of international law to establish and develop harmonious relations among nation States. Traditionally, while it relates to the territorial sovereignty of states under international law, in essence it is rooted in customary international law pertaining to the principle of inviolability of national borders and non-intervention therein. In international law practice it is widely expressed in declarations and agreements and its fields of direct application are clearly acknowledged among the rights and obligations or duties of States.

Nevertheless, lacks formal codification to clarify and define the principle of good neighbourliness. Throughout history, aspects of the principle have found expression in international documents and agreements: the 1955 *Final Communiqué* of the Bandung Conference, specified principles

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20 KOCHENOV, Dimitry and BASHESKA, Elena. “Introduction: Good Neighbourliness inside and outside the Union”. In Good Neighbourly Relations in the European Legal Context. 2015, p. 8.

21 See also A/C.6/40/L.28, *Rapport de la Sous-Commission des relations de bon voisinage*, where a representative claims that the principle equals to a vague exhortation to cooperation and comprehension between neighbours. Thus the duties entailed in good neighbourliness seem to result from obligations in respect of customary and conventional law. Available at: https://digitallibrary.un.org/record/110325/files/A_C.6_40_L.28-FR.pdf, last visited on 21 June 2017

21 Ibid., p. 9.
underlying the practice of good neighbourliness, and the 1970 UN Charter on Friendly Relations and Co-operation – while not actually using the term ‘good neighbourly relations’ as such – was more explicit in identify the main elements of the principle. Further attempts to clarify good neighbourliness were pursued, however these initiatives were not successful.

The European Union however, has gone further in defining the principle within the pre-accession conditionality imposed on all countries aspiring to EU membership, demanding such countries to settle bilateral disputes peacefully. Today, it is a crucial condition for the pending EU enlargement to incorporate countries of the Western Balkans. Indeed, in its external relations, the EU specifically mentions the necessity of the bloc in promoting a region of prosperity and good neighbourliness in Article 8 of the Treaty on European Union (TEU).

By comparison, in the context of the MERCOSUR integration process in South America, which emulated the aims and achievements of the European Union, there is no explicit mention made of good neighbourliness in any founding instruments, which serve to formally establish commercial and economic issues and dispute resolution. However, to these ends, the significance of maintaining democracy and stability and the rule of law within MERCOSUR, necessarily implies the intent of the Parties to promote and respect good neighbourly relations.

This article compares the application of the good neighbourliness principle within the EU and South America in the form of MERCOSUR. The first of the tree sections in this contribution, focuses on the principle of good neighbourly relations itself; its constituent parts and attempts made to codify it. Section two draws on the application of good neighbourliness in EU regional integration, including its external relations, specifically in recent pre-accession negotiations with neighbouring countries. The final section explores the South American integration process, comparing application of the good neighbourly relations principle in the two regional blocs.
2. The principle of good neighbourliness

2.1. Overview

In interstate relations with bordering countries, the principle of good neighbourly relations aims to achieve peaceful coexistence, open dialogue and cooperation, all in accordance with the fundamental idea of the sovereign equality of States. Basheska notes that the attribute “good” accompanying the term “neighbourliness”, denotes a positive relationship, as opposed to the negative behaviour of a “bad neighbour”. It reflects the respectful intercommunication resulting from positive interaction among States guided by international law.

The good neighbourliness principle today lacks any clear delimitation or formal codification in international law. Its main legal basis rests upon the observance of the principles expressed in the United Nations Charter and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States (GAR 2625).

What actually constitutes good neighbourly relations can be traced back to legal principles universally accepted in international law, found in resolutions of the General Assembly of the UN. Sucharitkul lists three relevant principles of international law conducive to good neighbourliness that have been identified and reconfirmed by the practice of the United Nations. These principles were codified in declarations which the main aim is to provide a durable peace and prosperity for all peoples, based on the territorial sovereignty of States and the inviolability of national borders.

The first principle, that of “decolonization”, is identified in the Declaration on the Granting of Independence to Colonial Countries and Peoples (GAR...
Being “conscious of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples”, it declares that:

“all States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.”

In 1970, the principles of friendly relations and cooperation were gathered in seven principles and adopted by the General Assembly of the UN (GAR 2625) relating to the obligatory duties of every State, and reflecting contemporary practices of interstate relations. Maintaining and strengthening international peace and security is key, as is a more effective application of those principles stated that govern the conduct of states: “the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another”.

Finally, in 1974, the definition of aggression set down in Resolution 3314 as “the use of armed force by a state against the sovereignty, territorial integrity or political independence against another state”, was intended to enhance international peace and security as well as establish an environment of cooperation under GAR 2625. It reinforced the settlement of international disputes by peaceful means, called on States to refrain from acts of aggression or use of force contrary to the Charter and the Declaration of friendly relations and cooperation.

Despite being given form and fields of application, the principle lacks codification into international law. Rather than negating the principle or undermining the principle however, this serves to highlight its complexity.

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and reach\textsuperscript{28}. It has become increasingly necessary to strengthen and develop its content and modalities to enhance its effectiveness, see RES/43/171 to this end. To this end, Sucharitkul identifies, first, the growing importance of the principle as a guidance for State conduct when neighbouring states share common resources, such as minerals or resources of the sea, or common dangers or possible natural calamities. It emerges as a general principle of international environmental law involving State duties to cooperate in investigating, identifying and avoiding environmental harm to a state or its bordering neighbour and its inhabitants\textsuperscript{29}. The close cooperation in such instances is crucial for the survival of the States in the neighbourhood, and good neighbourly relations becomes a political imperative for the necessary exchange of technical, scientific, social and commercial information in the broader region. Sucharitkul next identifies the widening concept of neighbourhood inherent to the concept of neighbourliness\textsuperscript{30}. A “neighbour” is no longer limited to a geographical situation or to frontier regions, but could also apply to countries separated by water, whether by open sea or even an ocean. In an increasingly interconnected world, where the environment knows no borders, events in one country are capable of affecting countries in other parts of the world. What constitutes a “neighbour” is capable of going beyond tangible geographical proximity, extending to interstate relations between countries from the broader regional area or States on the other side of the globe\textsuperscript{31}. The preamble of the United Nations Charter mentions the need for all countries to be good neighbours, notably by undertaking positive and cooperative actions to maintain and ensure international peace and security:

\begin{quote}
“\textit{WE THE PEOPLES OF THE UNITED NATIONS DETERMINED [...] to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, [...] AND FOR THESE ENDS to practice tolerance and live together in peace with one another as good neighbours}”.
\end{quote}

Basheska recalls Iftene Pop, who writes that “good neighbourliness does not designate a geographical situation but a model of relations”\textsuperscript{32}. Further clarification could help eliminate inconsistencies in its implementation and avoid it being disregarded or misused. An improved, definitive articulation of the principle is necessary to assign its functions in several interstate contexts\textsuperscript{33}, to reinforce international law on the matter and minimise inconsistencies in application.

\textbf{2.2. The evolution of the principle of good neighbourliness}

Various documents govern principles of international relations and cooperation establishing many elements of the principle of good neighbourly relations. Centred upon the territorial sovereignty of States, non-intervention and peaceful settlement of disputes, 1945 Charter of the United Nations demands that States act as good neighbours through practising tolerance and peaceful coexistence. Chapter One reinforces the development of friendly relations among nations, the recognition of the sovereign equality of all UN members, and settlement of international disputes by peaceful means\textsuperscript{34}. In April 1955, 29 countries from Africa and Asia – including independent nations of Africa and Asia that either were not yet admitted to the UN or were poorly represented in the organisation\textsuperscript{35} – published a \textit{Final Communiqué} following the Bandung International Conference. Being a precursor to Resolution 1514 on decolonization, the Bandung Conference debated the hardships of dependent peoples and colonialism.

In addition to appealing to States to act towards each other with tolerance and to live together in peace as good neighbours, Part G of that \textit{Communiqué} listed ten principles supporting the practice of good neighbourliness, giving special attention to:

\begin{itemize}
\item \textsuperscript{32} Ibid., p. 92.
\item \textsuperscript{33} KOCHENOV, Dimitry and BASHESKA, Elena. “Introduction: Good Neighbourliness inside and outside the Union”. 2015, 27
\item \textsuperscript{34} UNITED NATIONS. Charter of the United Nations. 1945.
\end{itemize}
“2. Respect for the sovereignty and territorial integrity of all nations. [...] 
4. Abstention from intervention or interference in the internal affairs of another country. [...] 
7. Refraining from acts or threats of aggression or the use of force against the territorial integrity or political independence of any country. 
8. Settlement of all international disputes by peaceful means, such as negotiation, conciliation, arbitration or judicial settlement as well as other peaceful means of the parties’ own choice, in conformity with the Charter of the United Nations.”

It appeals to States to behave with tolerance towards each other and live together in peace as good neighbours. Seven principles were elaborated and set down the 1970 United Nations General Assembly Resolution 2625 on the Principles of Friendly Relations and Cooperation among States. The importance of the progressive development and codification of the principles of international law regarding friendly relations and cooperation among states, is clear. This Resolution attests to the Parties’ conviction as to the contribution these principles would make to world peace and the rule of law among nations.

a. The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,
b. The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,
c. The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter,
d. The duty of States to co-operate with one another in accordance with the Charter,
e. The principle of equal rights and self-determination of peoples,
f. The principle of sovereign equality of States,
g. The principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter,

These seven principles bear obvious similarities to the ten principles set down by the Bandung Conference. In fact, only three principles from the conference were not incorporated into the UN resolution: the recognition of equality of all races; the respect for self-defence, and; abstention of interests or pressures on other countries. According to Sucharitkul\textsuperscript{38}, these principles are certainly conducive to the improvement of the practice of good neighbourly relations, particularly as they continue to be adhered to in interstate relations.

The UN took further steps to establish the legal basis of the principle, along with the rights and obligations attached to it. The General Assembly set out to identify and clarify its elements, creating the Sub-Committee on Good Neighbourliness\textsuperscript{39} in September of 1985. Taking a deductive approach, it embarked upon defining “good neighbourliness”, identifying its principles and concrete manifestations. Some saw the principle more as a political notion or doctrine have doubtful legal content, and more about the attitude or conduct of a State. Others saw it as an amalgam of elements constituting international norms and instruments found in larger codified works, such as the UN Charter, and more a matter of behaviour in accordance with the rules of international law governing the relations between states.

The broader understanding of neighbourhood emerging from the report of the Sub-Committee was that good neighbourliness extended beyond the simple relations resulting from territorial contiguity or the existence of common borders. Equally, States sharing the same sea or fluvial basin could be considered neighbours, even if they did not share common frontiers. Going further, States pertaining to a same commercial region or having common historical ties could be labelled “neighbours”, and therefore subject to good neighbourliness principles. According to the report, “modern communications have so narrowly shrunk the world that one could no longer regard a State as isolated or escaping the imperatives of good


neighbourliness.” Consequently, the analysis should certainly begin by territorial contiguity but may well move beyond the sub-regional, regional and even global levels.

In November 1988, the Sub-Committee on good neighbourliness adopted the report, *Legal elements and others related to the development and reinforcement of good neighbourliness*. Various points on the list were provisional, having the sole objective of contributing to the identification and clarification of the elements on good neighbourliness. The document was not exhaustive and established no hierarchy or order of priority between its Titles, nor had any general agreement been reached on the list. It generally accepted the principles and norms of international law concerning relations of good neighbourliness and reaffirms the necessity of respecting them. Later sections relate to the fields of cooperation, the means of developing good neighbourly relations and the role of international organisations in doing so.

The General Assembly took note of the report of the sub-committee and the need to develop and strengthen good neighbourliness (Resolution 43/171), and it affirmed the legal basis of the principle:

“I. Reaffirms that good-neighbourliness fully conforms with the purposes of the United Nations and shall be founded upon the strict observance of the principles of the United Nations as embodied in the Charter and in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, and so presupposes the rejection of any acts seeking to establish zones of influence or domination”.

The matter was later overshadowed by other pressing issues and work did not continue.

To understanding which State practices translate into good or bad neighbourly relations, is crucial. Due to the growing interconnectedness among countries and the depth of globalisation today, it is necessary to formally identify and clarify States’ rights and duties in respect of their immediate

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40 Un-official translation. For more information regarding representatives’ declarations and complete development of initial debate, please refer to A/C.6/40/L.28.


42 Refer to the Annex of A/C.6/43/L.11 for the complete list and considerations.

neighbours or neighbours in the broader sense. The new dimension in the European Union integration and enlargement process illustrates this point. The principle has been transformed into a pre-accession conditionality, with its scope clearly defined within this framework.

3. Good Neighbourliness in the EU

3.1. Differences of traditional use and EU legal context

Classic operation of the principle rests on the mutual respect of sovereignty and the inviolability of borders among states in the international community\textsuperscript{44}. As noted already, the good neighbourly relations principle in international law is based on the sovereign equality of states, peaceful resolution of disputes and non-intervention in matters within the domestic jurisdiction of any state. However, in the European Union internal and external contexts, the principle stands out compared to its application in international relations more generally. Supranationality in the legal landscape of the EU Member States means that EU integration is capable of transcending national frontiers and the individual interests of States, reshaping the very notion of borders and State sovereignty, obliging its Member States to take account of the interests of other Member States and the Union as a whole\textsuperscript{45}, as the Members States act move forward as a Union, on a common path.\textsuperscript{46}

\textsuperscript{44} KOCHENOV, Dimitry. “The Internal Aspects Of Good Neighbourliness in the EU: Loyalty and Values”. In Good Neighbourly Relations in the European Legal Context. 2015, p. 2.

\textsuperscript{45} These interests, however, are limited to the common foreign and security policy, including the common defence policy. Chapter 2, Article 24, Paragraph 2 of TEU states: “Within the framework of the principles and objectives of its external action, the Union shall conduct, define and implement a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever increasing degree of convergence of Member States’ actions.” Paragraph 3 complements: “The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.”

\textsuperscript{46} According to the Common Provisions of the Treaty, the Member States confer competences to achieve objectives they have in common. The limits of competence of the
The supranational framework of European Union alters the concept of sovereignty contained in the friendly relations principle due to the reality of interdependency and the sharing of common values, objectives and measures established in the context of the Union. Once a Member State transfers its sovereign pursuit of interests concerning certain competences to the EU level, it is taking into consideration the impacts of its own decisions in other Member States: committing to shared action to benefit the Union as a whole, gives good neighbourliness a new meaning, transforming itself into a systemic principle of major importance within the bloc.

Member States that have already joined the Union after completing the rigorous accession process, must continue to guarantee full and complete adherence to the values and principles of the bloc. This compromise is essential to the continued membership of the Member State. The change in behaviour of any Member State regarding the basic principles of European Union, such as rule of law, democracy and human rights, affects decisions in and by other Member States as well. Membership commitments are secured through Article 7 of TEU, a monitoring mechanism allowing the EU to secure the values enshrined in Article 2. Any serious breach by a Member State can trigger this system of checks and balances.

Union, however, are governed by the principle of conferral, which can be found in Article 5 of the TEU.

Kochenov, Dimitry. “The Internal Aspects Of Good Neighbourliness in the EU”. 2015, 4

Kochenov, Dimitry and Basheska, Elena. “Introduction: Good Neighbourliness inside and outside the Union”. In Good Neighbourly Relations in the European Legal Context. 2015, 11

Kochenov, Dimitry. Op cit. 11. every European citizen has an interest in not being challenged with an illiberal Member State in the EU, since this Member State have voice in decisions taken in the European Council and the Council of Ministers, and indirectly engage in governing the lives of European citizens all over Europe.

“The EU is above all a community of values. We are a family of democratic European countries committed to working together for peace and freedom, prosperity and social justice. And we defend these values”. In “The European Union explained: Enlargement”. A publication by the European Commission, available at: http://europa.eu/pol/index_en.htm, last visited on 5 July 2017. For a full explanation on how the Union might apply the monitoring mechanism contained in Art. 7 of the TEU, see the full text, to be found at: http://urlex.europa.eu/legal-content/EN/TXT/?uri=celex:12012M/TXT, accessed: 6 July 2017.
The Union’s capacity to influence Member States’ internal State conduct, give the European Union the character of a neighbour in itself in the light of the good neighbourliness principle\(^{51}\). A special relationship between the Union and its Member States emerges. Not only must the Member States ensure good neighbourliness among each other and respect their territorial sovereignty and borders, internal issues, and peaceful settlement of disputes: they must also consider the entire EU as a neighbour in its own right. This reinforces the guarantees of Article 2 TEU values. Because of the specificity of the legal reality of interdependence that the bloc has shaped, it is legitimate to expect the EU to intervene if a Member State neglects the European reality and cause negative externalities which start affecting others\(^{52}\).

The EU role in neighbouring countries is governed by its enlargement policy and its European Neighbourhood Policy (ENP). Good neighbourly relations functions different in the EU’s external relations where the principle of conditionality is deployed.\(^{53}\) The Union has put in place a strategic relationships to help ensure a prosperous and safe neighbourhood, where aspiring Member States and neighbouring countries must progress towards and meet pre-conditions in order to be entitled to EU support and partnerships. The ENP reflects the Union’s role as a neighbour and its desire to build on common interests with partner countries of the East and South\(^{54}\) in order to work jointly in key priority areas – notably the promotion of democracy, rule of law and respect for human rights – all in order to achieve a more stable EU Neighbourhood, in a political, socio-economic and security terms\(^{55}\).

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\(^{53}\) KOCHENOV, Dmitry and BASHESKA, Elena. “Introduction: Good Neighbourliness inside and outside the Union”. 2015, 11.

\(^{54}\) The European Neighbourhood Policy (ENP) governs the EU’s relations with 16 of the EU’s closest Eastern and Southern Neighbours. To the South: Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia and to the East: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.

Article 8 TEU enshrines the obligation of the Union to develop a “special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union”. This confirms the EU as a normative power in the region, acting according to its own political principles and its general prescription of Article 3 of TEU, stating the Union’s aim to promote peace, its values and the well-being of its citizens. Thus, Article 8 TEU actively promotes policy reform and transformation in bordering states to create a specific neighbourhood based on European values. It is an important aspect contributing to stability and peaceful relations, nonetheless, and counts on close relations based on cooperation. However, it does not define a region of good neighbourliness. The lack of codification of good neighbourliness internally and externally is apparent here too.

Working through bilateral ENP Action Plans and bilateral agreements containing reciprocal rights and obligations, the Union aims to enforce its own democratic values and extend it to its neighbourhood through political, economic and institutional reforms. Stabilisation of the region on European terms is the aim, assuring peace and co-operation among the neighbouring countries. Better security at the EU’s borders is to be accomplished through the principle of good neighbourly relations, and particularly to settle conflicts between its neighbouring countries.

It is relevant to ask, what constitutes a good neighbour for the EU both internally and externally? Kochenov argues that this entails not only respect

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57 Paragraph 5 rules on the relations of the Union with the wider world and reaffirms “the Union shall uphold and promote its interests and contribute to the protection of its citizens.”
58 Hillion, however, claims that constitutionalising the neighbourhood competence the Treaty adds constraints on the development of a policy which has been incremental and flexible thanks to the fact that it was forged outside the Treaty framework, on the basis of soft law instruments. By defining the principle, its scope becomes limited and subject to competence struggle among institutions.
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for international law and the principles embodied by the UN Charter and the declaration on friendly relations and cooperation: it also, and mostly, strict adherence to the values of the European Union. Internally speaking, it implies strict adherence to the acquis communautaire. To be a good neighbour in the EU or outside means to be a specific type of state, embracing specific values and principles. Candidate countries and aspiring Member States seek to transform themselves into this model by implementing the EU’s pre-accession conditions, including approximation to the entirety of the acquis communautaire. While the approach towards actual/potential candidates and ENP countries seem separated, nevertheless a special relationship is pursued with countries in the European continent and its accession prospects.

The Action Plans regarding neighbouring countries part of the ENP seek to establish approximation of values and norms, to promote political and institutional reforms and the possibility to develop an increasingly close relationship with the bloc. Further integration between the EU and neighbours is seen as a means to secure peaceful and stable borders on the one hand, and on the other it reinforces financial support to these countries. Particularly for the countries composing the Eastern Partnership, Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine, which represents the Eastern dimension of the ENP, the action plans could represent something more than just a special relationship with the Union. Considering the geographical location of the Eastern Partnership countries and the efforts delimited in their respective Action Plans, potential membership cannot be disregarded outright when reading Article 49 TEU, see further, the legal basis for eligibility and the process of EU accession. The ENP and enlargement prospects are

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64 The documents reinforce ambitious objectives based on commitments to shared values and effective implementation of political economic and institutional reforms. Implementation will advance on the convergence of the countries’ legislation, norms and standards to those of the European Union and assist further integration. The same discourse can be found throughout the Action Plans of the Eastern Partnership countries.
inherently interlinked, as much because of the EU conditionality approach, as because of the common overarching goals of stabilisation and pacification of the continent\textsuperscript{65}.

The application of the principle of good neighbourliness within and in external relations of the European Union apparently encompasses all the values and principles enshrined in the UN Charter and the Declaration on friendly relations and co-operation. Inspired by the international customary law practice, the same difficulties arise due to lack of clarification and formal codification. This said, the EU has certainly altered and shaped the principle in order to achieve its own interests. While this fluidity and flexibility has helped the EU to model and apply the good neighbourliness principle in different ways, within the EU, the principle alters some aspects of state sovereignty and the non-intervention dimension of the principle is relegated to the second level, because a State must renounce the pursuit of individual interests in the name of a common policy decided at supranational EU level.

By assuring the Member States do not deviate from supranationally-agreed shared duties and rights, the Union assumes the role of a neighbour in its own right. This role extends to the EU’s engagement with the neighbouring region. The principle emerges as core to EU enlargement pre-accession legal practice as well as of the ENP. Keeping in mind that the EU transforms through incorporation\textsuperscript{66}, the ENP directed to some specific countries could lead to potential candidate status, provided these countries do not deviate from EU values and the broader good neighbourliness pre-conditions and behaviour. Further afield, the Union works through Partnership Instruments in order to advance its strategic interests with selected third countries beyond its immediate neighbourhood and to tackle global challenges\textsuperscript{67}.

\begin{itemize}
\item \textsuperscript{65} KOCHENOV, Dimitry and BASHESKA, Elena. Op cit., 19.
\item \textsuperscript{66} KOCHENOV, Dimitry and BASHESKA, Elena. “Introduction: Good Neighbourliness inside and outside the Union”. 2015, 18.
\item \textsuperscript{67} For more information regarding the Partnership Instrument, refer to: https://eeas.europa.eu/topics/partnership-instrument_en, accessed: 10 July 2017.
\end{itemize}
3.2. Good neighbourly relations as a pre-accession conditionality tool

Eligibility to join the EU is provided for in Article 49 TEU. Any European state may apply to become a member of the Union, provided they respect the values set out in Article 2 TEU. While not expressed in Article 49 TEU, good neighbourliness in referred to Article 8, albeit without definition. Rather, the principle has developed over the enlargement practice of the Union. The 1993 Copenhagen Criteria consolidated the pre-conditions to accession to the EU, based on political, economic and legal conditions, based on creating a stable democracy and competitive market economy, willingness to take all EU policies and promoting the values and principles of the Union. However, the bloc does not establish a uniform model of democracy or capitalism, and nor has it tried to outline one. The good neighbourly relations principle has been growing steadily in importance with each enlargement round, culminating with the formal proclamation of good neighbourliness as a part of the Union’s major effort in the Balkans, which further expands the Copenhagen criteria.

In development assistance by international organizations, conditionality is more the practice of allocating assistance resources to be used consistently with a set of previously agreed goals. European Union conditionality has

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69 Ibid., p. 250.
70 Ibid., p. 21.
71 STEUNENBERG, Bernard and DIMITROVA, Antoaneta. “Compliance in the EU enlargement process: The limits of conditionality”. In European Integration online Papers (EIoP) Vol.11, No 5. 2007, 2.
72 If the objectives or the conditions linked to the recipient country are not accomplished, the donor is able to stop the world of resources. Nonetheless, it is acknowledged that aid conditionality does not have a universally-agreed definition. It could cover a variety of different type of engagements. According to “Summary Note on Conditionality”, prepared for the Working Party on Aid Effectiveness - Task Team on Conditionality, “most discussion of conditionality has focused on commitments related to the provision of budget support; however, in practice such commitments are but a subset of wider range of commitments that link donor financial support to actions by partners”. Available at: http://www.oecd.org/development/effectiveness/49066211.pdf, accessed: 11 July 2017.
developed from a minor policy tool in agreements with third countries, to a core policy device in EU external relations relating to its enlargement policy. Assistance received by potential and candidate members through European aid programmes focus on the stabilization and convergence of domestic matters to the bloc’s reality and does not rely, at least symbolically, only on the monetary gains.

EU enlargement conditionality can be defined as an exchange between the Union and a candidate country, where the bloc offers the candidate a realistic membership prospect, if the candidate implements a wide range of domestic reforms. This “carrot and stick” approach presupposes the withdrawal or slowing down of accession prospects if the candidate state fails in its reform programme. The Union looks to minimize risks of incoming Member States disrupting or destabilising the political, economic and legal internal order. However, the bloc also applies conditionality to third countries in forms of trade concessions, aid, co-operation agreements and political contacts. An example is the conditionality contained in the ENP Action Plans, applying bigger incentives to countries in the EU’s surrounding neighbourhood, to reinforce agreements and reforms leading to candidate status. In fact, pre-accession conditionality applied to candidate states during preparations for membership is a different category of conditionality the bloc employs in its external relations. Formal candidate status can be an arduous task. Convergence with EU norms, candidate countries is very much a moving target as the Union itself continues to deepen its own integration and other activities. It is a highly politicized process also ultimately requiring the political willingness of the EU Member States to finally accept candidate countries as partner Member States.

73 STEUNENBERG, Bernard and DIMITROVA, Antoaneta. “Compliance in the EU enlargement process”, p. 3.
74 Ibid., p. 3.
77 Ibid., p. 252.
Since this is an asymmetrical relationship, Member States and applicant countries are not equal partners in this process, the application of good neighbourliness condition has become highly politicised. EU Member States can slow down a country’s accession by not granting it candidate status or by refusing to open or close negotiating chapters during the pre-accession process. This way, Member States can lever political means to resolve any bilateral disputes with candidate countries, arguably going against the principle of equality of states, which is necessary for the functioning of good neighbourly relations. Equality of states presupposes equal treatment of both States before the law. For good neighbourliness the equality of States is rooted in international law but also the nature of the relations between States. Symmetric relations are essential to the existence of good neighbourliness, while inequality of States before the law and an environment of enmity hinder good neighbourly relations.

Where reforms are postponed or compliance is superficial, negotiations or even enlargement may be suspended. While the EU might prefer to enjoy a stable and democratic neighbouring country, it may not be inclined to grant that country full membership. In such cases, the Union stimulates and gives continuity to the introduction of reforms but without granting the reward of membership.

The good neighbourly relations principle began to be delineated in the Union’s enlargement process in the early 1990s with the advent of the Copenhagen criteria set down by the 1993 Copenhagen European Council. The Council’s Conclusions here were framed with the countries of Central and Eastern Europe in mind, to lower risks of these countries to ensure their preparedness to meet the full rights and obligations of membership. By the Copenhagen Criteria specify that,

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78 Membership negotiations cannot start until all EU governments agree, in the form of a unanimous decision by the EU Council, on a framework or mandate for negotiations with the candidate country. For more information, refer to: https://ec.europa.eu/neighbourhood-enlargement/policy/steps-towards-joining_en, accessed: 12 July 2017
80 Ibid., p. 98.
“membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market as well as the capacity to cope with competitive pressure and market forces within the Union”.

It also states that “the Union’s capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration”.

Enlargement conditionality comprises conditions as well as incentives and disincentives applying both to aspiring Member States and to receiving Member States, including the absorption capacity of the EU. The EU was concerned, among other things, as to the future functioning of its internal decision-making and continued integration potential, and also about the security implications of unsettled issues implied by eastwards enlargement, particularly border disputes and the protection of minorities. In order to enlarge to bring in the Central and Eastern European countries, the Union started working out conditions and frameworks for the expansion progressively and frequently, through summits and meetings at all levels of administration and government. Good neighbourliness and bon voisinage came to the fore, and the Essen European Council of 1994 established an structured relationship with CEECs and areas of action, and affirmed that for the success of this strategy, intra-regional cooperation and promotion of good neighbourly relations between the CEECs and their immediate neighbours.

82 For further information regarding the Copenhagen criteria, refer to the Presidency Conclusions of the Copenhagen European Council 21-22 June 1993, available at: http://www.europarl.europa.eu/enlargement/ec/pdf/cop_en.pdf, accessed: 11 July 2017. They involve full approximation to the acquis communautaire, which is the body of common rights and obligations binding to all the EU member states. According to the Union, it is constantly evolving and it is composed of the content, principles and political objectives of the Treaties, legislation, declarations and resolutions adopted by the Union, instruments under the Common Foreign and Security Policy, international agreements concluded by the block. Adoption and implementation of the acquis are the basis of the accession negotiations. Information retrieved from: https://ec.europa.eu/ neighbourhood-enlargement/policy/glossary/terms/acquis_en, accessed: 13 July 2017.


to be of particular importance\textsuperscript{85}, as much for promoting regional economic development.

The 1997 Luxembourg Council raised the profile of good neighbourliness for the enlargement prospects of the CEECS. The comprehensive, inclusive and ongoing enlargement process took place in stages, and “the European Conference” was set up to bring the EU Member States together with aspiring CEECs for political consultation, and broaden and deepen co-operation, all of which were to abide by:

“...a common commitment to peace, security and good neighbourliness, respect for other countries’ sovereignty, the principles upon which the European Union is founded, the integrity and inviolability of external borders and the principles of international law and a commitment to the settlement of territorial disputes by peaceful means, in particular through the jurisdiction of the International Court of Justice in the Hague.\textsuperscript{86}\textsuperscript{9}

The peaceful settlement of bilateral disputes by peaceful means is consistent with the principle’s traditional use in international law, as already explored above. In line with application of the good neighbourliness principle in international law, EU’s enlargement law and practice has implemented the principle so as to prevent the internalization of external conflicts\textsuperscript{87}, even formalizing the requirement of aspiring member countries to settle their bilateral disputes at multilateral level. Progress towards membership is measured, inter alia, according to progress in settling such disputes.

Because of the major role good neighbourliness principle came to play in the settlement of disputes, Bashetska argues that it should be applied consistently and in accordance with the rules of international law\textsuperscript{88}. The sovereign equality of States and the symmetry between States facing a bilateral dispute should be taken into account. However, when disputes involving member and candidate states emerge, the enlargement process and negotiations do not do so. The asymmetry of power between Member States and candidate countries plays is noteworthy. Using Rodin’s definition

\begin{footnotesize}
\begin{enumerate}
\item Ibid., p. 100.
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to differentiate between two general groups of bilateral disputes involving states with different status: vertical disputes consist of countries aspiring to EU membership involved in a dispute with an existing Member State; horizontal disputes are between candidate countries. The settlement of horizontal disputes might be arranged within or outside the framework of the Union. Vertical disputes can be more problematic, causing delays or even deadlock in accession processes. This distinction becomes important in the previous and current Balkans enlargements.

From the 1990s, the unique (historical) challenges of enlarging into the Balkans region, damaged and traumatized by conflict, have proved greater than in the case of the CEECs. State formation, recognition of countries and the status of minorities demanded considerable support and reforms, including the reinforcement of regional cooperation and good neighbourliness. The June 1999 the Stabilization and Association Process (SAP), strengthened by the Thessaloniki Summit in 2003, set the EU’s enlargement policy towards the Western Balkans, declaring “the future of the Balkans is within the European Union”. The SAP is implemented by the bilateral Stabilization and Association Agreement (SAA) framework for relations between the EU and each of the Western Balkan countries. The SAAs, while specific to the Balkans country concerned, identify common and political objectives, and fostering of regional cooperation and good neighbourliness, which are now essential elements of the SAP enlargement processes, with the success of

89 BASHESKA, Elena. “The Good Neighbourliness Condition in the EU Enlargement”. 2014, p. 94
90 Ibid., p. 95.
91 UILENREEF, Arjan. “Bilateral barriers or good neighbourliness? The role of bilateral disputes in the EU enlargement process”. June 2010, p. 11.
94 For more information regarding the SAA, refer to: https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/saa_en, accessed: 12 July 2017
95 2016 Communication on EU Enlargement Policy. COM(2016) 715 final. The document goes further: “Good neighbourly relations continue to be reinforced through various regional cooperation initiatives. At the same time, more responsible political
cooperation today being a measure of the success of the connectivity projects and regional initiatives.

Regional cooperation and good neighbourliness are crucial for the entire region. Compared to the CEEC enlargements, no group enlargement will follow for the Western Balkans, and progress depends solely on individual achievement\(^{96}\). The Thessaloniki Summit confirmed this: “Progress of each country towards the EU will depend on its own merits in meeting the Copenhagen criteria and the conditions set for the SAP.” Uilenreef sees the potential for creating asymmetries and tensions that could undermine regional cohesion should one country progress faster towards the EU. He proposes ways be sought to make progress of one country favourable to the other Balkans countries\(^{97}\).

Between the existing Member States and candidate countries, the good neighbourliness principle guides conduct and provides the appropriate framework for settling disputes. The 2016 Strategy Paper on enlargement highlighted that: “bilateral issues need to be addressed by the parties concerned as early as possible and should not hold up the accession process, which should be based on established conditionality.”\(^{98}\) Most bilateral disputes today are between a Western Balkans country and an EU Member State, whereas for the CEEC enlargements of 2004 and 2007, such disputes were between the CEECs themselves or with third countries\(^{99}\), and being horizontal disputes were not strictly implemented\(^{100}\).
For the Western Balkans and Turkey, where the disputes are vertical, the problem of application is not about inconsistency, but more that individual Member States seek national interests and political considerations in applying the principle\textsuperscript{101}. Such disputes can result in the suspension of membership negotiations by the EU\textsuperscript{102}, from the time the country applies for membership. The European Council can ask the European Commission to issue an Opinion on the applicant country with which it has the dispute, and from then on, a Member State could block the start of formal accession negotiations because a unanimous decision by the European Council would be necessary to do so.

If the applicant country has already been awarded candidate status, accession negotiations can start. Common positions are unanimously adopted by the Council, in accordance with the propositions of the Commission\textsuperscript{103}. Negotiations between ministers and ambassadors of the EU governments and the candidate countries take place in intergovernmental conference (IGC). Even though the Commission plays this central role in guaranteeing due process in the pre-accession process and practice, interference by Member States slow down the process, often involving checks on the validity of requests for further adjustments by the candidate countries’ programmes: after all, enlargement is ultimately only possible with the unanimous support of the Member States. This is the duality of EU conditionality as identified by Uilenreef: while enlargement is regulated by the EU Treaties, it is nonetheless influenced by the political process between Member States and candidate countries throughout the negotiation rounds\textsuperscript{104}.

Many in the Western Balkans region, after the dissolution of the Republic of Yugoslavia in 1991, were engaged in the boundary dispute of the Bay of Piran, a small gulf located in the Adriatic Sea. When conclusion of the

\textsuperscript{101} Ibid., p. 95.
\textsuperscript{102} There are 3 stages: the grant of EU of candidate status to an aspiring country, the opening of formal membership negotiations, and the completion of negotiations and reforms leading to accession. A summary of steps towards joining the block can be found in its webpage: https://ec.europa.eu/neighbourhood-enlargement/policy/steps- towards-joining_en, accessed: 13 July 2017.
\textsuperscript{103} UILENREEF, Arjan. “Bilateral barriers or good neighbourliness? The role of bilateral disputes in the EU enlargement process”.2010, p. 6.
\textsuperscript{104} Ibid., p. 8.
membership negotiations was almost complete, Croatia faced a Slovenian blockade, which objected to Croatia’s negotiation position referring to controversial maritime borders. Croatia’s accession was delayed, but the dispute had not been addressed at the time of Slovenia’s accession in 2004. Both disagreed on the method to be used to settle the issue, Croatia preferring international arbitration while Slovenia favoured mediation, which would give it a more favourable situation because it could use its status as an EU Member State to leverage political gains. In 2009 at arbitration outside of EU fora, the two agree to a bilateral binding and definitive settlement but after Croatia became an EU Member State, in 2013, Croatia refused to recognise the final arbitration ruling for reasons of Slovenia’s interference with the proceedings the Permanent Court of Arbitration in The Hague.

Concerning the politicization of the principle of good neighbourliness and the asymmetry of power between EU Member States and candidate countries, the intractable dispute involving FYROM and Greece stands out. It began with the dissolution of the Federal Republic of Yugoslavia in 1991, when the newly independent country adopted the name “Republic of Macedonia”. Greece opposed this name, charging the country with

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105 Ibid., p. 16.
107 Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia, November 2009, available at: https://pcacases.com/web/sendAttach/2165, accessed: 13 July 2017. The Arbitration Agreement of 2009 recalled the peaceful means of settlement of disputes present in the UN Charter and both the parties affirmed their commitments to a peaceful settlement of dispute in the spirit of good neighbourly relations. Good neighbourliness is also called into matter in Article 4(b) concerning applicable law: the tribunal shall apply “international law, equity and the principle of good neighbourly relations in order to achieve a fair and just result”. After some turmoil regarding the arbitration on Piran Bay, on 29th June 2017 Croatia has refused to recognise a ruling by an international tribunal in the Netherlands concerning the outstanding sea and land border dispute with Slovenia. Croatia said that the Hague-based Permanent Court of Arbitration was no longer valid, following disclosures in 2015 that a Slovenian official had inside contacts with the court’s Slovenian arbitrator. “Croatia ignores ruling on Slovenia border dispute” in EUobserver of 30 June 2017, available at: https://euobserver.com/justice/138398, last visited on 13 July 2017.
irredentist aspirations towards the Greek province of Macedonia. By 1993 a provisional solution was found – “Former Yugoslav Republic of Macedonia” – making UN accession possible. In 1995 FYROM and Greece signed an Interim Agreement where Greece: accepted this provisional name as well as the fact that the Macedonian constitution expressed no irredentist aspirations (Art. 6); raised no objection to FYROM’s application to or membership in international, multilateral and regional organizations and institutions of which Greece is a member, provided it was referred to accordingly (Art. 11); agreed to obligation of both countries to encourage the development of friendly and good neighbourly relations (Art. 14).

This framework facilitated FYROM’s inclusion in the accession instruments for the Western Balkans, and reinforced provision for regional cooperation and good neighbourliness, without mentioning explicitly the name dispute. In 2004, FYROM secured candidate status, subject to fulfilment of the Copenhagen criteria, and in 2008 the FYROM Accession Partnership expressly made “good neighbourly relations, and in particular finding a negotiated and mutually acceptable solution for the country’s name” one of the political criteria. Greece’s response – backed by France – was to veto Macedonia’s accession to NATO that same year: NATO membership may only be conceded to FYROM following a settlement of the dispute. This strengthened the position of Greece inside the Union, and other Member States sided with Greece, which shied away from involvement in any conflict between a fellow Member State and an applicant country even though Greece’s veto was in breach of Article 11 of the Interim Accord and impacted the EU enlargement process. The International Court of Justice

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confirmed the violation of the Interim Accord by Greece, but with no effect, not even on guaranteeing Greece’s compliance with international law. Recent progress in implementing confidence-building matters with Greece are decisive steps needed to solve the name issue. This comes after the Commission, again, stating its preparedness to extend its recommendation to open accession negotiations with the former Yugoslav Republic of Macedonia.

The name dispute stretches over 27 years and remains an essential to the EU enlargement process, as is clear from the European Commission’s 2016 Communication on EU Enlargement Policy. The abuse of the good neighbourliness principle in this way, illustrates the moving target problem: FYROM’s name was not a pre-accession condition initially, but as the dispute evolved the settlement of the issue became a good neighbourliness determinant.

Because of the region’s history, bilateral disputes are now very much an issue of concern to the EU enlargement process, not only those among Balkans countries but also those with neighbouring EU Member States. To address this, the Berlin Process was launched, comprising yearly high-level meetings between the six Western Balkan governments and several EU Member States between 2014 and 2018, and with the main goal of reaffirming the European

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116 This occurs not only with member states that have been in the Union for a longer time, but also with newcomers. Croatia faced Slovenian obstruction to its accession due to borders disputes, and now that it has become a member state, it took part in a controversy with the blocking of opening of chapter 23 with Serbia concerning demands for fulfillment of international legal and minority rights standards. “Bilateral Issues in the Western Balkans: A Threat to European Integration?” In European Western Balkans of 21 June 2016, available at: https://europeanwesternbalkans.com/2016/06/21/bilateral-issues-in-the-western-balkans-a-threat-to-european-integration/, accessed: 17 July 2017.
perspective in the region by enhancing cooperation and economic stability\textsuperscript{117}. The Berlin process focuses on economic development and growth, recalling that regional cooperation and good neighbourly relations are a pre-condition for EU accession and one of the strategies to address related challenges. The process has a three-pillar structure, aimed at tackling issues related to bilateral disputes, economic governance and connectivity and cooperation with civil society and youth. Within the framework of the Berlin process, during the Western Balkans Vienna Summit 2015, the foreign ministers of the Western Balkans countries signed the text of the “Declaration on Bilateral Issues”\textsuperscript{118} and committed themselves to settle all open questions in the spirit of good neighbourliness and commitment to European Integration\textsuperscript{119}. They agreed not to block or encourage to block, the progress of neighbours on their respective EU paths. It also suggested formally stepping up EU involvement in the resolution of bilateral disputes.

Unresolved political issues in the region could pose a serious obstacle to regional cooperation, a good neighbourhood, investment promotion and the European integration process\textsuperscript{120}. A special process was developed, aiming to stabilising the countries politically and encouraging transition to a market economy. Regional cooperation is an essential element of this process, since most of the countries of the region are better approximate to the EU than

\textsuperscript{118} The declaration was drafted by the Balkans in Europe Policy Advisory Group (BiEPAG) and it is an integral part of the policy brief ”Removing Obstacles to EU Accession: Bilateral Disputes in the Western Balkans”, available at: http://balkanfund.org/wp-content/uploads/2015/08/BIEPAG-Policy-brief-web.pdf, accessed: 14 July 2017.
among each other\textsuperscript{121}. Resolution of bilateral disputes is crucial to a peaceful and cooperative neighbourhood for all countries in Europe, but also to avoiding disenchantment in the EU Member States that could further hamper future enlargements.

The principle of good neighbourly relations as a pre-accession conditionality was developed throughout the enlargement rounds. Presently, it has been used as tool to settle bilateral disputes between member states and candidate countries, as well as among candidate and potential countries. Its role seems to acquire more relevance than in previous enlargement rounds due to explicit mention in official documents concerning accession strategies and partnerships, together with agreements and summits designed to reinforce and promote regional cooperation and good neighbourliness. The asymmetry in status of the Member States and candidate countries, politicises the good neighbourliness principle, applied more in the national interests that those of the EU and the broader region. As Basheska points out, the numerous inconsistencies in the implementation of the good neighbourly relations principle, especially in EU foreign relations and enlargement can easily lead to its misuse\textsuperscript{122}.

4. Good Neighbourly Relations and Mercosur

4.1. Mercosur overview

The Common Market of the South (Mercosur) is a regional integration process that comprises Argentina, Brazil, Paraguay, Uruguay, (until recently) Venezuela and Bolivia (the latter still in process of adhesion). The integration process is intended to be dynamic and open, having as its main goal to establish a common place that would generate commercial and investment opportunities through a competitive integration of the national economies in

\textsuperscript{121} Ibid., p. 84.

\textsuperscript{122} KOCHENOV, Dimitry and BASHESKA, Elena. “Introduction: Good Neighbourliness inside and outside the Union”. 2015, p. 27.
the international market context\textsuperscript{123}. Despite its economy-oriented framework, the bloc acquired a more political stance over its existence, to promote democratic governments in the region and social cohesion beyond the initial economic project\textsuperscript{124}. Various initiatives of Brazilian and Argentinean governments over time together with the spill over of its functions to more political matters, has made Mercosur into a mechanism for the political orchestration of these two historical powers in the region.

The need to develop good neighbourly relations in Latin America helped to create a multilateral framework of cooperation and solidarity through the promotion of economic development in MERCOSUR member countries. Even though the necessity of maintaining good neighbourliness could be seen as a contributing factor to the creation of MERCOSUR, the principle is not referred to the founding treaties nor other documents pertaining to this regional integration. When compared to the application of the principle in the European Union, good neighbourly relations have neither evolved nor had much of a role to play as a pre-condition to acceding countries. However, an implicit application of the principle in the MERCOSUR integration actions in the region is evident.

The history of integration in Latin America been more one of political rhetoric, with feeble manifestation of actual aims. Already in 1819 and 1826, attempts to bring about desired regional unity to the region through pan-American Congresses failed\textsuperscript{125}. By 1948, the Organization of American States came into being, becoming the world’s oldest regional organization and aiming to achieve an order of peace and justice among its members, promoting solidarity and defending their sovereignty, their territorial integrity


\textsuperscript{124} MALAMUD, Andrés and SCHMITTER, Philippe C. “La Experiencia de Integración Europea y el Potencial de Integración del Mercosur”. In Desarrollo Económico, vol. 46, Nº 181, Abril-Junio 2006, p. 3. According to Malamud, “Mercosur is a customs union that aspires to convert itself in a common market, even though it manifests the commitment of also promoting an eventual political integration.”

\textsuperscript{125} MALAMUD, Andrés. “Mercosur Turns 15: Between Rising Rhetoric and Declining Achievement”. In Cambridge Review of International Affairs, Volume 18, Number 3, October 2005, p.422.
and their independence\textsuperscript{126}, all of which aims translate into core elements of the principle of good neighbourly relations. The OAS is a regional agency within the United Nations, pursuant to the provisions of Chapter VII of the UN Charter, thus obliged to defend the rights and duties prescribed\textsuperscript{127}. In this spirit, the OAS Charter also states that the true significance of American solidarity and good neighbourliness can only mean the consolidation on the continent within the framework of democratic institutions, of a system of individual liberty and social justice.

The desire for deeper integration in the region and further focus on a multilateral framework of cooperation in Latin America translated into the first serious effort to promote regional integration, in the form of the Latin American Free Trade Association. Due to its poor performance, it was later replaced by the Latin American Integration Association (LAIA)\textsuperscript{128}. In its constituting document, the Treaty of Montevideo of 1980, the signatory States reclaimed the purposes of strengthening the friendship and solidarity ties among its peoples together with the willingness to propel forward the development of solidarity and cooperation commitments with other countries and areas of integration in Latin America, having the main objective of promoting a convergence process leading to the establishment of a regional common market\textsuperscript{129}. Even though the need to foster an area of cooperation is mentioned, its general principles focus on the progressive convergence of actions aimed at creating a Latin American common market. MERCOSUR was established in 1991 with the Treaty of Asunción, to pursue the establishment of a common market by 31 December 1994. In this sense, the bloc could be seen as a complementing economic agreement

\textsuperscript{126} For the complete Charter of the OAS, please visit: http://www.oas.org/en/sla/dil/inter_american_treaties_A-41_charter_OAS.asp, accessed: 25 July 2017
\textsuperscript{127} Article 52 of Chapter VIII of the UN Charter states that: “Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.” It also urges that such agencies shall make every effort to achieve pacific settlement of local disputes. Available at: http://www.un.org/en/sections/un-charter/chapter-viii/index.html, accessed: 25 July 2017.
within the framework of LAIA. The Treaty claims that the expansion of the current dimensions of its national markets through integration constitutes a fundamental condition to speed up its economic development process alongside social justice. It takes into consideration the evolution of international relations, notably the consolidation of large economic spaces and the internationalisation of its member countries\textsuperscript{130}. Twenty-four austere articles and five annexes make no mention of democracy or human rights, and thus demonstrating reluctance to implicate political institutions beyond economic and trade issues. Article 8 of the Treaty of Asunción commits MERCOSUR members to pre-existing obligations assumed before date of celebration of the Treaty, including the agreements signed within the framework of LAIA. It would seem tenuous to argue that this provision could be seen as supporting the development of solidarity and cooperation relations among the countries in the region.

Despite initial intentions to lessen domestic pressures and reduce threats to the fledgling democracies in the region by deactivating (potential) conflict, only tariffs and macroeconomic policies were provided for, not social actors or domestic stability\textsuperscript{131}.

4.2. Institutions and Structure of MERCOSUR

The Protocol of Ouro Preto in 1994\textsuperscript{132} gave MERCOSUR legal personality while three other protocols constituted its institutional and juridical backbone\textsuperscript{133}: the Protocols of Brasilia, Ushuaia and Olivos respectively. The Protocol of Ushuaia in 1998 apparently brought to the fore issues beyond economic integration, spanning regional citizenship, social cohesion and democratic decision-making, which emerges in near all debates on MERCOSUR in political or academic circles, beyond the original intent


of MERCOSUR’s founders. Malamud depicts how the bloc tends to be ideologically represented as an end in itself rather than as a way to increase economic efficiency and growth: MERCOSUR has emerged into a symbol of resistance to neoliberalism, reflecting the expectations of its speakers rather than the real world\textsuperscript{134}.

To this end, the Protocol of Ushuaia introduced the “democratic clause”. According to the Protocol’s first Article, full effectiveness of the democratic institutions is an essential condition to the development of the integration processes among the Parties to the Protocol\textsuperscript{135}. It also sets out the procedures to be followed should a member breaks with the democratic order, starting with the loss of rights of participation in the different integration organs and leading to suspension of rights and duties under integration processes. However, the Protocol does not define “democracy” nor indicate which circumstances might amount to disrespect of democratic institutions.

The Protocol of Olivos of 2002 replaced the Protocol of Brasilia of 1991 which had established the settlement of dispute mechanisms. The Parties recognized that the evolution of the integration process within MERCOSUR demanded improvement of the dispute settlement system. Fourteen chapters set down the legal mechanisms for dispute mechanisms\textsuperscript{136}. Technical procedures provide for the constitution of ad hoc courts and international institutions or organizations, not forgetting that these disputes were intended to be solely economic in character. Perhaps this is why no explicit requirement is provided for peaceful settlement or the respect for territorial sovereignty and the non-intervention within domestic matters of MERCOSUR Member States comparable to the European Union approach.

After searching for the good neighbourliness principle within the MERCOSUR founding instruments, it is seems that good neighbourly

\textsuperscript{134} MALAMUD, Andrés. “The Internal Agenda of Mercosur: Interdependence, Leadership and Institutionalization”. In Grace Jaramillo (Eds.), Los Nuevos Enfoques de la Integración: Más allá del Regionalismo (pp. 115-135). 2008, p. 117.
relations plays no major role in MERCOSUR integration. Whereas the principle has been progressively been worked out throughout consecutive EU enlargements and enjoys pre-accession conditionality status today, accession to MERCOSUR demands no observance of good neighbourliness. In fact, accession is open by means of negotiation to all countries belonging to LAIA: Article 20 of Treaty of Asunción. Accession must be unanimous approved by MERCOSUR Member States but has always been open to other countries to become full members.

In recent years, negotiations for enlargement have been ongoing. In 2014, Venezuela became the first non-founding Member State of MERCOSUR. According to its Accession Protocol, Venezuela’s integration was affirmed as relevant to the consolidation of the integration process of South America within the framework of Latin American integration. Venezuela was the first country of LAIA to make use of the possibility to request full membership of MERCOSUR. A catalyst for this was President Hugo Chávez’ decision to leave the Andean Community (CAN). Even though the process of adhesion for this country has faced challenges, such as opposition in Paraguayan legislative, it has still developed rather fast.

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138 In fact, Venezuelan entry happened without Paraguayan legislative approval. In 2012, Paraguayan president Fernando Lugo suffered a parliamentary coup. By evoking the democratic clause under the Ushuaia Protocol, Argentina, Brazil and Uruguay considered the impeachment of the Paraguayan president a break in the democratic order since it denied him the right of defense. In June of the same year the member states ratified the suspension of the country until the event of new elections and in the same meeting approved the entry of Venezuela. However there is a debate regarding the democratic order inside Venezuela itself and if the democratic clause should not have been applied to the very entry of Venezuela to Mercosur. “Os Venezuelanos estão chegando”. In Desafios do desenvolvimento - A revista de informações e debates do Instituto de Pesquisa Econômica Aplicada. Year 9, Edition 74 of 31 October 2012. Available at: [http://www.ipea.gov.br/desafios/index.php?option=com_content&view=article&id=2826:catid=28&Itemid=23](http://www.ipea.gov.br/desafios/index.php?option=com_content&view=article&id=2826:catid=28&Itemid=23), accessed 27 July 2017.

139 GLIKSBERG, Miguel. “Incorporación y suspensión de países en el Mercosur y la Unión Europea: Es posible otro tipo de integración?”. In Centro de Estudios Internacionales Contemporáneos, Revista de Economía y Comercio Internacional Nº6, July 2016, p. 57.
Bolivia’s accession process started in 2007 with the creation of an ad hoc working group to define, together with the Bolivian delegation, the terms and conditions for accession. Unlike Venezuela’s case, Bolivia’s accession to MERCOSUR is complicated by the fact that has not seceded from CAN prior to its application for MERCOSUR membership. Even though commercial relations with third countries are encouraged and regulated by the Andean Community, there is no provision for the accession of a CAN member to another customs union. CAN seeks to defined the double membership of Bolivia to these two integration projects but this has not obstructed signature of the MERCOSUR Adhesion Protocol in 2015. Together with the Protocol for Venezuela, asymmetries and differentiated treatment applies to Bolivia and time frames are established for the harmonization and adoption of rules and norms, and Bolivia’s accession is reaffirmed as a means to consolidate the integration process in South America.

The whole body of MERCOSUR norms, procedures and regulations must be adopted, comparable to the European Union approach, and political support of the MERCOSUR Member States is the decisive. However, it must be said that half of the MERCOSUR regulations to be transposed into the national law are not yet in force. Moreover, pre-accession conditions are non-existent, and no benchmarks attach to the opening or closure of any negotiation, and over half of Mercosur norms also contain confidential annexes which undermines transparency in the process.

As for application of good neighbourliness as a principle for the settlement of bilateral disputes, while the European Union imposes it in relations between the receiving and applicant/candidate countries, no protocols or treaties relating to MERCOSUR require observance of good neighbourly relations.

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in the event of disputes arising between the Parties or aspiring members. Whereas European bilateral disputes revolve more around territorial and border issues, implicating core elements of the principle, disputes in Latin America tend to involve commercial matters, such as controversies regarding interpretation, application or failure to respect obligations under the Treaty of the Asunción and its Protocols. Nonetheless, the procedures established by the 2002 Protocol of Olivos at Article 4 urges the Parties in a controversy to “try to settle it, before anything else, through direct negotiations”, only tenuously echoing good neighbourliness. There is no formal and expressively written consequence to non-respect of good neighbourliness. The principle is certainly not promoted in the region. Advances in the role played by MERCOSUR, or at least the shift towards social and political considerations nowadays, emanates from the institutional structure of MERCOSUR and its arrangements.

MERCOSUR, contrary to the EU, is an intergovernmental model for regional integration, maintaining the autonomy of its Member States in decision-making on foreign and macroeconomic policies. National governments are exclusively responsible for enforcement, compliance and decision-making, which can be an impediment to completion of the integration project since it leads to a cult of State sovereignty\textsuperscript{144}. Integration involves resigning at least a measure of autonomy in order to be able take decisions that cater to the interests and wishes of the partners. Malamud defines regional integration as a process where countries voluntarily merge and mix with their neighbours so as to lose the factual attributes of sovereignty while acquiring new techniques for resolving conflicts among themselves\textsuperscript{145}. Some MERCOSUR countries resist this, mainly because of public opinion and the priority given to national autonomy among political elites. The institutions comprise ministers and officials from national governments and administration. They are not independent of national administrations. Regional decision-taking bodies are not isolated from national governance over legislation and policy implementation. This seemed justified given the

\begin{footnotesize}
\begin{enumerate}
\item[144] MALAMUD, Andrés. “El Mercosur: misión cumplida”. In Revista SAAP, Vol 7, Nº 2, November 2013, p. 279
\end{enumerate}
\end{footnotesize}
feeble results of earlier regional integration experiences in Latin America, where commitments to integration and legislative progress was weak at national level\textsuperscript{146}.

This intergovernmental arrangement in MERCOSUR goes deeper because of the nature of its institutions and the decision-making being in the hands of the national governments, where interpresidentialism rules. Here, the domestic institutional structure of the presidential democracy is combined with its foreign policy strategy in the form of presidential diplomacy. Consequently, MERCOSUR operates through direct negotiation among its national presidents, using their political and institutional competencies to take decisions and solve conflicts\textsuperscript{147}. In parallel with steering the MERCOSUR integration, they pursue their own domestic political agendas, which may or may not be reflected in regional integration process.

Importantly, MERCOSUR has assisted the domestic reforms in its member countries and tripled intra-regional trade\textsuperscript{148}. Trade in industrial goods boomed between 1991 and 1994. By December 1995, MERCOSUR countries agreed a medium-term action plan, \textit{Agenda MERCOSUR 2000}, targeting priority negotiations to consolidate and enhance the customs union. The “golden years” from 1995 to 1997, saw conclusion of free-trade agreements with Chile and Bolivia, signature of the framework agreement with the European Union and participation as a single entity in the Free Trade Area of the Americas negotiations\textsuperscript{149}. Nonetheless, MERCOSUR failed to progress with national discretion on policy and regulatory issues, and due to economic crises during 1998 and 2002 it was scaled back in terms of regional openness and interdependence\textsuperscript{150}.

The political achievements can be observed both in national and regional cases. Undeniably, the MERCOSUR project was intended to foster domestic


\textsuperscript{150} MALAMUD, Andrés. Op cit. 2013, p. 278.
democratic stability and lasting peace among its members. With the history of authoritarianism in the region, the project was able to transform a region of low mutual confidence and high rivalries into an area where inter-state violence has been averted, international cooperation has become the norm and high- tension conflicts have been avoided\textsuperscript{151}. MERCOSUR has increased understanding and tolerance among neighbours, helping to open up long-closed societies. Disputes do exist, but generally remain inactive and do not hinder good bilateral relations, and in some cases, the countries concerned are also party to bilateral or multilateral free trade or common market agreements\textsuperscript{152}.

However, MERCOSUR lacks popular participation, its citizens do not vote at the regional level, accession to dispute settlement procedures are only allowed for States\textsuperscript{153}, inefficient decision-making translates into ineffective implementation, and implementation of regional policies rests in the hands of national bureaucracies which lack incentives to prioritise it\textsuperscript{154}. Economically speaking, MERCOSUR has never recovered the degree of interdependence that characterised its early years, nor reached the common market structure sought under the Treaty of Asunción, and today its best achievement is an incomplete customs union\textsuperscript{155}. It is arguable that even this success could be attributed to the foreign policies of the Member States which hold such a determinative role in orienting the decisions and attitudes within Mercosur.

Here, good neighbourliness emerges through the interactions and relations that cannot be primarily attributed to the framing and actions of MERCOSUR per se. Brazil, for example, has always sought the peaceful settlement of disputes and non-intervention in domestic issues of other countries in its

\textsuperscript{152} DOMINGUEZ, Jorge I. “Boundary Disputes in Latin America”. In Paperworks No. 50. United States Institute of Peace. September 2003, p. 35. According to Dominguez, the structure of inter-American relations has generated state behaviour that prevent war between neighbours. The institutions, arrangements and ideologies evident and in course in inter-American relations kept armed conflict infrequent and short, building means of solidarity and reducing expectation of war between neighbouring countries.
foreign relations, in line with its Constitution. Moreover, these same two core elements are embodied in the UN Declaration concerning friendly relations and cooperation, the legal basis for the good neighbourliness principle.

4.3. Mercosur as a tool for Brazilian foreign policy

Brazilian concerns to develop good neighbourly relations with Argentina and the emerging democracies in the neighbourhood could be seen as the impulse required to the start of integration arrangements. In addition to complementarity and economies of scale, the initial objective of the rapprochement between Brazil and Argentina has been to lower risks to emerging democracies by avoiding probable conflicts that would feed military budgets and phobias. Brazil and Argentina avoided war in the 1970s when their governments reached an understanding the development of hydroelectric resources of the Paraná River system and other hot topics. Brazilian foreign policy underwent a major shift at this time, and Brazil’s Latin American identity was incorporated in its foreign agenda, closer ties being forged with countries in the region. The re-democratization process in Latin American countries later in the 1980s saw that only regional integration could enable their competitive insertion in the World context. Sarney’s

156 Besides listing the principles that govern the country, Art. 4 of the Brazilian Constitution expresses the will of constituting a community of nations in the region, as it reads: “The Federative Republic of Brazil shall seek the economic, political, social and cultural integration of the peoples of Latin America, viewing the formation of a Latin-American community of nations.” Constitution of Brazil [Brazil], 5 October 1988, available at: http://www.refworld.org/docid/4c4820bf2.html, accessed: 3 August 2017.

157 DOMINGUEZ, Jorge I. “Boundary Disputes in Latin America”. 2003, p. 34.

158 SARAIVA, Miriam Gomes. “Brazilian foreign policy towards South America during the Lula Administration: caught between South America and Mercosur”. In Rev. Bras. Polit. Int. 53 (special edition): 151-168. 2010, 156. Saraiva mentions that the complicated international scenario led Brazil to get closer to its regional peers. In this direction, Brazilian government took the first steps towards closer links with Argentina by signing agreements on Corpus and Itaipu, visits to their neighbours and signing of a nuclear agreement with Argentina.

government in Brazil explored South American integration, and sought to bury perceptions of Brazil as a sub-imperialist influence in the continent, cultivated strategic rapprochement with Venezuela and Argentina\textsuperscript{160}. As of the 1990s, Brazil focused on building ties and forging integration with its neighbours, taking initiatives to enhance and deepen South-American integration\textsuperscript{161}, including MERCOSUR. The liberal governments in Brazil and Argentina influenced the trade dimensions of MERCOSUR, leading to an open regionalism approach\textsuperscript{162}, although some would argue that previous agreements between Brazil and Argentina were perverted: the progressive state-led initiative for a true community of South American nations became a conservative market-based project\textsuperscript{163}.

In a more multipolar and fragmented international system following the 9/11 terrorist attacks in the US and the 2008 global economic crisis, Brazil was able to rise as a regional and third world power, reflecting on Brazil’s new approach to the South-American region\textsuperscript{164}. Lula da Silva’s hand in Brazilian foreign policy and South-South cooperation in particular, giving new meaning to its South American neighbours as a way to propel the country into the international arena. Lula’s government, strengthened Brazil’s traditional goals and how it interacted with its geographical context. With his first mandate, his government proactively exerted an effective leadership as a regional power to the international arena. Negative reactions by neighbouring countries perceiving Brazil’s foreign policy as hegemonic and imperialist, forced Brazil to alter its public discourse, albeit without relinquishing its leadership aspirations in the neighbourhood\textsuperscript{165}. It sought

\textsuperscript{160} VILLA, Rafael Duarte. Op cit. p. 71.

\textsuperscript{161} NOLTE, Detlef, “Latin America’s New Regional Architecture: A Cooperative or Segmented Regional Governance Complex?”. In EUI Working Paper RSCAS 2014/89, 2. According to Nolte, since the 1990s, regional and subregional organizations have proliferated in the region, jumping from seven major multi-issue regional and subregional organizations in 1990 to thirteen in 2012.

\textsuperscript{162} SARAIVA, Miriam Gomes. “Brazilian foreign policy towards South America during the Lula Administration”. 2010, p. 156.


\textsuperscript{164} SARAIVA, Miriam Gomes. Op cit. p. 159.

instead to characterise itself as a “soft power” – contrary to historical perceptions – respectful of the autonomy and non-intervention of its counterparts in the region\textsuperscript{166}.

Brazil claims good neighbourliness to be a core principle guiding its foreign policy. Engagement with neighbouring countries was apparent under Lula\textsuperscript{167}, leading Brazil to remodel the concept of non-intervention to that of non-indifference: non-intervention in another State’s domestic affairs, does not equate with a lack of interest\textsuperscript{168}.

To illustrate the point using the example of the Fund for the Structural Convergence of MERCOSUR (FOCEM)\textsuperscript{169 170}. It aims to reduce asymmetries in the region, and Brazil is the contributes 70\% of the resources, reinforcing Brazil’s image as a generous partner and good neighbour. Nonetheless, under President Lula, Brazilian interaction in the region focused mostly on bilateralism, through cooperation projects, lessening the priority for regional integration efforts\textsuperscript{171}. Brazil’s desire to become a regional leader through coordinating regional cooperation and integration prospects, had as it ultimate intent to enhance Brazilian development\textsuperscript{172}.

In 2008, the UNASUR was established as a common political platform integrating all South American countries. This cooperation forum has been instrumental in crisis response in the continent\textsuperscript{173}, also with a strictly intergovernmental structure guaranteeing the autonomy of its Member States. Brazil uses UNASUR as its main channel for multilateral action, making it


\textsuperscript{167} Ibid., p. 45.

\textsuperscript{168} SARAIVA, Miriam Gomes. Op cit. p. 160.


\textsuperscript{170} Information in accordance with the Brazilian webpage of FOCEM, available at: http://www.mercosul.gov.br/fundo-para-a-convergencia-estrutural-do-mercosul-focem, accessed: 3 August 2017. It is a fund destined to finance programmes to promote structural convergence; develop competitiveness; promote social cohesion, and support the functioning of the institutional structure and the strengthening of the integration process.


\textsuperscript{172} SARAIVA, Miriam Gomes. “Brazilian foreign policy towards South America during the Lula Administration”. 2010, p. 160.

\textsuperscript{173} Ibid., p. 160.
an important mechanism in Brazil’s political action in the region, providing a platform for establishing common positions with its neighbours.\(^{174}\)

In terms of regional co-operation initiatives, because integration in Latin America is apparently advantageous, the regional architecture reflects the its diversity as concerns economic interdependencies, development strategies and interests. The South American experience demonstrates how the proliferation and overlapping of regional institutions does not incur into fragmentation or segmentation.\(^{175}\) Rather, the will of the major players in the region in forging their own Integration, addresses the concerns and wishes and ultimately engages them in cooperation so as to secure a peaceful and cooperative neighbourhood. While the principle of good neighbourliness is not explicitly enshrined in instruments of MERCOSUR or other regional initiatives, good neighbourly relations is implicit in the foreign policies of the Latin American countries through the intergovernmental arrangements of the regional organisations in which they participate. National wishes and efforts to reach common aims makes good neighbourly relations essential. Regional integration provides a tool for national bureaucracies to promote good neighbourliness in South America, conversely to the European experience, where good neighbourliness is the tool for regional integration.

**Conclusion**

One of the major difficulties the principle of good neighbourliness faces is the lack of a clear codification in international law, since it is mainly based in customary law and practice, blurring its definition content and application. This lack open to door to potential misuse of good neighbourly relations. Currently, the study of good neighbourliness is relevant due to

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\(^{174}\) Ibid., p. 160.

\(^{175}\) NOLTE, Detlef, “Latin America’s New Regional Architecture”. 2014, 16. According to the author, all the existing initiatives reflect geopolitical projects of founding or member countries of these institutions in a way to promote geostrategic interests. In this manner, countries from the region interact within the framework of this spectrum of regional organizations to pursue their own interests
the widening concept of “neighbourhood” in practice and its increasing role as guidance for state conduct. Some elements of the principle are set out in the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with The Charter of The United Nations. It was very much inspired by the 1955 Bandung Conference, motivated by the potential of good neighbourliness to contribute effectively to the maintenance and promotion of international peace and security. Still, the principle remains to be properly clarified, even as it continues to be employed to these ends in international relations today.

The functioning of good neighbourliness in European legal context differs from that observed in classical international law. The supranational nature of the EU has changed the perception and understanding of what constitutes state borders and state sovereignty, both primary components of the principle. This alters the very concept of sovereignty under the traditional principle of friendly relations in international law.

Also, the application of the principle is notably different in the EU’s external actions and enlargement policy compared to the region of the EU itself. The aim is to develop a zone of prosperity and a friendly neighbourhood within which EU wishes is able to enjoy close, peaceful and co-operative relations. The analysis reveals the EU more as one amalgamated neighbour to the countries in the region, demonstrating how the concept of neighbourhood has expanded not only to refer to immediately bordering countries, but also to interstate relations between countries from a same geographical region and even the relations of states on the other side of the world.

The peaceful settlement of disputes was points highlighted already in the 1970’s in the UN Charter on friendly relations, and was taken up in the EU enlargement tools for the settlement of bilateral disputes to prevent the internalisation of external conflicts in the Union. The good neighbourliness conditionality formalise the requirement that countries aspiring to EU membership settle their bilateral disputes at multilateral level.

This highlights the asymmetry of power among EU Member States and candidate states and the resulting in the politicization of the principle. Member States employ their membership powers to leverage favourable outcomes in disputes, either from withholding consent to the opening or closing of negotiating chapters for EU accession, to objecting to a country’s progress to a new phase. The Member States use their stronger bargaining
position to influence resolution of bilateral disputes with candidate countries, as conditionalities required of Western Balkans countries have shown. The need to balance law and politics when reverting to the good neighbourliness in order to avoid arbitrary misuse would help to reinforcing the rule of law, which is core to EU membership both in terms of rights and obligations.

To compare the EU’s experience with that of MERCOSUR, in the first place, the Treaty of Asunción makes no mention of the principle of good neighbourly relations nor any of the principles set out in the UN Declaration on friendly relations, the European Union’s Treaties at Article 8 TEU, which is a core objective of the EU and puts the onus on the EU Member States to create an area of prosperity and good neighbourliness. The MERCOSUR Treaty makes no mention of democracy or human rights, no apparent guardian role of the bloc in promoting and protecting these or any related values. Nevertheless, the main concern expanding its members national markets through integration promises speed up processes of economic development and social justice. Concerns with democracy appeared with the Ushuaia Protocol, which introduced the democratic clause, even if that clause fails to define its understanding of democracy or what constitutes a disruption to it.

When compared to use of the principle by the EU as a conditionality tool for accession and even as a policy toward neighbours in the region, MERCOSUR foresees no formal institutional consequence should the principle not be applied. Even when examining the Protocol of Olivos, concerning the settlement of disputes within the bloc, there is no mention of settling the disputes in a peaceful manner, nor of non-intervention.

Yet this does not mean that members are oblivious to the application and compliance with norms, regulations and values of MERCOSUR. Throughout the years, it has shifted in role, from an economic integration process to a geopolitical project. This reflected the change in governments which, thanks to the intergovernmental characteristics of MERCOSUR, have shaped the new reality and new focus on political and social integration. Hence, the MERCOSUR countries could now ensure that good neighbourly relations principle is observed in an implicit way.

For Brazilian foreign policy, which traditionally chooses the peaceful settlement of disputes and non-intervention, these two principles embodied in the UN declaration concerning friendly relations provide a legal basis for the good neighbourliness principle. Brazil’s concern with good neighbourliness
in its relations with Argentina and the new democratic regimes in the neighbourhood, was the impulse for integration. As for the South American experience of MERCOSUR in the coherent application and role of the good neighbourliness principle, the principle is not formally respected. Due to the bloc’s intergovernmental arrangement, good neighbourliness relies on the members’ foreign policies and cooperation initiatives. Good neighbourly relations is essential for the South American continent, being the main reason for integration processes being developed there. As a way to soften old rivalries however, its role cannot be equated with its role European Union peace and stability integration mechanisms, in the accession process and the European Neighbourhood Policy.

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Chapter 4.

Access to Basic Rights and Social Goods:
Brazil compared with EU state responses to the emergence of new social movements based on the example of the UK

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Abstract

This contribution compares and contrasts the state capabilities and limits to state guarantees and provision for basic rights and access to social goods in Brazil with those in the UK, necessarily drawing on the EU context.

To do so, this contribution is limited to an exploration of the emergence of new social networks concerned with social goods in the aftermath of the 2008 financial crisis in Brazil (the “Journeys of June 2013”) and the UK (notably the “Occupy” movement, in the winter of 2010/2011). However, for Brazil the triggers for those new movements are linked to the privatisation and pricing of Social Goods.

The Brazilian and UK State responses to these emerging social networks are compared and contrasted without drawing on the many other examples of relevance in Europe and in Latin America at that time and since. This exploration is limited to comparing and contrasting the Brazilian and UK State responses to these emerging social networks both at national level, leaving aside the many other examples of relevance in Europe and in Latin America, such as in Catalonia and Argentina since Macri’s election. Overall, the conclusions highlight the contradictions in the application of rights by Brazil and the UK in their national and international relations, specifically in the context of newly emerging democratic and social movements.

General conclusions do emerge concerning the legal and political provision for common values under the EU-Brazil relationship in terms of the rule of
law and access to justice for social movements seeking to assert basic or fundamental rights and access to social goods. These general conclusions also reveal obvious incongruities – double-standards even – in Brazil’s self-assumed role in South-South relations as a defender of international values, as well as in the European Union’s agenda to provide and guarantee common rights and values among its own Member States as much as the Union’s pursuit of its values in its external relations, in this case under its Strategic Partnership with Brazil, dating back to 2007.

**Introduction**

While the welfare state emerged after World War II in Western Europe, on countries like Germany, United Kingdom, the Scandinavian countries and others, Brazil has only recently embarked on introducing, sparsely, policies addressing social welfare and social balance. In Europe and in Brazil today, population responses to governments seeking to weaken the provision for social benefit have taken on new social and political dimensions. While the root causes may be comparable, the population or societal responses can vary considerably in intensity.

Those protesting in Brazil have tended towards making rather simple demands and adopting non-violent movements, notably the Eldorado dos Carajás Massacre in 1996, where 19 members of the Landless Movement (“Movimento Sem Terra”, or “MST”), which seeks land reform and occupies unproductive land, were killed by the Military Police during a peaceful march. This episode illustrates well how protesters are dealt with when far from the spotlights and the enforcement the State has to stop such violence, given that of the 150 policemen directly involved, only 2 were prosecuted and arrested on the past 20 years\(^{176}\). Now in 2017, the situation has not improved and 37 deaths of rural activists were registered within the first five months of the year\(^{177}\).

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\(^{176}\) [https://anistia.org.br/noticias/massacre-de-eldorado-dos-carajas-20-anos-de-impunidade-e-violencia-campo/](https://anistia.org.br/noticias/massacre-de-eldorado-dos-carajas-20-anos-de-impunidade-e-violencia-campo/)

In the United Kingdom, the police responded with violence against protesters draws parallels with the approach taken by the State in Brazil, highlighting the challenges of defending and guaranteeing civic rights and duties at national level, but also challenging the values and democratic aims of countries in their international relationships. In the comparative context, referring to Europe, the protesters have demand against cuts have seen violence and civil occupations.

Other examples we can quote are the Tarnac Nine and the recent protests against labour reform in France; Poland on the years of 2015 and 2016 and where the government tries continuously to increase its ruling power towards authoritarianism; and on 2017 over the past months on Spain with the Catalans, that suffered from a violent repression and political prisons with their attempts on independence.

Such examples reveal not only the difference between the perceptions of and demand for social goods, but also similarities of disproportionate and harsh responses from State actors that do not meet their responsibilities for granting access to justice and up-keeping the rule of law. In Brazil, deep divergences exist in the willingness of the government to afford access to justice and social goods to social actors and the practice.

In the European Union also, access to those basic rights in reality might differ from the values adhered to by the EU and embodied in their Member States national arrangements. Within the European Union, respect to rule of law, with its basic rights and widespread access to justice cannot be assumed to be as strong as the EU demands from their partners and countries aspiring to EU membership, as the erosion of constitutional rights and provision in the cases of Poland and Hungary have recently highlighted. The limitations of the EU’s values aspirations is revealed in their struggle to actually regulate their Members States in the event of such serious breaches of the block’s values.

However, on occasions such as in the case of the winter of 2010/2011 in London the criticism of recalcitrant Member States has been notable by its absence and the Member States seem more ready to criticise peripheral or neighbouring countries. Disrespect of fundamental principles by central countries, such as Italy and the United Kingdom, obviously goes against the values the EU stands for, and highlights to the limits of the EU’s purpose to
congregate the people and values of the EU Member States. For the UK, I will examine the London Riots, its repression, coverage and outcomes.

Brazil one would expect, possesses better capabilities than the EU to secure the basic protest rights and rule of law, given that it does not have to negotiation among so many partners and has less than half the population of the EU. However, it fails to do so. The country’s rhetoric as defender of values of human rights, condemning violence and expecting its peers to do so in practice. Internally however, the *Journeys of June* – a series of protest initiated on June of 2013 – were met with violent and systematic repression by the State forces against the movement, exposing how Brazil deals with such movements in reality.

Posing as a leader of the South-South movement and having stood up for international values, Brazil has a very different practice with its people than what it preaches for the international community, being very different from the rule of law, as is usual on Latin American countries (O’Donnell, 1998). Having signed most of the international treaties for human rights, the Brazilian police ranks as one of the most brutal and deadly in the world. In Brazil, I will examine the *Journeys of June*, the State response, the media coverage about it and the outcomes from the movement.

The complexity of social movements and protest in the broader Latin American and European regions deserves further research on themes including which institutions collaborate or harm democracy, the rise of New Left since the turn of the Century and the spread of democracy, the current right-wing conservative movements benefiting authoritarianism and how will external forces impact the region.

In terms of methodology, resources and definitions, Section 1 of this paper is structured as follows, beginning with an introduction to what social goods and benefits comprise as well as the importance of the rule of law and access to justice for access to social goods. Pertinent instruments and provisions of the EU-Brazil relationship are listed in order to identify common values and approaches pertaining to the rule of law and rights arising in the context of emerging social networks:

- for Brazil, the provisions of the Constitution are noted, as is the National Pact of July/2013, at relevant primary sources concerning Brazil’s South-South relations are introduced, including within the Latin American region, Human Rights, Conflict Resolution and Business Partner;
- at intra-EU level, this list includes provisions of the EU Treaties and the Charter on Fundamental Rights among the EU Member States, including the provision for raising the standard of living of its citizens since the founding Treaties of 1957, and more recently, the 2013 Copenhagen Commission;
- at the level of EU-Brazil international relations, the list includes Brazil-EU Treaties and the Strategic Partnership of 2007, as well as financing instruments thereunder.

The two subsequent sections explore the silence of the Brazilian government in the context of the circumstances leading up to the Journeys of June and its aftermath (section 2) and the UK State’s approach to the winter for the London Students (section 3). Section 5 contains a discussion of the theory and is followed by the conclusions.

1. Methodology, resources and definitions

The research bases on recent academic research, main and independent media coverage, legal framework of the regions and NGO reports. Active research was conducted by interviewing protesters and personal experience of the Brazil protests of 2013. The analytical framework is based on Guillermo O’Donnel’s theory on concessions to the people in order to refrain social movements from Authoritarian Bureaucracy (2008) and Anselm Jappe’s ideas on how the State manipulates and uses violence against social movements, from Violence, what use is it? (2009).

The term “democracy” refers to its broader aspect, including regular elections, but also a system which aims towards more equality in the society. Another term that used is “polyarchy”, referring to participative democracy where groups composing the population all have a fair representation and there is neither a dictatorship by the majority nor any one group holding unequal influence over the government.

The term “social goods or benefits” refers to the political definition which defines them as public goods that generate indivisible advantages to the benefit of all, not subtracting the benefit of the individual to the benefit of others, more frequently acquired by the public finances (Bobbio, Matteucci e Pasqualino, 1998).

The term “rule of law” as defined by Guillermo O’Donnell, consists of the equal application of existing legislation, by state institutions, to all
actors of the society, disregarding their position (O’Donnell, 1998). Having an efficient rule of law becomes essential to an effective democracy, by extending the social goods for all the population, or at least a vast majority. With such elements, there would be an increase in democracy by addition of elements equally to the society and levelling out inequality. Any inequality or difficulty on the distribution of social goods would be a reflection of the inefficiency on the rule of law to the detriment of democracy.

2. A comparative approach to identify similarities and common challenges, as well as the potential for common state and intra- and inter-regional responses

The inability to renew itself at a fast pace and renew trust in their way of making politics, has resulted in considerable costs to the movements and parties on the Left. The lack of an alternative has joined both left and right around the belief that it is necessary to grow the economy and then share it. When this does not work, to prioritize the market economy champions, such as banks and big companies, while pushing the cost of such rescue to the lower levels of society and making Public Goods more precarious. We have seen the capital being valued to the detriment of the State, who widely fell back on sectors under its intervention (Jappe, 2009).

In Brazil and the rest of Latin America, there was little chance for a leftist movement to take hold in the second half of the Twentieth Century due to the military dictatorships, which, despite being right wing, had intervened strongly in the economy and in Brazil resulted in the creation of state owned companies.

In countries such as the UK, the implementation of a Neo-Liberal agenda stems back to Margareth Tatcher. To different extents, it has also been applied by other countries of the European Union. Recent cuts and reforms seeking austerity have been proposed and approved in several members of the EU and in countries such as the UK and France. Those cuts have attracted much negative societal responses and remain controversial.

In the UK, where the Office of Budgetary Responsibility of the hung Parliament in 2010 had decided for a £11 billion reduction in welfare spending, those and other budget reforms based on cuts added up to £99 billion, and prioritized a balanced budget over everything else (Whiteley,
Clarke, Sanders, Stewart, 2013). This quickly led to a wave of protests from different sections of British society but mainly middle-class and students. Such measures tended to aggravate social inequality, and the consequence of such inequality is the cost to democracy because it makes it harder for people to rely on their rights as citizens, thus creating a deficit on the rule of law (O’Donnell, 1998).

In France, the strong history and tradition of protest has somehow always assured the rights of the population, despite some violence from the police. French protesters do not hesitate to respond with force: as Sidney Tarrow has said “it was the French who practically invented the public demonstrations as we know it today” (Protests in Franc: La crise à la française, 1997). In the UK, especially in the case study of London, protests such as those in 2010 have been seen before but with long gaps in time, such as those in the 1980’s or the Suffragettes Movement on the beginning of the Twentieth Century. Those three examples had the police responding with violence and arrests of protesters, while the media promptly labelled them as “riots” and called for order.

In Brazil, the government started to apply a neo-liberal agenda during the 1990’s. Starting with former president Collor, broadened and continued by the former president Fernando Henrique Cardoso. Despite the election of the Workers Party candidate, Luiz Inácio Lula da Silva, in 2002, there was a maintenance of this agenda, as pointed by Ricardo Antunes178, even though there has been a significant increase on social investments by the government.

The Latin-American country had a very deficient provision for public goods and, since it had a military dictatorship, access to justice was rather limited and demands on the government for improvement was something new. The rise of the Labour Party to power has distanced Brazil from the previous agenda and greatly enhanced its social investments. Recent years have seen a great advance and evolution on the protests in Brazil, similar to a few moments in the country’s history, this time concentrated mostly in São Paulo, but which spread to other state capitals and main cities. Most recently, the police have used a violence such as has not been seen before against the protesters, but a small group of protestors also used violence on an unprecedented scale.

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178 See A Desertificação Neoliberal do Brasil: Collor, FHC e Lula; Ricardo Antunes, 2004
Many aspects of the emergence of these social movements in São Paulo and London make the comparison obvious. The labelling of such protests as riots due to small groups who were violent during the event, the excessive use of force by police who adopted “kettling” and other examples of police brutality, the lack of political representation on the approval of very unpopular reforms, and both movements being fuelled by increases in public goods that are meant to be universal.

Institutionally speaking, this lays bare the lack of respect by states of their own standards, values and commitments declared and enshrined at national and international levels, and the absence of any superior power having the will and the power to represent, guarantee and enforce the rule of law and rights of civil society to express themselves through protests. Independently of the moral standpoint, the means to the strengthen institutional legitimacy is justified by the need to engage with the electorate. To stand up for values is a way of standing out politically, a much-needed development in today’s climate of generalized distrust of the political establishment worldwide since the 2008 crisis. Not only that, Brexit and the impeachment of Brazil’s President Dilma are illustrative of the resistance to affording legitimacy to the establishment, and the complexity of this scenario which has taken years to take form and where governments’ inability and inaction has laid the foundations of this scenario.

The simultaneous emergence of such social movements centering on access to social goods within a diversity of countries participating in regional integration(s), tests the democratic values overtly pursued by the EU and Brazil in their international relations. The EU has some mechanisms devised – or would be expected on the basis of their wording alone – to be used to challenge the British government’s disrespect of the principles of Article 2 of the Treaty on European Union, which lists the values supposedly embodied by the Member States. At that time, within the TEU, Article 7 provides for the

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179 TEU Article 2: The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.
sanction of a Member State that acts in discordance with Article 2. Considered the “nuclear option” of the TEU, it has never been used. Unfortunately, EU institutions have had a tendency to procrastinate and focus their energy on elaborating new instruments of limited effectiveness when action is required (Kochenov, Magen, Pech, 2016). Today the EU has more mechanisms but the will of the Member States required to actually employ them has proven highly sensitive if not entirely lacking.

The EU has been effective on promoting its regulatory and internal Market \textit{acquis}, while ineffective on promoting their values. While promoting the internal market, the values have been left out while the “old” Member States adhered and adapted to the Union; only for the new Member States was it necessary to prove some adherence to Article 2 TEU values, through the pre-accession preparations which demand compliance with the political, legal and economic conditions worked out since the 1993 Copenhagen European Council. For the old Member States, the EU simply assumes their adherence to the values as assured. Effective on creating rule-abiding Members for the \textit{acquis}, the EU has not only failed to export these core values to the more recent Member States, namely Poland and Hungary (Kochenov, 2013) but also, has not progressed with its efforts supervise or ensure the respect for those values by the old Member States.

Pre-accession conditionality demands approximation to the entire \textit{acquis} before actual accession to the European Union. Once a Member State, a country joins the ranks of full Member States, giving the impressions that their adherence to the values is assured. Significantly however, once among the ranks of the Member States, the principle of consensus that guides EU decision-making even on matters subject to simple majority voting, combined with sensitive concerns of protecting national sovereignty and competence that are necessarily implied in the tension arising in debates on the rule of law at EU level, inhibit the true powers of the EU (which is after all, its Member States) to meet its own founding principles. Thus, while it may be effective in creating rule-abiding Members for the vast regulatory and Internal Market \textit{acquis}, the EU has not been able to do the same for sustainability of the export of EU values to the recent Member States (Kochenov, 2013), nor to supervise or ensure the respect of those values by the old Member States.

Bearing this in mind while focusing on the 2010 behaviour of the British police in London, involving kettling and hitting protesters with batons, the
inertia of the EU to take any action in order to enforce the citizens’ rights to protest was remarkable. Further, when the protests had ended, neither police officers nor authorities faced charges for abuse, and once more, the EU was silent about it.

Turning to the case of Brazil, a Left party was standing for social reform, human rights and democracy all over the world has ruled the Brazilian federal government for 3 terms from 2003 to 2015. The Workers Party (PT) first came to power with Luis Inácio Lula da Silva, who ruled through two mandates and had a foreign policy based on his image. His successor was Dilma Roussef, a woman who took part on the anti-dictatorship resistance during the Brazilian Military Dictatorship, and experienced imprisonment and torture. Both held speeches on several occasion on the need of dialogue between population and government and respect for human rights.

In the State of São Paulo, the right-to-centre wing party, the PSDB, has democratically ruled this State for over 20 years. This party is the main opposition to the PT, but it also holds among its ranks, former civil rights leaders and exiles of the dictatorship. Even with their history, the state governor has done nothing to restrain or condemn the abuses practiced by the Militarized Police (abbreviated to “PM” in Portuguese), which are subordinate to the Governor himself.

Despite the federal arrangement of Brazil, the President may pressure or intervene in the State’s politics in some cases\textsuperscript{180}. There is even an article on the Constitution, which entitles the Federal Union to intervene where basic human rights are being disrespected within the territory of Brazil, by both the President and the Supreme Court. Even with such capabilities, there was no effort from those in power to ensure the protection of the right to protest or to stop police brutality toward protesters.

In both cases, we have seen excess use of force being used against protesters and in both cases, higher instances do exist that could have intervened or pressured for the respect of the democratic values in favour of the protesting population. In addition, there was a clear partiality, in both countries, of the bigger channels of communication portraying the movements as violent and illegitimate.

\textsuperscript{180} Article 34, VII, of the Brazilian Constitution
At the same time, both movements were contesting top-down decision making and were going against the traditional hierarchy, along with the lack of leaders or committees, and both movements were taking decisions taken horizontally. Such characteristics imposed a higher level of difficulties to existing institution, while challenging the previous structure; it also holds the possibility of the hijacking of those movements by conservative forces\(^{181}\), as both then experienced.

### 3. Brazil: Silence From Above

The situation in Brazil needs further consideration before drawing parallels with the UK at the time. If the federalism arrangement of Brazil can explain why the public transport fares were raised as well as the disproportionate repression of the movements due to the local process of decision, the silence and apathy from the federal level was unusual because many of the Brazilian leaders are strong defenders of human rights, a flag they wave throughout the international community.

Indeed, the position of the political parties is indicative of the posture eventually taken by the state governor and the president. While the government of the State of São Paulo has a solid tradition in power and has no considerable opposition, it could afford to take unpopular measures. Taking into account Guillermo O’Donnel’s explanation of the inefficiency of Polyarchies, how to evaluate the response to popular demands as attending to them or using repression, when it came to the benefits and losses for the state government their choice was repression. Applied in this case, since it was not a direct threat to the political power that would be lost by the PSDB and no important pressure came from individuals within the state government, the governor could afford to take unpopular measures and repress any protests in order maintain his political hold, including the support of the private interests backing his politics (O’Donnel 1998).

The revenue brought in by the R$0.20 increase on the transport fares would off-set the loss of popularity, and the media support for the government

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\(^{181}\) Raquel Rolnik, em *Cidades Rebeldes* (São Paulo, Boitempo, 2013)
was expected to contain the public resistance by portraying the movement as riots that were out of control. Those two forces would justify the increase as the only viable option. Although there was a significant political cost involved, the increase in the bus fares had added up to over 300% and this expenditure weighed heavily on the lower classes budget (Santos, 2014). This closely relates to the idea put by Anselm Jappe that, “The State does all so the only `alternative’ to its reign be the open barbarism […] the State declares no change is no longer possible, it’s take it or leave it” (Jappe, 2013).

At federal government level, the President had begun to struggle to keep her office. Dilma was in office at that time and she did not have the popularity of her predecessor while commodities prices were decreasing, which was having a major effect on the Brazilian economy and slowing it down after years of growth. Facing growing opposition and in a delicate situation, the federal government could not afford to intervene on Brazil’s leading State, held by the leading opposition party. The political instability was already beginning to show, and with the elections of 2014 in sight the President opted for silence while the protests were beginning and kept growing to the point where they no longer could be ignored.

Constantly increasing living costs had typically been swallowed passively by the Brazilian population before 2013, and the previous impeachment of President Collor in the early 1990s, and today in 2017, the lethargy seems to have overcome the social agitation. In 2013 however, the confidence of the middle-class had been bolstered by the economic situation and preparations for the World Cup in 2014, which demanded high investments throughout the country, to be followed but the Olympics in Rio de Janeiro, and the maintenance of such poor public services next to those investments were enough to ignite the movement.

Brutal police repression followed, while the media acted together with the government to label the movement as violent, in the aim of cornering the movement and scaring anyone who thought about joining it to think twice, and also to stop Brazil from looking bad at a time when the world was watching the country182. These tactics had no effect, as more people joined,

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182 Carlos Vainer, em Cidades Rebeldes (São Paulo, Boitempo, 2013)
sharing the same agenda, or out of pure solidarity for those who had been experienced the police violence.

As June unfolded, the movement grew in size, spread through the country and increased its demands. Notably on June 13, it marked the expansion of the movements and a shift in media coverage (Romão, 2013). More than just the rises in transport fares and police repression, what was underlying the movement was a generalized discontent with the inefficiency of public goods, which explains the lack of leadership (Nobre, 2013). The movement went beyond an agenda; it was an expression of discontent *zeitgeist* among the growing middle-class, who had the increasing purchasing power that could not be met by public services in all sectors.

Now a movement that was present in 22 state capitals throughout Brazil, in all of them the first response of the police was violent, with the use of rubber bullets, tear gas, batons and kettling, actions which induced more people to join in the stand against the police brutality and to make even more demands. The population was witnessing investments into stadiums for the Federation Cup that was being held and even more for the 2014 World Cup, while at the same time they were being strangled by high taxes with little to show for them in return (Antunes, 2013). Many authors find that a movement this size has only been seen before on the eve of the 1964 coup and the movement for direct elections in 1985 and the impeachment of President Collor in 1992.

As more people joined the movement, they made more demands, asking for better social goods, less corruption and an impartial journalism. There was a general and spontaneous demand for citizen rights that took the movement to unexpected paths (Santos, 2014). In about 10 days, the movement grew from a rally of two thousand people in São Paulo o 6 June, to a rally of 70 thousand by the next day. By 20 June, the movement had spread to over 400 cities and in São Paulo gathered some half a million people for a rally.

The media was divided in their perception and representation of the movements, while the independent media was fiercely supporting it. The main agencies that first were against it had some of its major publications shifting sides after 13 June, due to the actions of the police (Romão, 2013). During that night of protests, the police were intentionally aiming at reporters, for example the *Folha de São Paulo*, the second biggest newspaper in Brazil, had 7 of its reporters shot and 2 of them took rubber bullets to the eye and
had to be hospitalized. There were 24 journalists injured or detained and 14 of them had informed it was done on purpose (ABRAJI, 2013).

It became clear that violent protesters were a minority; the police brutality was unjustified, amounting to an excessive use of force, made use of methods that the Public Defender Office had requested the Security Secretary not to use\(^\text{183}\) and arrests made arbitrarily with the police invading hospitals to drag out protesters intoxicated and injured. The police also had infiltrated offices into the demonstrations, known as P2, to urge the protesters to become violent. The police had proven to be unable to handle the situation and had made use of disproportionate force toward protesters (Romão, 2013).

The government not only approved the police brutality, but it was a tactic systematically employed by it with the blessing of the governor. The PSDB party has shown on the 1990’s to be of neoliberal inclination, when it held the federal power. In São Paulo, it had been no different, having privatized many lines of the public transport system that were at the centre of the controversy.

The use of tactics that would stir up the protests towards violence would put the civilians there in a clear disadvantage, not only because the police had guns, but because they are professional at using violence (Jappe, 2013). In addition, it would fuel the headlines in favour of the State, by portraying once more the protesters as wild rioters and the police as a force of order.

The state government faced a situation where to keep some political stability, it had to make concessions and reduced the transport fares to the original price, back-tracking on the increase of R$0.20. The demands regarding police abuses were not answered, as the PM Ombudsman gave a declaration on September 2014, saying he had never spoken to the governor, regarding police abuse\(^\text{184}\).

From the federal level, the silence had to be broken, since they also became a target of protests, with crowds maintaining their protest outside the National Congress. The government had to make changes in order to appease the population and get in pace with a society that had changed considerably and had demanded better services (Romão, 2013).

\(^\text{183}\) \url{http://www.conectas.org/arquivos/editor/files/Recomenda%C3%A7%C3%A3o%20direito%20de%20reuni%C3%A3o_Defensoria_Conectas(1).pdf} Accessed on 16/06/2017

To appease those demands, the President’s office had come up with a National Pact, which was supposed to respond to the deficit pointed during the protests on the areas of Public Transportation, Health and Education, besides proposing a political reform that aimed to lower corruption. Out of those, we can point that on Health and Education efforts were made and took forward, with the *Mais Médicos* programme advancing, which brought thousands of foreign doctors to supply the demand. The president passed a bill, which stated that all the money from the *Pré-Sal*, a huge offshore oil reserve, would go to the areas of Health and Education, creating an injection of billions of dollars on those areas.

Considered weak and lacking sufficient credibility to pass to the National Pact, due to its delay in responding to popular outbursts combined with a history of prioritizing the market economy and major companies, the President’s popularity continued to diminish.

The President took no measures to enforce the right to protest or to hold to account any security actor accused of human rights abuses. The State protected itself, going against one of its constitutional obligations, ignoring the law to benefit those in power and to restrain the protesting citizens (O’Donnel, 1998).

A solid example of this was the anti-terrorist law sanctioned by President Dilma, which gives State actors greater powers to repress social movements and protests. This placed the President clearly against the population that joined the Journeys of June. Her popularity continued to diminish after June 2013, almost costing her the 2014 elections and strengthening the political crisis that led to a very dubious impeachment process. The protests continue to a certain extent until today and have been used partially to justify the impeachment process of president Dilma. For in 2015, the year of the impeachment, there were massive protests against the PT and with a strong anti-political, nationalist agenda where the only accepted parties were the right wing and the police made no moves against them. The movement was hijacked by conservative forces, with the presence of notorious torturers from the military dictatorship and slogans asking for military intervention, while at the same time the left-wing protests were losing space and strength and enduring continuing police repression.

The PT has shrunk considerably since, and Dilma has lost any expression as a political leader. Certainly, this situation has its roots in the years before
the Journeys of June which have not been tackled by Lula nor Dilma. The spark for this fall from grace was the lack of commitment to the demands and rights of the people who formed their electoral basis. The PT has lost what little credibility it still had, after years of not delivering on its pledges, and by failing in its obligation in ensuring basic rights for those who elected them.

4. Winter for the London Students

In November of 2010, a student movement emerged in the UK, initially based on university occupations, such as of the University College London, and marches in response to government budget cuts implementing Lord John Browne’s review publication *An Independent Review of Higher Education and Funding and Student Finance*, for cuts on the higher education system of 2010 (Huggins and Pusey, 2013).

The hung UK Parliament had decided for a budget based along the lines of these proposals. Even though a softer version had initially been proposed by the Tory party, it was very different to that promised by the Liberal Democrats who sat alongside the Tories in government. Following the 2008 economic crisis, the project was questioned on grounds of the costs of putting it into practice and the high costs of maintaining the government staff to implement it. Passing such as unpopular bill proved a heavy burden for any Parliament and politicians that stood for it.

To do so, the government decided to proceed in isolation, shutting out the general public from decision making and the final voting. Those affected by it, the students, had no say in what was being decided on regard of their own education. The increase of over 270% in tuition fees along with cuts to the Educational Maintenance Allowance (EMA) triggered the student protests. As well as going against the measures, the movement reflected the frustration of the younger generation at the lack of perspective of political representation in the Parliament and the discontent with the neoliberal agenda (Trilling, 2011). Many of the students there had voted for the first time and not only were being ignored by those who they have helped elect, but were being oppressed by the same government (Sagar, 2011).
A country that is considered one of the best destinations for higher education in the world faced a budget restraint that made their students from colleges in London’s East End, joined with Cambridge dons (Barnett, 2011) out of fear of the harm those measures implied for the higher education system. Meanwhile, the politicians shut themselves away and rushed ahead with the voting.

As the voting went ahead behind closed doors where only the MPs could be present, the mass of revolting students had to be contained along with the various supporters that had joined their ranks. Their movement embodied a radical disapproval of the cuts being passed, as their chants were, according to Anthony Barnett185: When they say, `cut back!', We say, `fight back!' As the government pushed on to adopt the budget, the State set into motion its repression apparatus: riot police and cavalry were deployed to contain the protest.

Just as in São Paulo in 2013, the police met the London movements with an disproportionate violence. In order to repress a minority of violent protesters, the police made use of indiscriminate force against the entire movement (Datoo, 2011) (Sagar, 2011). Moreover, as it would happen again in 2013, the mainstream media painted the movement as an uncontrollable riot that needed to be seized by the police, a message clearly discredited by the shocking interview by the BBC with Jody McIntyre, a disabled activist who was asked by BBC if he posed a threat when he charged at the police with his wheelchair (Gallagher, 2011). The unequal balance of forces quickly became clear, exposing the disproportionate brutality of the police, and revealing the lack of partiality of journalists favouring the government position. In Brazil it was when representatives of the media in the streets fell victim to the violence to bring about some control over the use of excessive force by the police. In the UK, was more the necessity to acknowledge what could not be denied or distorted and maintain some respect for their institution by stating the obvious.

The police would kettle around the protesters, keeping them for hours in very low temperatures and kept taunting them, until an individual would

185 Anthony Barnett, *Fight Back 2011*
respond and all the protesters would receive truncheon blows and be charged on horses (Datoo, 2011) (Sagar, 2011). The idea was the same as that used in Brazil: use a mix of scare tactics to legitimize the State’s option as the only viable one to keep society running and the need to protect the society from those violently protesting on the streets.

It back-fired in the UK just as it did in Brazil. A growing wave of protests on cities around the UK, the masses growing in size as people joined the students in solidarity for their having a say in their future. Just as the Parliament was voting “yes”, at the same time students and their supporters were being kettled outside the Parliament square. It seemed rather unlikely that the same government who was disregarding their opinion would interfere to restrain the police acts. As Anselm Jappe would argue, the government would most likely be hoping that the protesters would become increasingly violent towards the police, thus entering the realm of State monopoly and the realm of violence mastered by a neoliberal government refusing to dialogue with its society (Jappe, 2009). The Liberal Democrats could not back track on the budget proposal because it needed to keep the support of the Tory party in order to assure their shared-government’s majority in the Parliament. Paradoxically violence against those they should have been protecting.

It would be expected that an organization such as the EU, with a rhetoric of values that go against such practices within its Member States, would be more than a spectator and stand for the common values that are core to its existence. If the EU also represents and embodies the values it wants to spread, that a member of over 40 years flouts these values this reveals a major weakness in the EU fabric. Lacking the will to act to enforce EU values at home, lends to the impression among applicants or international trading partners that it is trade rules rather than values that bind the Member States.

Article 2 of the TEU and on the Charter of Fundamental Rights of the European Union provides that the values of democracy, dignity and human rights are common among their State Members, but that was not the case in December 2010 at the UK. In order to secure those values, the EU has been very weak, even though it is this Article of the TEU, the community is an extremely weak justice actor which is effective on rules but not holding values (Kochenov, 2013).
The EU focused on promoting its Internal Market rules inside EU borders, while assuming a watchdog position on the respect for values by neighbouring and applicant members as well as other partner countries. Internally, with the central and traditional members, the assumption that their respect for Article 2 TEU are taken for granted and have not been supervised or enforced Copenhagen Commission (Kochenov, 2013). The Copenhagen Commission, a new organ that would monitor the adherence by the Member States to EU values (Kochenov, 2013). The Copenhagen criteria that have been worked out since the 1993 Copenhagen European Council impose this conditionality on countries that preparing to accede to the EU, including the Article 2 TEU values: however, the countries that are already members for a longer time, are subject to no such conditionality.

Poland and Hungary – EU Member States only since 2004 and under Soviet occupation until the Fall of the Berlin Wall – have come under considerable scrutiny by the EU concerning their respect for values, and recent political threats to these values have led to the EU seriously consider the use of Article 7 TEU. They were already subject of the Copenhagen Criteria that were initially framed in 1993 and have been progressively worked out since, their embodiment of the EU values are more closely watched than of a Western European country and pre-existing Member States, such as the UK.

The responsibility to guarantee the respect for human rights remains under national jurisdiction, with the result that the EU was effectively enabling what was going on in countries like the UK. Whether by assuming those countries already inside their system are upholding those values or by simple lack of commitment, the EU has not fulfilled its part as a value promoter internal to the EU. Today, to discuss whether the to use Article 7 TEU to bring Poland and Hungary into the EU line, and also holding other instruments to enforce values, the EU falls shy on the use of these pressure measures, tending to postpone and discuss it. On several occasions, the EU has bought itself time by creating new mechanisms and commissions for functions and actions already covered (Kochenov, Magen and Pech, 2016).

During the events of late 2010, they were incapable of give a simple statement toward the respect of the right to protest and to protect the students’ physical integrity. Such inability to act with regard to the values it holds, gives the impression that the EU is no more than a rule abiding organization
to facilitate commercial relations between its members and to makes outsider access to its market difficult. If so, the EU would be nothing more than a neoliberal tool to favour only the companies, banks and commercial interests. Such an impression gives weight to the dissatisfaction playing out in separatist and populist agendas within the EU itself, most obviously in the context of the Brexit referendum, the working and middle class British voters questioning the benefits of being part of the EU.

It is symptomatic that the EU has failed to take a stand and to address the student protests, which could have been instead, a platform to build morale inside the UK and make a statement that the community is more than a business facilitator. Upholding rights and giving voice to those not represented inside their country, the EU lost an opportunity to define itself as the bearer of European values, such as human rights respect and affordable social goods. Such stand could have, if not prevented it, made the Brexit approval a harder process.

Because of this social conflict, the Liberal Democrats have been severely reduced on their number of seats in the Parliament and the dissatisfaction of the population hijacked into the pools of the referendum for Brexit.

5. Theoretical discussion

The advance of the neoliberal agenda has brought a considerable cost to democratic aspects, damaging the Rule of Law. The decision to raise the cost of Public Goods, while shutting out most of the citizens from the discussion, at the same time bailing out banks, in the British case, and providing billions worth of incentives for major corporations over the years, in the Brazilian case. On both side of the Atlantic something expected, new forms of social movements and the rise of civil society organizations have emerged. To maintain their budget arrangements, the governments of these countries have made use of their repressive apparatus, keeping them far from any reprisal from the organs supposed to regulate them.

Such reprisals are often seen in Latin America and many authors consider it fair to question the label “democracy” for those countries that continue to violate basic rights (O’Donnell, 1998). This is unusual to see in Western
Europe though, at least to the extent experienced today. Today “democracy” seems more than ever, purely formal and limited to a timely choosing by democratic representatives of the different nuances in the same management approaches (Jappe, 2013), involving the elimination of the direct participation by such social movements and societal representatives and significant changes to political programmes.

When we look at the polyarchies of Latin America, it is not really surprising that the response to the Journeys of June unfolded as they did, even though the agenda of the Brazilian authorities had shifted and many expected or hoped that a shift in practice would follow the rhetoric of safeguarding Human Rights alongside the Rule of Law and granting access to Social Goods for the Brazilian population. Many hope that Brazil was entering a new phase, overcoming its troubled past and assuring the democratic idea to establish citizens as holders of rights.

With the hung parliament in the UK in 2010, no party had gained sufficient majority to rule. Under the Conservative-Liberal Democrat coalition that then took joint office, saw the Lib Dems switch their economic policy to adapt to the (unelected) conservative proposal in order to build that coalition. As expected, the coalition sought to keep the people away from those measures, as the coalition had opted for a very different agenda compared to the Lib Dems’ election manifesto. The coalition supported repressive measures to do this, even as while being condemned by competent organs. This assured a negative comparison with a recurring theme in the Southern countries, that of not upholding the citizens’ full rights which is essential for a full democracy.

The result reveals not only the persistence of the inefficiency of Latin American polyarchies, but also the deficiency of the British democracy as it also embodies the necessity to maintain the monopoly of violence, defended by the neo-liberal agenda. Such tools impose an unpopular top-down agenda, to the benefit of only small sections of society, but which have considerable negative costs for the fullness of both the rule of law and democracy in its broadest sense.

In both countries the democratic elections had favoured a more social state, where the provision of Social Goods were supposed to be maintained and widened. In order to sustain the interests of big companies and influential
elites, following the elections, the measures taken compromised the maintenance of access to those much-needed services of high education and public transportation.

More shockingly, the policies and conduct of responses by the British Parliament fit well with the description of O’Donnell for the flaws of the Latin polyarchies. Evidence of the flaws in a system within a region having functioning systems and overseen by an organization whose members are supposed to embody the values that make a polyarchy functional and have been the cradle of the rule of law.

The EU has not been slow on pointing out to new members, applicant members or partner countries, any poor conduct in the maintenance of the rule of law, the respect to human rights and the difficulties for its people to access the Social Goods. In this case however, the absence of the EU of pointing out abuses or criticising policies and violations of formal rights, such as political participation and participation in public gatherings, is remarkable.

The Maastricht Treaty aimed to make the EU an organ of cooperation to defend peace and justice for its members and people, but it has gone about it in a very selective way. To then not abide by that Treaty calls into question the obligations attaching to the implementation of those values.

At the same time, Brazil had been praising its development under President Lula’s double mandate and the spread of a rhetoric for the world of similar values to those of the EU. While standing as a leader and “big brother” for the South American countries, going beyond being an important commercial partner, it aspires to being a value keeper and role model for those other new democracies.

An aggravation of such inaction on behalf of social protection is that Brazil and the EU have a Joint Action Plan, the outcome of the 2nd Brazil-European Union Summit, held in Rio de Janeiro, in 2008. This action plan constitutes a mutual agreement to safeguard and promote peace, security and social participation, making both the Union and the Brazilian federal government even more responsible to take action on the events explored here. The Brazil- EU partnership aims to be more than just an economic commitment, but also promote and safeguard values.

186 See 2nd Brazil - European Union Summit, Rio de Janeiro, 22 December 2008
Brazil not only has this joint action plan with the EU, it has thoroughly used the MERCOSUR regional integration as a platform to spread and defend values in South America. Even though MERCOSUR has gradually lost its commercial role as Brazil diversified its commercial partners from traditional partners as MERCOSUR, the EU and USA to countries of the South from Africa, Asia, Central America, Middle East and Europe\textsuperscript{187}, it has continuously been used as a political tool by Brazilian presidents since the Fernando Henrique Cardoso’s presidency and even more under Lula’s presidency, to promote Brazil as a leader on the region\textsuperscript{188}.

While losing its commercial importance, MERCOSUR has been strengthened as a spreader of Brazilian values and rules, due to Brazilian efforts that kept the block functioning, even though its peaceful rhetoric has not been put into full practice at national level. The internal reality proved Brazil’s failure to uphold its position, with poor development in those areas it aspired to and being unable to surpass those systemic problems of a dysfunctional polyarchy. O’Donnell points to the problem that questioning the system without personal risk is rarely seen in the developed world (O’Donnell 1998). For Brazil, it has not upheld such safeguards nor been able to overcome this deficiency.

While in Europe, the discussion revolves around the capability of the European Union as a spreader of values and democratic reassurances, Brazil has a more delicate discussion. With very clear capabilities of each sphere of power, it is necessary to know whether the country’s federal powers are willing to sustain the values they want to embody through more than speeches, and by using constitutional powers to do so.

To impose an unpopular agenda to sustain the State in order to assure the reforms that benefit a small group with great influence in the government, the state uses its monopoly on violence which at the same time, shrinks its capabilities. During such times of crisis, the neoliberal State values capital

\textsuperscript{187} See Thiago Cavalcante and Marcos Costa, \textit{The Trade Policy of Lula’s Administration (2003-2010): A Comparative Analysis of Brazil’s Trade Relations with MERCOSUR and with the Rest of the World}, SÉCULO XXI, Porto Alegre, V. 4, Nº2, Jul-Dez 2013

\textsuperscript{188} See Leticia Pinheiro, \textit{Política Externa Brasileira} 2004 and Perry Anderson, \textit{Lula’s Brazil} 2011
institutions over public goods and has no more to offer than protection, therefore it benefits from the insecurity (Jappe, 2013). Such systems have a damaging effect on the development of democracy and the maintenance of formal rights, enforcing the law upon the weak and using the government apparatus to benefit a minority that holds more power of influence and greater financial capabilities.

We see in both cases an aspect that has not been pointed by any author used in this article: the lack of compromise by the governments to their own elections pledges, or in the case of the EU an agenda that justifies the rights and obligations of membership and their set of rules. Both institutions portray themselves as value bearers and keepers, but in practical terms capital and commercial interests win take precedence.

This imbalance between rhetoric and the practice has added to the charges of lack of legitimacy among the electorate, which opens up channels for dangerous backdrafts. As Raquel Rolnik noticed during the Journeys of June, the risk was of a political crisis in which the protesters rejected the participation of political parties and politicians during the protests, denouncing the necessity of a political reform that would amplify political participation and a risk of the hijacking of those movements by different forms of fascism (Rolnik, 2013).

Later on, reflections on the disappointment with the political parties and International Organizations emerged. In the UK we have had the Brexit, while in Brazil a political crisis in 2016 led to the President’s impeachment and the election of João Doria in the city of São Paulo, a mayor whose motto was that he is a manager and not a politician.

Widespread discontent with the political establishment is apparent, resulting from its unclear role and the many different levels involved. On different levels and spheres, none of the institutions analysed had stood firmly for the values that were meant to identify them and were the reason for their appointment and legitimacy. At the same time, the State tried to resolve all kinds of conflict (Jappe, 2013), but when failing to do so, responded fiercely and harshly towards those who questioned the State agenda.

Society has been put aside in decision making, where public policies should be privileged and their attempt at dialogue shut down, creating an unsatisfied mob. Such discontent opened space for a new political marketing that will likely be more irresponsible than before. The lack of an alternative
for the current system brings to the political arena apolitical figures such as Doria in São Paulo and Trump in the USA.

If on the one hand the lack of alternatives in the political spectrum creates a convenient environment for these ‘apolitical’ figures, such a strategy cannot be expected to last for a long time. Given that their position as politicians once started with managing to win an election, a second or third run under the same slogan will hardly be as convincing as the first time around. After the event, the same demands for accountability from the population towards the government will be back, despite the profile of whoever is in power. While such a strategy of reducing the social benefits and shrinking the public goods continues, the opposite will happen with the struggle of the population against it. To expect that the population will take this lightly is a lack of vision, once the same implementation of norms and concessions was a product of political struggle of the groups that later benefited from them (O’Donnell, 1998). Therefore it is obviously logical that the same groups will resume their efforts to achieve those benefits again and with more will, for now the social goods are taken for granted and not as privileges. The shrinking of the democratic value of developing towards a more equal society have been substituted to the maintenance of the unpopular neoliberal agenda. While the shrinking State cannot hold and assure the rights of the people inside them, their attention turns to their capability for violence, so those that chose a different agenda during the elections, have no channels for expressing their discontent and frustration.

**Conclusion**

To conclude, the times have greatly changed from when such rights were conquered. Today we have different and more sophisticated apparatus used to impose the will of the government and the groups they represent, over the will of the people. The scare tactics may have back-fired and more people have joined the movements explored above, but we cannot consider them as an independent and disorganized action by a bunch of police officers. These are clearly intentional tactics, using technology and intimidation on different levels, from truncheons to taking photos of protestors.
Parallel to the development of the repression, the capabilities of organization and resistance has evolved, and even that has taken a different pace. Social media has worked as a new and dynamic tool to mobilize big groups, but also to relocate them on a quick way and to expose excess from any side. With the independent media, new visions of what is going on during the protests reach a large share of the population, breaking the monopoly of the government-and-media agreement. Still it has not been enough to counter the strength of the institutions that are on the other side, shutting down the protests.

There is a strong necessity that institutions back the social movements, due to unequal capability of States to revert to violence, while intervening in other areas. Such interventions to develop this broader concept of democracy have more had the purpose to promote more equality inside a society and inclusive participation of different parts of society.

To sustain the rule of law, a State apparatus must safeguard and apply it. It is possible to create the range of instruments necessary to maintain the rule of law, even by the State itself. This requires the creation of institutions that are independent and enforce the rule of law, social rights, freedom of speech, public participation and prevent authoritarianism from the government.

Ironically, not only is there enough knowledge to create those mechanisms and institutions, but at least a form of them were present on both countries and within the EU framework, but the will to act was lacking.

Institutions with the capability to act on behalf of these democratic values remained quiet, even if their standpoint was purely moral or symbolic. The Brazilian federal government had more than enough capabilities to intervene and as stated on the Constitution, had an obligation to do so. The EU stands as a value keeper but did not act in the British case to oversee whether as an EU Member State, it was actually embodying those values.

Since 2008 there has been a general sense of discontent and questioning of the current order and social arrangement, which has generated a legitimacy crisis among governments and institutions that have been working for the benefit of smaller interest groups. People today express their values, state their minds and wishes, while holding to account those who are supposed to represent their interests.

Today, an organisation needs to understand this in order to hold its influence and power. The public outreach for values becomes clear in many and very
new ways. No political actor was able to meet the demands. Their public support shrunk to a point where other forces were able ride on this sentiment and use it against the political forces that had failed to safeguard or promote the rule of law and social rights. The role of the institutions was questioned and suffered greatly because of it. As the average citizen expects their rights to be protected and those institutions in power to fulfil this ideological role, they obviously reject those would fail to support them. This lack of legitimacy can be seen as a foundation stone of the movements that brought about the Brazilian PT’s loss of the presidency and the withdrawal of the UK from the European Union.
Chapter 5.

*Lieux de mémoire: the European Union Global Strategy and Russia*

Caio H. Duarte

This essay is the result of a long-term collaboration that culminated in a research expedition to Moscow from April to July 2017 in order to apply the initial findings of my research into the hermeneutics of the annexation of Crimea and the concepts of Russian nationalism. It is important to put this project into context: Russian studies in the scope of geopolitics are an unexplored field in Brazil, with a few exceptions, such as Ambassador Roberto Colin’s *Russia, the Risorgimento of the Great Power*, from 2007, and BRICS-oriented studies. Here I intend to provide fresh understanding on the paths and challenges facing the European Union in implementing its Global Strategy (EUGS) as concerns the EU’s relations with Russia and its neighbouring regions, the foreign policy of the Kremlin and Russia’s own aims as a sovereign nation. These impressions and findings rely on encounters with members of the diplomatic corps based in Moscow, including the EU representation, as well as with Russian society. This experience has led me to understand the challenges in seeking to harmonize goals and policies that appease both sides, especially the complexity of (sometimes oversimplified)

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issues and concepts that we take as monolithic in preconceptions of the motivations and historical reasons behind Russia’s actions.

To facilitate understanding of the complexity, this article first contextualises the Russian government’s perception of itself in a historical and global perspective, before exploring the challenges that the EU Global Strategy present to EU-Russia relations, and identifying potential opportunities for mutual understanding, ultimately aiming at giving the reader a fresh perspective on the interests and issues that permeate the Russia-EU relationship today. The intention is to provide the reader with both a grasp of how historical content and a narrative are present in Russian policy-making to this day, as loci of memory, that is, collective constructions that alter or contrast with a historical and political narrative from both sides, and how those issues relate to the current European Union Global Strategy and might affect policy making in the field.

**Recurring concepts in the Europe-Moscow relations**

It is fair to make the generalisation that Russia has often figured in European politics as a threat, a problem to be dealt with. From the images of parades of unending platoons and nuclear missiles in the Red Square to the influence it had on the eastern European countries, the Kremlin and its leaders have had an undeniable and long influence on Europe. Dating from the Vienna Congress, we see Russia as the *Gendarme* of Europe in the Holy Alliance, having taken up the laurels of Napoleon’s demise, the Czars placed themselves as the keepers of the *Ancien Régime*, consecrating in Nicholas I official state policy of Autocracy, Orthodoxy and Nationality in the face of liberal revolutionary values of the Enlightenment.

Today, similarities can be drawn with that vision, both inside and outside of Russia. From a historical perspective, it is no surprise that Russia is perceived as a disruptive force in the international scene when faced with the current scenarios of the Russian intervention in Syria or its assertive discourse against NATO and EU expansion. But the underlying question

relates to Russia’s motivations behind its opposition to western expansion towards its sphere of influence.

With the clash of imperial projects and spheres of influence in the late Nineteenth Century, Russia was defeated by the Great Powers in the Crimean War, Sebastopol being the epicentre of a struggle to reaffirm British and French supremacy with the Sultan’s aide over a territory that represented the imperial might of Russia. Added during the reign of Catherine the Great – that is, Little or New Russia, the former Tartar heartland controlled by the Ottomans – this area in a broader definition is what today encompasses not only Crimea, but also Donbass and Donetsk, regions engulfed in a Civil war over nationality conflicts.

The Crimean War had marked the end of an era, enabling Russia to safeguard the autocratic regime and serfdom with the power of numbers, engulfing the army of the Czar in the technological superiority of the British and French armed forces. In the West, it is remembered for Florence Nightingale’s progress in nursing practices following the industrial scale damage suffered under that conflict, and the ever-enduring poem of Lord Tennyson, *The Charge of the Light Brigade*, a memento of the virtues of cavalry and war, that is, blind loyalty. Yet, it is still fittingly poignant to evoke said notions of in Tennyson’s verse, for it gives great contrast to the Russian perspective of the symbolism attached to that war and to the meaning of allegiance to the state, but also to the consequences of the lack of reasoning and dialogue\(^{192}\) For Russia, the defeat in Crimea had a more visceral meaning, that of centuries old dogmas, seen as triumphant after the Napoleonic wars, shown as weak justifications for the functioning and survival of the Russian state in the Industrial Era. British and French warships being seen by the Czar in his palaces by the shores of the Baltic sea in the Russian capital of St. Petersburg expressed in stark relief, this undeniable weakness and the need for change. For the first time since the triumph over Napoleon, the Russian bureaucracy and nomenklatura\(^{193}\) felt the limitations of their form of rule.

\(^{192}\) Known by the lyric enunciation of the fate of the Light Brigade, the poem can be read in full at: [https://www.poetryfoundation.org/poems/45319/the-charge-of-the-light-brigade](https://www.poetryfoundation.org/poems/45319/the-charge-of-the-light-brigade)

\(^{193}\) Nomenklatura is a Russian term used to define the bureaucratic ruling-class that rose to power during the Soviet Regime, derived from Latin. Some historians, such as Professor Richard Pipes in *Russian under the Bolshevik Regime* argue that it is merely a continuation of the Tsarist bureaucracy.
Within Russia, in terms of the mass media, the Crimean came during the transition from to industrialisation enabling the rapid dissemination of news, far faster than authorities could control it. For an autocratic state that still had inquisition-like prohibitions on publications and censorship, this revealed the existential threats to the Russian State self-preservation machine in the face of mass industrialisation and chaotic democratic process of the West.

Added to that, after the defeat in the 1905 war to a much smaller Japan and the economic crisis that engulfed the reign of Nicholas II, the autocratic state of the Czars started on its final path towards a swift demise under the economic, social and political pressures of the Great War. Because of the Autocracy’s refusal to reform itself properly, in 1917 the autocratic state of the Romanovs became the totalitarian state of the communist party, the future Soviet Union of Socialist Republics, a collective of regional bureaucracies that did not constitute a modern nation state according to Western standards. Vitally, the transition of power at this point, compared to the West, still continues to influence notions of sovereignty and popular expression in Russia today.

Only in 1991 did Russia emerge as a nation state in the western sense, being multicultural in its composition. In linear terms, Russia was trying to make up for time lost by integrating fully into the Western community. However, this is too simplistic: since Peter the Great’s reforms of westernization, the Russian ruling class always debated, with divisions arising, whether it should align with the West or remain true to Russian ideals. Slavophiles gained momentum during much of the Nineteenth Century leading up to to the Great War, as we see for Russia’s support of Serbia in the Concert of Nations, being motivated by pan-Slavic movements.

As detached as they were from the populace, the three Slavophile pillars of Czarism had long-standing foundations in the Russian people’s collective memory. Czarism as a form of rule evolved from a link to Byzantium, itself the role model of Christianity for the Russian Patriarchy, and Nationality followed as a concept similar to that of the Greeks, the civilized world that conquered barbarians in an Empire under a Caesar or Basileus, a King of Kings anointed by Jesus Christ himself through the Patriarch. This explains why, from the marriages of the Princes of Muscovy to Byzantine princesses to the rhetoric in the manifest destiny towards expansion of the Empire, Russia saw itself as the Third Rome, a supranational Empire concentrated in
the hands of the Czar, both spiritual and political leader of the Motherland and Father of the People.

When in 1917 those foundations were banished and desecrated, new ones were coined by the ruling political elite of the Communist Party vanguard. Soviet Nationality and the need to strive towards the success of the socialist revolution started to guide the ideological formation of the peoples of the newly-born soviet state. While states such as Germany and Italy used wars to unite similar peoples under a nationality, the soviets devised a set of ideals that at the same time emphasized ethnic differences and promoted a sense of union through denial of the outsider: the capitalist Other.

The soviet passport, an internal document, symbolized this effort. It was seen in the early days of the Soviet regime as a rite of passage, when individuals truly became citizens, part of the soviet collective, in contrast with religious or national rituals of western nations, such as the catholic first communion. But it also carried in its fifth line a very relevant trait, that of the nationality, similar to the western concept of ethnicity, through which an individual could claim to be German, Russian, Jewish, Kazakh or any other of the many peoples of the Soviet Union. Inside the red cover, it carried verses by the renowned poet Vladimir Mayakovsky, as a sign of the elegance of the Soviet superiority over other bureaucratically stiff nations, apparently even mocking the very instrument’s solemn character. Nonetheless, some scholars credit it as the creation of the modern passport in Russia, a tool of oppression by the Czarist government towards its citizens under a famous Russian saying: “a man without a passport is a man without a soul”.

The passport is the perfect synthesis of the contradictions of soviet identity and ideology: a bureaucratic tool used to control and limit freedom, defining racial standards even after the Holocaust made it unacceptable in the West, but also blatantly detached from the reality of the population, an artificial creation for the masses. If during the Romanov’s rule Russia was not a Nation-State in the classic definition of the term, but a property of the absolute and autocratic sovereign, who held command over his subjects, nor was it so under the rule of the Communist Party of the USSR, who held the belief that its citizens were first Soviets and then Russians, Tatars, Ukrainians
etc\textsuperscript{194}. The debate over whether to approach Europe or not in order to curb the United States sphere of influence, became a debate over what it meant to be a citizen of the Soviet Union\textsuperscript{195} The consequent impact at the end of the USSR fomented thinking in all fields, providing a better understanding of a nationality that is not ethnic and that can also be political, in the Western classical conception of the meaning.

It is worth commenting on the Soviet debate regarding Europe, so as not to give the impression that the Slavophile-versus-westernizers quarrel died out during the communist years. While in the first years of the party rule Russia was ostracized by Europe, after the Second World War it was seen as an unavoidable subject to those that wished to discuss stability in the continent. Russia’s influence over Eastern Europe through the Warsaw Pact and the COMECON enabled Kremlin policy-makers to lobby for the construction of\textsuperscript{196} a Moscow-oriented Europe, pursuing trade with Western European nations as a way of modernizing their own economy and securing a market for Soviet commodities to finance the regime’s aspirations,\textsuperscript{197} such as the financing of communist parties in Western Europe. Although integrating with Europe was not seen as a vital priority of the regime, the soviets considered it important to stability in eastern European countries, as part of the grand-strategy of Soviet Russia in the Cold War.

This strategy has had impacts on a recent past in the integration of Europe. One key-point that sheds light on many of the events of our day

\textsuperscript{194} The artificial nationality is a recurring issue in Russian politics to this day, along with the nationalist affirmation in public policy. Relevant points will be presented further in this article. Further reading on the Soviet issue abounds, such as in the compendium organized by Jeremy Azrael, Soviet Nationality Policies and Practices (Praeger, 1978).

\textsuperscript{195} BAIBURIN, A. Rituals of identity:. In M. Bassin & C. Kelly (Eds.), Soviet and Post-Soviet Identities.


\textsuperscript{196} An example of this is the creation and subsequent actions of the Comintern (1919) and its successor, the Cominform (1947), over the coordination of communist parties in Europe and the world according to the needs of Moscow.

\textsuperscript{197} Although hard to analyze in its motivations, Soviet economic interest in Europe is largely documented, and so are trade relations. An interesting source are the CIA memos on the issue, as much of the West overestimated Soviet economic power, because of documents on the issue in Russia still being largely unavailable.
when examining the Soviet foreign policy strategy of the time, is that of how the Soviet Union saw relations with Europe, with a focus on Germany, expressed in a directive$^{198}$ that of the menace of a strong Germany, especially given the growth of the European Economic Community. The Soviets used a strong relation with General de Gaulle, the first western leader to visit the Soviet Union, in the 1960s, to weaken both NATO and the EEC, playing on the French ambition to lead Europe. As much as Gaullism and the French Communist Party are no longer forces to be reckoned with in the French political landscape, it is not hard to grasp the Kremlin’s motivations for funding Marine Le Pen’s *Le Front National*, in the last French presidential elections. The Soviet policy towards the EEC focused on the Bonn-Paris-London triangle, just as the Kremlin does today. Past conceptions may seem to subside, but they remain in a collective memory and still guide policy-making, raising an interest in why the same concerns of decades or even centuries ago have a weight in Russian actions.

Brexit and the divide now forming between London and Europe, have contributed to Russian interests in having a debilitated Union to negotiate with, but Le Pen’s defeat to a “globalist” Macron and the pro-EU in the German elections helped preserve the EU stance against lifting sanctions on Russia, allowing stable conditions for pressuring Mr. Putin in topics ranging from Crimea to human rights.

Here the anecdotes of politics illustrate better than anything how alert and distrustful Germany is on topics involving the EU and Russia, but also how Russia still considers Germany as a relevant concern. When President Putin first visited the German Reichstag, speaking in impeccable German, all applauded in awe, East-German-raised Chancellor Merkel was quoted as saying: “thanks to the Stasi”$^{199}$, referencing Mr. Putin’s time as a KGB operative in Germany, working alongside the East-German version of it, the Stasi.

$^{198}$ Apart from the polemic March Letter of Stalin, in which he advocated with reasons still controversial for the unification of Germany, Soviet foreign policy maintained a consensus on the issue and in their management of Moscow’s sphere of influence. More on this issue can be read in Baras: BARAS, Victor, Stalin’s German Policy after Stalin Slavic Review. Cambridge: Cambridge University Press. Vol. 37, No. 2 (Jun., 1978), pp. 259-267.

Besides this focus on the London-Paris-Berlin axis, there are other heirlooms of the Soviet Union that shape Russian Foreign Policy. Looking back further to the last days of December 1991, Mikhail Gorbachev announced the dissolution of the Soviet Union, launching Russia into its first days as a Nation-State in the mould of the West but without ever having had a complex and popular oriented process of identity formation. Some citizens of this new State were issued the third passport within their lifetimes, the fifth line of which depicted their ethnicity, referred as nationality, which helped to complicate even more the meaning of being Russian and the nationalist narrative in Russian politics. The infamous “fifth line” was to be abolished only in 1997, during the turbulent days of the Yeltsin government. Still, it remained as a trait of national unity linking Russians to the past – both Czarist and Soviet- in its granting of value to ethnicity, which had survived the regime change.

This contributed to profound and unfruitful discussions on what it meant to be Russian during the crisis of the Yeltsin years, giving some of the minorities, such as the Chechens and Tatars, reasons to pressure the central authorities for more autonomy, first violently and then peacefully. The Russian ethnic group, on the other hand, feeling lost without the long-standing manifest destiny of promoting imperial growth, started to look inwards for answers.

With the economic and political crisis that ensued, it is not surprising to see Vladimir Putin’s nationalist rhetoric in this sense as an attempt to stabilizing the Russian political scenario200. Tensions of old and ever-present political schools of thinking and the concerns and values they raise must be dealt with in the domestic field, and this takes its toll on how Russia orients its diplomacy. Philosophically speaking, this explains the revival of the Slavophile aspect to the centuries old debate in Russia: as Pierre Nora argues201, memory in a collective sense is a form of the dialectics of


201 This concept is developed in several essays in the compendium organized by Professor Nora. NORA, Pierre. Lieux de mémoire. Paris: Gallimard, 1997.
remembering and forgetting, creating lasting bonds between people over shared affection. Some believe that in traditions and symbols lie the places of memory that can help understand what it means to be Russian and to Russia’s existence as a nation.

It is therefore relevant to rescue the foundations of the debate of Imperial Russia’s decadence, and the subsequent breaks of continuity in its institutions throughout the Twentieth Century. Clarity in this trajectory allows us to see why in the Twenty-first Century we see a state that clings to symbols of failed regimes and their demised triumphs and angst when in negotiations with the European Union as it asserts its identity in the global community.

The rhetorical challenge

To discuss to the challenges posed by Russia in the EU and the context of the EU’s Global Strategy goals within Brazilian academia, aims to respect the principles of responsible peacebuilding, maintenance and promotion of human rights and international organizations as means of solving conflicts. In 1828, Brazil was the first country of South America to establish relations with Russia. To continue to promote principle-oriented dialogue is what makes this a fruitful relation not only bilaterally, but to the world. As so much of this revolves around discourse, the ideas presented and relevant to the EU Global Strategy goals are challenging in themselves.

In the second half of the twentieth century, fostered by the post-war need to rebuild and secure lasting peace, democratic Europe saw itself promoting so-called global values, notably to strive for supranational institutions that could ensure the emancipation and freedom of individuals. Just as the UN was used as a platform for disseminating freedom and human rights around the world, so the European international organisations were the platform inside the continent and on its borders. Social rights and the right to have rights, became leading subjects of discussion in this rising tide of liberal democracy.

At the same time, the Russia of Yeltsin and Putin lacked any pretension to exerting such influence. Not only was the Nineties Russia too troubled to be able to project influence over any region other than its internal ones that were
trying to break away from central power, in the early Twenty-first Century we also saw the closing of military bases such that in Cuba, with the enormous symbolic weight that this implied for those that had seen the tension Cuban Missile Crisis and the years that followed.

Still, after 9/11 and the decay in the belief of a Pax Americana\(^\text{202}\), the rhetoric as to global values began to lose credibility, being openly criticized for lacking substance. The Kremlin, for instance, takes these values to be post-Christian, imbedded in a messianic drive.

For Russia, the EU has a rhetoric of forcing other nations to accept so-called gay values and the compromise of their traditions in favour of a globalist approach that allows terrorists to undermine the sovereignty of nations.

Russia has then sought to pose itself as a moral bastion of a different ideology, anti-Islamic, anti-globalist, pro-tradition and conservatism, rooted in the long-standing debate that has occurred inside its borders since the heydays of Peter the Great. From the regime’s meddling with other countries elections to the concerns on the social, political and economic stability in a post-Putin Russia, or even in the 2018 elections, what happens inside this country and its participation in the global community are vital to any strategic planning, especially that of the EU.

The Russian stance towards a multipolar world, as different as it is from the Chinese or the Brazilian or EU stances, is therefore something that has to be addressed, debated and understood, so that foreign policy-making in those countries or any other that has to work with Russia can respond meaningfully to the need of solving critical issues, such as securing stability, advancing human rights and economic prosperity in the global scenario.

Although the Kremlin succession, a concern for the continuity of this debate, is either considered a taboo or an impossible question by many, if not all, there are common points that can be seized upon around the negotiating table. From the security cooperation and global fight against terrorism agenda to the partnerships in the academic field, there are relevant areas of agreement in which both the EU and Russia can build upon.

The issue of the Kremlin seeing colour revolutions, like that in Ukraine and the pro-EU regime change at its borders, creates obstacles to this process: such developments are understood to be the result of the EU’s promotion of its values, which are negatively rather than positively received by Moscow and – counterproductively – add to the long list of mutual accusations that serve to harden the stalemate in the dialogue between Brussels and Moscow. It is also worth noting that there is no real interest in confrontation on either side given the economic and social pressures on them both.

All these motivations behind the Kremlin’s stance in relations to the EU hold important implications for the European Union’s Global Strategy.

**Public diplomacy**

For the European Union, enhancing public diplomacy is pivotal to its new Global Strategy. It followed hot on the heels of the shock of Brexit, putting the spotlight on the inability of the EU to enlighten and articulate the benefits of EU membership in its discourse with the EU electorates and to inform on the complexities and nuances of the challenging issue that is EU membership. From think-tanks to student unions, to help the expansion of programmes that assert a fact-based fruitful debate is the aim, to reduce the gap between institutional policy making and what citizens of the EU believe the EU to represent – and what it is capable of achieving as much as what it has already achieved.

This engages with one of the most pressing concerns that encompass EU-Russia relations: fake news, a phenomenon that challenges the traditional lines of communication by creating and spreading through the internet opinions that curb public debate and even render it a chaotic and polarized medium.

More challenging still is that this comes with the challenge of how to balance principles such as freedom of speech and public opinion, with cultural diversity and cultural relativism. Inserting its institutions in a scenario that aims at dealing with cultures once considered inferior and alien to the European, both in new Member States of Central and Eastern Europe and in neighbouring states and regions, the EU has at the same time to convince public opinion of its own Member States and of other countries alike.
Here civil society plays a key role, as it is behind social interactions online, leading debates that have the power to overthrow governments and swing elections by the last minute, as seen from the experiences in the Arab spring or the British vote on Brexit. The destabilization of regimes in the Middle East and Northern Africa that resulted in an unprecedented refugee crisis inside the EU and its Member States, together with the “alternative facts” on economic and other issues, influenced UK voters into believing a myriad of misconceptions and proven untruths. All this has brought negative consequences for the European Union’s stability and growth, such as a rise in populist xenophobic rhetoric and challenges to the rule of law within EU Member States themselves.

In the Russian case, this translates to a much more complex scenario: that of the meddling of Russia in the electoral process of other countries through hackers, production of alternative news media content and influence in social networks. Both the EU and the Kremlin’s neighbourhood policies and how those relate to public diplomacy planning and execution, are implicated.

Russia realized that it could influence the democratic process of countries through the production and dissemination of information on the internet in order to curb NATO’s inroads into its traditional sphere of influence. Other than the Baltic assertive policy towards aligning with the EU and NATO, the so-called colour revolutions – especially that in Ukraine, which saw regime change to a more pro-western government – raised the concerns of the Russian government as to how to regain control or at least fight for the narrative of the political game. This meant thinking both inwardly and outwardly. Inside Russia, the curbing of freedom of speech and confiscation of independent or oppositional means of mass communication that began under Putin with the Security Doctrine of the Russian Federation in 2002, saw TV stations and newspapers confiscated by the state in name of the protection of the “Russian Spirit” and “Russian values”\(^{203}\), although those were not specified in the legal text.

Additionally, the persecution of journalists and politicians that opposed the regime’s decisions was intensified with the murder of journalist Anna

Politkovskaya in 2006. Politkovskaya had been key to reporting on the brutality of the Russian Army’s actions in the Caucasus, a region where violent separatism tendencies had been evident since imperial times. For the Putin administration, control over the narrative in the Caucasus issue held special meaning: it was during a brief success period in Yeltsin’s\textsuperscript{204} management of the war that Putin was sworn in the position of Acting-President of the Russian Federation, which ushered in a new Era of administrative changes enabling him to win over public opinion as a measure of his stabilization of the region.

However, this balance came at a very heavy price, taking its toll on the LGBT persecution and sparking world outrage, see further. Moreover, the branding of think-tanks such as the Levada Center—a public opinion research centre that also researches the integrity of the Russian electoral processes—as “foreign agents”\textsuperscript{205} helped the Kremlin to control its official public diplomacy narrative. In contrast with the chaotic democratic debate that has occurred during the Brexit debate in Britain, regardless of its merits, the Russian scenario has emerged unscathed, as one of unison, with dissonant pitches being legally or brutally quieted down.

This has meant that the incentives for civil society organizations to get involved in the EU-Russia debate inside Russia has had a negligible effect. From the common funding of the EU and its institutions to foster projects, or even the influx provided by third sector organizations or foundations associated with political parties, the violent branding of a stakeholder as a foreign agent prevents any real sustainable progress in the debate.

The EU has obviously realized it could achieve more by dealing with something crucial to Russia: its sphere of influence. By opening a negotiation agenda with Armenia and Georgia, for example, the EU has forced Russia to debate and rethink issues with these countries, which in turn has reflected on the policy-making of Russian diplomacy.

\textsuperscript{204} For a better understanding of the scenario at the time of Yeltsin’s resignation:https://www.nytimes.com/2000/01/01/world/yeltsin-resigns-overview-yeltsin-resigns-naming-putin-acting-president-run-march.html Last seen on May 2, 2018.

Its maintenance of influence started to change because if the EU offers benefits in its relations with a country that has a proximity in policy decisions with Russia, then Russia has to adapt in order to see how it might compensate those offers and benefits in its own relation with those countries. From the failing Community of Independent States, the Kremlin now seeks to reassert its influence in former Soviet Republics, with the creation of the Eurasian Economic Union in response to the EU’s courtship of Kazakhstan and other key countries, such as Armenia.

Still, the original project for a Eurasian Union had the word “economic” added by the former republics, who requested this so as to express their political independence. Their reservations with the centralization of power surfaced again in Kazakhstan’s adoption of the Latin Alphabet, replacing the Cyrillic, which has dealt a heavy symbolic blow to Russia, Kazakhstan once having been a province of the Russian Empire and which the Czars took considerable effort to colonize.

Returning to the outward focus of Russian public diplomacy, the moral high-ground once held by the European institutions in what was the propaganda war dimension of the Cold War, is now held by the Kremlin. While the EU focus on producing content that helps debunk fake news and alternative facts, the Russian path in this information warfare is the one of generating massive content and helping turn narratives in favour of anti-EU sentiment, nationalism and populism.

The creation and expansion of channels of communication such as Russia Today, Russia beyond the Headlines and In The Now all seek to promote an alternative, pro-Kremlin view of issues being debated, even raising points that Russia considers to not have been as well debated as they should. In this we can see a scaremongering policy favouring Euroscepticism, shedding light on points such as the EU being a disseminator of post-Christian values – like LGBT rights – with a messianic drive. The EU’s response, as outlined in its Global Strategy, was the creation of a disinformation debunking newsletter.

This, in addition to direct funding and political support, has helped fuel anti-EU feelings. The most relevant case being the funding of Marine Le

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206 An example of this is the discussion about the subject in Kazakhstan https://en.tengrinews.kz/opinion/435/ Last seen on May 2, 2018.
Pen’s *Front National* during the 2017 French elections. Le Pen’s rhetoric being that of a conservative crusader against degenerate EU values and of the control of the Brussels bureaucracy of the French sovereignty, gained momentum and seemed to threaten an already fragilized position of the EU after the Brexit vote.

**Linking external and internal policies**

The need to connect external and internal policies under the EU Global Strategy in relations with Russia is clear. The emphasis on cyber security is important, and clearly a challenge to be tackled by joint internal and external EU policies. Here, Russia’s role as a disruptive and provocative force requires examination.

Firstly, in the 2007 cyber skirmish with Estonia was considered by Tallinn to be the first ever example of a cyberattack perpetrated by one nation against another. The consequent shutdown of government services in a country that prides itself on leading the informatization of bureaucracy and even elections, was motivated by Russia’s objections to the transfer of a statue in homage to fallen soldiers of the Red Army from the centre of the Estonian capital to a military graveyard in its outskirts. This served to rally Russian’s patriotic emotions. Importantly it has drawn on Estonia’s ethnic Russian minority who have long complained of being treated like second-class citizens and who represent a remnant of the brutal soviet occupation of Estonia, and who along with the Russian government have long felt deprived of any integral role in their historical memory and pride.207

This was an opportunity for Russia to test its potential to mark territory in the cyber field without leaving obvious traces or deeply damaging its reputation, as it is almost impossible to prove the source of the coordinated attack to have been the result of a direct order from the Kremlin. We are left to assume that because the Estonian attack shares similar traits with those of the

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US elections’ hacking, which was also credited to Russia. It was most likely\textsuperscript{208} to have been an order of the Russian government, probably motivated as a show of strength and an everlasting need of assertiveness based in the imperial and soviet past, considering

Estonia and the other Baltic countries to be nothing more than a seafront backyard of Russia in the view of the Kremlin.

The 2007 cyberattack serves then a dual purpose. It shows the importance the Kremlin gives to the political narrative of the war against Nazi Germany and also helps stir nationalist sentiments in the ethnic Russian population of the former Soviet Republics, a form of preserving a bond that Russia sees as vital in its preservation. Both that of the political regime and of the wide notion of the Potence. For the Kremlin, any questioning of the memory of the Great Patriotic War against Nazism and the moral superiority of Russia is out of the question, being seen as a revisionist tool of the West to corrupt the heroic legacy of the Russian people. But it is also interesting, if not vital to the Russian military and diplomatic thinking, to keep the pressure up on a nation that has its borders with Russia less than 2h30 away from St. Petersburg and has joined both the EU and NATO.

Still, even though we ought to separate the EU from NATO, the 2007 attack helped foster involvement of other EU members in the discussions about cyber warfare and the need to decide on security, conceptualize actions that may constitute harm so a punishment might be inflicted on the bellicose states, and so on and so forth. Estonia congregated collective forums, founded institutions for cyber-studies and even established a centre on this subject, NATO Cooperative Cyber Defence Centre of Excellence in Tallinn, bringing together EU nationals and fomenting similar practice in countries such as England and Czech Republic\textsuperscript{209}, taking the lead as the most advanced of nations when it comes to e-government.

\textsuperscript{208} Although it is hard to trace cyberattacks, political declarations and confluence of dates and actions favour the Estonian hypothesis, backed by most of NATO countries: https://foreignpolicy.com/2017/04/27/10-years-after-the-landmark-attack-on-estonia-is-the-world-better-prepared-for-cyber-threats/ Last seen MAY 2, 2018.

\textsuperscript{209} The Czechs have recently opened a similar centre of their own, https://www.govcert.cz/en/info/events/2456-the-czech-republic-opened-national-cyber-security-center while an Estonian is the head of the Centre for Doctoral Studies in Cyber Security at Oxford University.
In terms of cooperation and institutional integration, under the Russian threat the Baltics as diverse as they might be – have always held close cooperation on this matter, acting predominantly as a joint entity on policy making, whether external or internal. These three nations seem threatened by a large military contingent and aggressive rhetoric of destabilization. In dealing with Russian propaganda and the dissemination of Kremlin-oriented versions of notable events, they consulted one another on establishing a counter-attack communication strategy in this information war, albeit taking different approaches: some banning Russian television channels, others producing their own Russian speaking content, as Estonia has done.

But on working with issues such as terrorism and violent extremism, there is consensus that cooperating with Russia is unavoidable, especially following Russia’s intervention in Syria, at the source of all refugee issues so challenging to Europe. Coordinated actions to prevent terrorist attacks make sharing intelligence data in the mutual interest in this case. Still, while Russia seeks to assert the historic influence in Syria dating back to the 1950s, the EU has to deal with the impact of the refugee influx resulting from the destabilization of the region.

Russia can use its involvement in Syria to support the ruling party of Bashar Al-Assad over American-backed dissidents and the so-called Islamic State, to either increase or decrease the stability in the region, and has done so repeatedly. As the EU Member States argue over the distribution of refugees and the restriction policies that should be implemented, the Russian refusal in creating a state policy for refugees, as the German example illustrates, has been adopted by right-wing and populist groups both inside Russia and in EU countries to justify their anti-refugee and immigration agendas. In Orbán’s Hungary, we see the concern for preservation of Hungarian society and its values and the threat of Islamic terrorism used as justifications for undermining the rule of law and not working together with other EU Member States in settling refugees. Poland and Czech Republic followed the same path, fomenting further dissent in the already contested official policy of the EU regarding refugees. Needless to say that Moscow sees this too.

Moreover, as the Global Strategy outlines, partnership with the countries of origin is vital to achieving fruitful solutions to this crisis, and the
disagreement between Brussels and Moscow on this greatly damage dialogue on the matter. An example on this issue can be that of how the EU countries handle the political instability in the Middle East and Northern Africa and the migrant crisis that followed it since the Arab Spring.

When it comes to the crisis in Libya, where Russia favoured the ruling regime over the revolutionary overthrow backed by EU Member States, who condemned Colonel Gadhafi and sought his deposition in favour of the democratic rule by the Libyan people, the now wartorn and unstable Libya – once having Africa’s highest per capita GDP and life expectancy – is a breeding ground for ISIS cells. This only helped in strengthening Moscow’s criticism on the EU approach in dealing with regime change in Syria.

Thus, the thesis held by Russia in justifying Moscow’s support of Damascus the West bears a great deal of responsibility for causing unrest in the Middle East and in the Magreb, and therefore the refugee crisis that was aggravated by it, and that a more responsible transition of regime would not have caused this crisis. As much as the EU wishes to divert funds to help institution-building in Africa or even the Middle-East, the Kremlin believes that a stable path should follow institutional dialogue instead of economic pressure, favouring continuity with adaptation instead of incentivising chaotic and unpredictable change based on globalist values, that is to say, Moscow has its own view the respect of sovereignty.

This issue has serious implications in the tensions inside the EU, as Poland, Hungary and Czech Republic have been threatened with referral to the European Court of Human Rights on the matter of their refusal in complying with the quota system for refugees.

With Russia’s retrieval of the Statute of Rome in 2016, the Kremlin showed a more representative international legal system, also in favour of strong national sovereignty and cultural relativism, to be an argument it is interested in backing. This is not to say it created a precedent for countries leaving international legal systems, or that any of the above-mentioned countries intends to leave the European Court of Human Rights, but that one cannot brush aside the fact that its fairness, effectiveness and therefore also its legitimacy as a mechanism of delivering justice will remain unquestioned.

Moscow then presents a case where a country can remain sovereign and with its culture and borders free of compromise, degeneration, or the Islamic
threat and be convicted, even ostracized or that those countries can comply with international legal systems based on global values that do not represent their peoples, giving rise to the decadence and demise of nation-states.

**Security and Defence**

This leads us to the issue considered pivotal to the détente between Brussels and Moscow: the need for cooperation in the maintenance of defence and security. Integration between EU Members States on the defence field is seen with great care by Moscow, specifically because threats to Russia’s preservation of its sphere of influence and its border. In Russian military and political thinking, there are many sayings that exemplify this reality, one of those being that “Russia with Ukraine is an Empire, without it, it is nothing.” The broader area that was considered to be under Russian influence during Imperial and Soviet times, also extended as far as Belarus, Poland, the Baltics and the Caucasus.

The Russian military sees this as a necessary line of defence of the Motherland. Echoes of Kissinger, Brzezinski or even Sir Halford Mackinder’s theory of the Heartland can be heard in this. For the Russian armed forces, breaches such as NATO asserting its presence in Poland and in the Baltics, have greatly compromised Russian security, and the halting of any further expansion is seen as entirely necessary. This explains Russia’s influence in Ukraine’s destabilization, which compromised Kiev’s entry both into EU and NATO’s plans.

This is by no means an attempt at encroaching into geopolitical defence theories, for many might believe Kissinger and his peers to be outdated, but of an assertion that Russia does not fully acknowledge, whether politically or historically, the independence of its neighbours. It relates to a notion that Russia conditions its foreign policy to its historical past of political and cultural ties in the region, and therefore the need to retain influence over those countries is seen as the only way possible for Russia to securely strive for greatness as a nation, or, as some might argue, an Empire.

In this we can already grasp what the EU-NATO Joint Declaration means to Russian military thinking. If at first Russian Academia even considered
the possibility of a strong EU aligned with Moscow in opposing American dominance, now the Kremlin has almost adopted it as a dogma that the EU project is one that greatly endangers Russian national interest and sovereignty, serving both as a preacher of anti-Russian values and a bridge to NATO military occupation of the Russian borders.

The very idea of a joint military capacity of EU members is enough to motivate the criticism of the Kremlin and justify higher spending, the deployment of troops and military exercises. This is followed by the rhetoric of the militarism of Russian society. From theme parks to military parades and state-sponsored holidays, there is a driving élan in asserting inside Russian society that war-readiness and show of strength is necessary to secure traditional values.

Still, as infertile as this scenario might seem to cooperation, the very flaws of it show the field of defence to be the one that the EU believes capable of bringing Brussels and Moscow together. The recent terrorist attacks in Russia and Europe, regardless of the increased security in both, show that sharing intelligence and working together to prevent attacks and dismantle terrorist networks and cells is utterly necessary in a globalized world. Cooperation by necessity when facing an almost permanent treat helps stir the agenda towards a détente.

**Resilience**

When seeking to comprehend Russia’s notion of resilience – both popular and institutional, and how it relates to the dogmatic values shaping EU-Russia relations – the example of the Crimea epitomises the central issues. The Crimean issue reflects the challenges of the notions of nationality in Russia both past and present. If we are not able to grasp how Russia sees nationality and how this relates to their internal politics and policy-making, or even why this vision conflicts with EU values, it seems unfeasible to hope that EU institutions will be able to create a productive dialogue based in reality, where negotiations can both understand the concepts that limit them and at the same time surpass those issues when reaching for solutions.

The annexation of the Crimea in 2014 by the Russian Federation was certainly a turning point in EU-Russia relations, not least because it was the
motivation for many of the EU’s sanctions against Russia in place today. While the EU maintains this action to be an illegal move by Russia to assert its dominance over Ukraine and destabilize the Kiev central government in favor of ethnic separatism, Russia, on the other hand, argues that the vote to join the Russian Federation by the Crimeans and the acknowledgement of the result, is a matter of self-determination. Countries such as Brazil recognize certain points in the Russian reasoning to be valid, especially in the Kosovo comparison, by which relevant Member States of the EU and NATO acknowledged the Kosovar right to secede from Serbia under the principle of self-determination of the peoples.

Therefore, countries in a neutral position, such as those that support Russia, use the terms integration or reintegration, reckoning with the complicated nuances of the events that took place in the Crimea. But still, this exemplifies an interesting contradiction in Russian foreign and internal policy integration. While at home the Kremlin uses all means available to retain control and stability in separatist regions such as Chechnya, abroad it is a great supporter of ethnic-oriented separatism: Transnistria in Moldova, Abkhazia in Georgia and the Crimea, are just some of the cases that can be used as examples. And just as common it is to see Abkhazian wine in Muscovite supermarkets, it is taken as a natural right of the ethnic Russians to strive for rejoining the Motherland in the Crimean case. It is worth noting that Transnistria and Abkhazia, both being breakaway states, are used to pressurizing and destabilizing neighbourhood or surrounding countries with Russian populations when their governments disagree with the Kremlin. This is due to the concept of ruskii myr, or Russian World, more than anything210.

This concept can be traced back to historic notions of Russia’s expansionism and civilizing mission, but the modern meaning dates from the 1990’s when historical and sociological research focused heavily on the meaning of Russian nationality. The Russian world comprises not only Russia but those regions that contain Russian populations. Overly simplified as a notion of jus sanguinis over the western jus soli, it takes the Russian state to be responsible for those of Russian culture and language that are not

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210 As seen in https://dgap.org/en/node/28188
inside its formal borders, embedding it with the moral right to act in order to preserve those populations’ customs and well-being.

By this we can observe the justifications not only of Russia’s annexation of Crimea, but also its intervention in Georgia or its aide to runaway ethnic-Russian states. On top of that, we start to see an interesting phenomenon parallel both with Soviet history and EU challenges on resilience, the key to it being the soviet passport issue. Just as in Soviet times the sense of belonging to an artificial soviet community conflicted with notions of ethnicity (Russian (ruskii), Ukrainian, Jewish, Estonian, and so forth), we now see the rise of a long-forgotten notion, that of the political Russian being, the Rossianin, something akin to Soviet nationality, above other ethnic notions.

In Crimea, before the annexation people were differentiated on their ethnicity, Ruskii, Ukrainian, Tatar. What took place after that was a promotion of the notion of Rossianin in official discourse, so as to include all the residents of the peninsula in a notion of a greater Russian World of which they were a part. The use of this word demonstrates the Kremlin’s need to project its image as a purveyor of protection and safe keeper of values of the Russian people. In Russian political thinking, this resounds with the notion of defining Russian nationality through negative assumption, that is, the Greek concept of oikumene, the civilized world whose borders are language and customs over other peoples’ customs and languages. Such notion was adopted by both Rome and Byzantium in defining their foreign policies.

This explains the earlier reference to the shared collective memory evoked by Nora. It is not only the need to define the collective and the Self as a citizen that poses a problem. The German philosopher Jürgen Habermas himself talks about “an idea that (is) vivid and powerful enough to shape people’s convictions and appeal more strongly to their hearts and minds than the dry ideas of popular sovereignty and human rights”\(^{211}\) when thinking about European integration.

Nationalism is, of course, the “easy fix”, as one top EU diplomat phrased it, and has a wide and simple, yet strong appeal to many. This is why Putin

chose to reinstate the practice of military parades. If visiting Moscow around the 9th of May, one will surely find from supermarket cashiers to children dressed in military attire, flags – especially that of the regiment that took Berlin – adorning the buildings, and even international fast-food chains broadcasting specially made war-themed video clips on their televisions. Another relevant example is Russia Day, on the 12th of July, supposedly to mark Russia’s independence from the Soviet Union and used to foment war and historic reenactments, parades and decorations all over Russia.

Surely comparisons can be drawn with the artificial Soviet notion of nationality mentioned before, but it is also useful to extend those to the EU. The European Union understands that the rhetoric of global values over which its institutions are based upon has been eroded by several national and transnational crises, and is now under increasing pressure in an evermore contested global order, therefore seeking to improve resilience in the core of its institutional building. Creating a bond between the Europeans and the institutions that are supposed to represent and give voice to them is the challenge. The need for concepts such as belonging to an European collective to be shared in among the peoples of Europe carries certain similarity in its aim to that of a sense of russianness, sovietness.

Consequently, just as Russia seeks to define and spread values of Russian-ness, so Europe seeks to define and spread its values. What it means to be European is a question that the rise in Eurosceptic nationalist movements have placed in the centre of discussion of the EU agenda, with the risk of compromising the very future of the Union should it remain unanswered. But unlike Russia, the EU seeks to use memory in a path that does not build on nationalism to secure institutions that are seen as representative.

A common past of challenges, war and destruction is in juxtaposition with the present of interdependence and mutual growth among the Member States. At a time when the EU Member States are grappling with the implementation of directives for its institutions and integration paths as outlined in the 2017 White Paper on the Future of Europe, the goal of resilience under the Global Strategy demonstrates their mutual interests.

and intentions in promoting the popular articulation in the advancement of European democracy.

It aims not only at curbing fake news-motivated Euroscepticism but also at incentivising Europeans to involve themselves more in the building of the future EU, assuring that it is as democratic and responsive to popular needs and challenges as it can be representative of the diverse population of the unique political experience that is the European Union. It does so by growing incentives to channels of participation, NGO’s, civil society entities, cultural groups and many others of this kind to participate and spread the debate over the EU. From the Russian perspective, the dialogue in the academic field remains unaffected by sanctions, and a strong bond between Russia and the EU is what fosters the continuing relations between both societies, showing the benefits of mutual assistance and cooperation. This, in addition to the defence cooperation, leads us to the last point on the EU Global Strategy, that of a change and the creation of strategies to meet these resilience goals.

**Updating strategies and preparing new ones**

In a seemingly intransigent scenario of tension and distrust, there are potential healing factors of détente between Brussels and Moscow. The interest of the economic field to facilitate trade is core here, and even considering the current low in Russia’s main exports, oil and gas, and the fact that those assets, with the production controlled by state-backed companies, are used as a pressure leverage in negotiations with the EU.

The interdependence in the scientific field also favours this movement towards dialogue, given the prestige and incentive that the scientific community has both in Russia, as a heritage of Cold War competitiveness, and in the EU. This is why EU sanctions are against Russian oligarchs, and not programmes research and educational programmes such as Erasmus, something not publicized enough.

This can be exemplified by the food ban in Russia, which is commonly believed to be part of the sanctions, but is actually a Russian restriction on a vast array of EU agricultural exports, and in breach of which many trespassing routes have been found, such as the labelling “Made in Belarus” of seafood made in the EU, even though Belarus is a landlocked country.
Still, regardless of market interests, the EU Global Strategy is principle-oriented, and for this it is worth discussing how principles interact with the update and creation of strategies. Taking on the recent persecution of gay people in Chechnya – widely condemned by the EU– we have seen that few EU Member States have actively helped create solutions for sheltering this persecuted population.

The crisis was motivated by the Kremlin-backed local elite in the Caucasus, whose power lies in exchanging support of Moscow for keeping stability and separatism under control. This why President Putin turned a blind eye to the violations, which were denounced worldwide. Nonetheless, it is beyond discussion that countries championing individual liberties and human rights could do more on the issue, if not by sheltering the persecuted population, then by contributing in other effective ways to preserve their lives.

Diplomacy has a part to play in this crisis, as does academia, investigating the motivations and solutions to it. Security and defence should also play a part, as rapid-responses to helping endangered groups or populations is a way of enhancing the capacity of mutual response to any situation of conflict. From youth initiatives for human rights and the acknowledgement of specific cultural challenges to economic sanctions, the EU can use and should use its relationship-building with Russia to learn how to better plan and react to challenges.

**Conclusion**

In a scenario where the logic of interests is often blurred by a geography of passions, such as nationalist rhetoric, terrorism, sabotage and even military aggression, the EU Global Strategy has in the relations with Moscow one of its greatest challenges. Although its resilience strategy is not a year old yet, recent crises show that it needs to face reality and the political and historical challenges that the Kremlin considers relevant if it wishes to plan a successful Ostpolitik. Brussels must grasp the Russian political constructs

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that orient their policy-making domestically and abroad. For a diplomatic judgement that creates strong solutions through its institutions, it has to perceive not only its place in the world, but seek to understand how Russia sees their place in this same world.

Russia is as ever a complex and intricate political landscape, both inwards and outwards. The unique nature of the relationship between people and state following the collective traumas of a totalitarian past together with the Soviet and Czarist heritage, brings to this debate nuances both serious and delicate at the same time. The weight of tradition, artificial or not, conflicts with the rising participation of civil society in Russia and the pressures for free press, democratic institutions and political and economic transparency. The political spectrum congregates to the right both in Mr. Putin’s United Russia, strongly backed by the Russian church and oligarchy, and in the Communist Party. The importance of the Armed Forces, seen as an éminence grise, adds to this scenario, where the weak opposition is comprised of political and economic liberals, ultra-conservatives and radical communists.

Russian political landscape and the post-Putin scenario remain an impossible picture to most analysts, reinforcing the need for adaptation and rapid responsiveness to crises by the European Union. Yet looking back into the lessons of history and deeper into the concepts it reveals, notably the Russian identity, may help in putting forward new directives for long-term planning.

Strong guiding principles that resonate with people in the European Union in such a way as to unite them – such as by promoting peace and stability – lights the way for chances of progress in the dialogue with Moscow, beginning with the academic and defence fields. In its Global Strategy, the EU demonstrates its intention to remain open and act to improve itself based on the criticism that surfaces, whether in the form Euroscepticism or new threats and crises, such as the fake news propaganda that endangers its democratic processes from local to regional levels. Openness to dialogue and change is what will ensure that the EU Global Strategy’s own resilience and in the resilience of the Union it stands for globally, oriented by clear and important principles of liberal democracy, working alongside Russia and Russians for its aims and values.

In the history of Russian studies, a seldom – in its whole – remembered quote of Sir Winston Churchill can still purvey useful insight during times.
of tension with Moscow: “I cannot forecast to you the action of Russia. It is a riddle wrapped in a mystery inside an enigma. But perhaps there is a key. That key is Russian national interest.”214

In the search for shared places of memory upon which cooperation may be built, instead of two distinct histories, that of Russia and that of the West, the European Global Strategy has the potential to bridge the divisions in these two narratives carry and then construct its own a collective memory. If the anthem of the former USSR evoked the “unbreakable union of the peoples”, it serves as a warning that instead of being instituted by decrees, parades and holidays or even agendas or poems, resilience might require shared affection amongst the peoples, as chivalrous as it might seem, this moving forward with strong principles in both mind and practice but with a strong reasoning behind them, so as to avoid disastrous consequences.

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Documents relating to the outline of the European Global Strategy, available at:
Chapter 6.

Knowledge mobility: strengthening Brazil and EU relations

Joyce Pereira de Almeida*

1. Introduction

This research paper looks at the partnership between the EU and Brazil in science and technology, and the highly skilled migration it involves for both players. Since the first summit between Brazil and EU, an important effort has been made on both sides for this collaboration to bring mutually beneficial benefits. This research explores the agreements and dialogues that have taken place between the partners and, through the analysis of the number of exchange students in research (based in double degrees) within the University of São Paulo together with EU universities. The aim is to show how the cooperation has developed to the present day, in a practical way, taking in consideration the difficulties in furthering this partnership.

The first international treaty to establish relations between Brazil and the European Union was a Co-operation Agreement that was signed in 1995. Brazil and the European Union have always shared values as well as similar interests in promoting and protecting Human Rights, strengthening democracy, the rule of law and governance. With the proposal of the Agreement of Science and Technology of 2005, the partnership between both players was being deepened and has settled into one of constancy. With regard to the Strategic Partnership launched in 2007, the relationship was given more solid institutional foundations, notably including a series of “Sector Dialogues”, which were created to help deepen the cooperation at the level of local and/or regional actors in Brazil and Europe. The Sector Dialogues are a very practical expression of the deepening relationship between Brazil and the EU, through which joint practical actions and projects for the
development of this partnership are taken forward on themes ranging from regional and global challenges.215

This paper analyses this strategic partnership from the optic of the migration of students and researchers with the University of São Paulo. This theme is currently particularly relevant because of the importance attributed to this theme at the high political level on both sides, during the last Round Table between Brazil and the European Union in 2014 on knowledge mobility. At that Round Table, knowledge mobility was advocated as a tool for further developing the Strategic Partnership and, equally as important, as a practical means of promoting the visibility of the developing relationship between the two Parties. How highly skilled migration features in the practical evolution of international cooperation combines many dimensions, not least of which the benefits of brain-exchange. It demonstrates how the relationship between Brazil and the EU has developed in this area since the first summit establishing the Strategic Partnership in 2007, and can be traced through the agreements have been signed between the two Parties, the areas that they have established as of common interest, where the Strategic Partnership stands today and its future future prospects. This paper explores the evolution through a vision of how this new institutionalization of the Brazil-EU relationship has progressed in a very practical way: through academic relations – focusing on research – between the University of São Paulo (generally accepted as a leader in the broader region of Latin America) with European universities.

2. Highly skilled migration: the importance of a brain exchange

A highly skilled migration (HSM) may involve several levels of migration, from those realized for providing a specialized workforce, whether imported to or exported from the developed or developing countries, or in the form of the exchange of researchers and students between those countries. In the present paper, the internationalization of postgraduate level students between Brazil and the EU is considered to be HSM.

Globalization has brought about much change at economic, politic and social levels. This phenomenon arises perpetually nowadays in the context of the evolution in the information and communication exchange between countries today, and has become essential to accelerating a country’s scientific and technological development in the international arena. As science and technology have become crucial to the economical development of any country in a globalizing world, the exchange of information demands “access to knowledge” in the world economy. Knowledge, when put into action, allows for the birth of new technologies and which, together with many other factors, promotes the growth of the country, both socially and economically.

The mobility of highly skilled people has been speeding up progressively, both in the sense of the increase in numbers of people migrating and the complexity the migrating workforces, as well as in the promotion in the research and the specialization of the manpower concerned. It would be difficult to deny the impact of this type of migration on today’s societies. According to Salt (1997), it is important to consider that, first of all, the internationalization of students is a way of enabling the internationalization of what we call knowledge, besides enabling the creation of an elite migratory group between countries. Salt (1997) also proposes that the mobility of students may even impact on aspects concerning the “provision of tertiary education internationally which is now a major business and source of income, both directly (through fees received in destination countries) and indirectly (establishment of links)”. Furthermore, “foreign students (particularly postgraduates) who stay on in the receiving country constitute a relatively cheap source of skills”.

Within the European Union, as is generally so with developed countries today, an increasingly number of students leave their home countries in search of new knowledge bases in other countries. It is important to consider that,

“policymakers increasingly see international migration as part and parcel of economic development and recognise that good management of international migration can produce a win-win situation for both sending and receiving countries” (Lowel, 2004).
Therefore, once we consider that the migratory flow of people is largely fed by a higher education\textsuperscript{216}, we can understand that student mobility equally impacts on economic development both in countries of origin and those of destination.

For the sake of a simple classification, “brain circulation” is the term used here to refer to this highly skilled migration: where once “brain drain” as a term denoted the gain to be for the destination country only, the act of proposing a “circulation” of knowledge aims to demonstrate how such migration can benefit all countries involved: whether for Brazil, recently emerging from being a developing country, and to the EU and its Member States in general.

HSM is important to the economy of a country for various reasons. Firstly, education is increasingly important to maintaining a healthy economy, and therefore, education is capable of directly influencing the economy of a country. It can bring about the intensification of human capital, thus promoting qualified work, and it can also intensify the innovativeness of an economy, promoting the development and production of new technologies. As far as mobility of knowledge in particular is concerned, education promotes the dissemination and transfer of knowledge, which in turn promotes economic growth.\textsuperscript{217}

For developing countries such as Brazil, student exchange brings many benefits, notably by raising the country’s visibility on the international scene in the academic, economic and social contexts, which helps to attract eagerly sought-after international capital investments in the country. The mobility potential of highly skilled people therefore contributes to a country’s development generally, through opening doors to advances in education, technology and research, with the knock-on promise of growth that this implies for related sectors. For developed countries, this kind of brain exchange has enabled expansion into new technologies and continuing innovation, having positive and important impacts on their economies.

For the future, the EU is prioritizing progress in “innovation and technology”, with the ultimate aim of promoting a welcoming environment.

\textsuperscript{216} LA PORTE (2005)
\textsuperscript{217} Hanushek E A, Wößmann L (2010)
for researchers and students from several countries, in the interests of ensuring more sustainable economic, political and social results.

3. A Strategic Partnership: Brazil and European Union

The first Framework Agreement on Cooperation between Brazil and the European Union was signed in 1995 and the Agreement for Scientific and Technological Cooperation, signed in 2005, this relationship has been strengthened. Nevertheless, being a cooperation agreement under the European Union’s law governing its international treaty relations, this form of treaty is notable for what it is not: it is not a Free Trade Agreement, and does not preclude EU Member States from operating their own bilateral arrangements with Brazil, including in education, research and investments for example. Therefore, while the 1995 Cooperation Agreement took a first important step towards establishing Brazil’s relationship with the EU, the depth of the relationship only goes as far as co-operation – including on trade, investment, finance and technology – and is weaker than EU Association Agreements, the more recent of which provide for Free Trade Areas\textsuperscript{218}.

The Brazil-EU Co-operation Agreement provides for cooperation based on basic principles of democracy and human rights, which are present in all agreements signed between the European Union and Brazil. The 2007 Strategic Partnership between Brazil and the EU further strengthens the extent of the co-operation, providing certain institutional provisions that underpin the co-operation – including through the Sector Dialogues – and providing for multi-annual work planning as well as directions for financing of these actions.

For Brazil, as a country emerging from developing country status, the EU – including its Member States – has long been its principal investment partner, contributing to its economic growth and also increasing Brazil’s role on the international stage. For the EU, Brazil is a Strategic Partner alongside Mexico in Latin American region, Brazil being a regional leader both in

\textsuperscript{218} Framework Agreement Cooperation, 1995
Part 1. Brazilian perceptions of the EU and Brazil’s relations with it

Economic and political terms\textsuperscript{219}. Beginning with the 2005 S&T Agreement, the Parties specified those areas of common interest where they would seek to strengthen their relations:

– biotechnology,
– information and communication technologies,
– bioinformatics,
– space,
– micro- and nanotechnologies,
– materials research,
– clean technologies,
– management and sustainable use of environmental resources,
– biosafety,
– health and medicine,
– aeronautics,
– metrology, standardisation and conformity assessment, and
– humanities.\textsuperscript{220}

Practically speaking, the cooperation aims to support and further the development of scientific and technological research. To facilitate this, a focus on specific activities to be implemented by each Partner is foreseen. While the risks involved in the exchange of scientists, researchers and technical experts gave rise initially to the impression of “brain drain” due to perceived loss of resources, eventually the phrase “brain circulation” emerges in order to emphasise the paramount importance of ensuring highly skilled migration as a means of achieving the scientific and technological development ambitions of both Partners.

With common roots and history and consensus on basic principles as presented by the first framework agreement, Brazil and the EU declare common core values spanning democracy, the promotion of human rights and basic freedoms as well as a market-based economy. Such values, on the occasion of the first summit establishing the Strategic Partnership in 2007, were reinforced within a strategic approach, the strengthening

\textsuperscript{219} Towards an EU-Brazil strategic partnership”, 2007
\textsuperscript{220} Agreement for scientific and technological cooperation, 2005
of political dialogue and creation of the sector dialogues, always with a consciousness of the great Global challenges of our time. This heralded the start of the continuous communication between both Parties at numerous level of political and institutional collaboration, involving Round Tables for discussing common interests and establish new priorities, proposals and projects. The Civil Society Round Table first met in 2009, and established its central objectives as being:

- to reinforce the Sector Dialogues and communication between Brazil and the European Union;
- to provide a concrete civil society contribution to the Brazil-EU Strategic Partnership, and;
- to complement the political and parliamentary dialogue on both sides221.

Eight meetings of civil society have been held through the Round Table so far, with the last in 2014, but the first mention of the issue of highly skilled migration only arose in the context of the very last meeting. This meeting recognized that “knowledge generates innovation and can be an engine for the improvement of well-being in society”, and reinforces that:

“international cooperation in the fields of science, technology and innovation is a recent development and that collective work at national, regional and international level must be supported, particularly in the areas of energy, health and agriculture. Knowledge mobility needs to be implemented not only in the academic and educational sphere, but also by means of research in companies, other social organisations and international technological/industrial cooperation networks. International cooperation should also include cultural and artistic exchanges”222.

The mobility of knowledge gained space on discussions of importance between both Parties, but it is still a recent issue. Considered in numerous dimensions, the mobility of knowledge goes beyond the mobility of students, and refers to work and even to culture, and implies highly skilled migration. It is important to highlight that this meeting, also addresses the matter of “brain drain”, making provision for the return of the highly skilled to their

221 Description: 1st meeting Brazil-EU civil society round table
222 8thmeetingcivilsocietyroundtable
respective countries. This underlines the crucial importance of gaining knowledge as a contributing factor in the economic fabric and development of the Partners, all the while promoting the core values that underpin their partnership.

4. S&T Agreement: opportunities and challenges arising since 2005

Initially the S&T Agreement was signed for a 5 year duration, which was renewed in 2012 after a revision of the agreement to take account of experience gained during this first period. Initially the institutions involved in managing the S&T Agreement were mainly universities and research centers. In Brazil, federal institutions such as CAPES\textsuperscript{223} and CNPq\textsuperscript{224} were also supported as a form of research funding, besides the participation of academic private institutions.

In the revisions made for the second face, one of the criticisms was that the Agreement was seen more as a diplomatic vehicle for maintaining relations between Brazil and the European Union, than as a platform to strengthen research institutions and to support the researchers themselves\textsuperscript{225}. A Proposal that also enters as one of the modifications for its renewal.

During this first stage, in 2007, the European Union adopted “FP7” – its 7th Framework Programme for Research\textsuperscript{226} – that it was another way of promoting research and innovation in Europe together with the its partnerships established with third countries. Brazil increased its participation, bringing more research proposals than under previous programmes, and Brazil stands out among Latin America countries as an EU partner in international research collaborations.

\textsuperscript{223} “Coordenação de aperfeiçoamento de pessoal de nível superior”: Brazilian federal government agency focused on improving higher education.

\textsuperscript{224} “Conselho nacional de desenvolvimento científico e tecnológico”: Brazilian federal government agency, under by Ministry of Science and technology, focused on the promotion of scientific and technological research.

\textsuperscript{225} Review 2006 to 2011

The global research network was established between Brazil and the European Union in this first stage in spite of bureaucratic difficulties\textsuperscript{227} and other difficulties arising in the implementation of the agreement. Today, the partnership between them remains important for both sides. After the agreement’s renewal in 2012, a new phase of the cooperation began. When the FP7 ended in 2013, its successor programme – entitled “Horizon 2020” – set the frame for promoting funding for research in Europe as of 2014 up until 2020\textsuperscript{228}. One of the programmes funded by Horizon 2020 – INCOBRA\textsuperscript{229} – aims to intensify the EU-Brazil partnership specifically in Research and Innovation.

As highlighted earlier, universities and research centers were the most present institutions in FP7. However, further analysis reveals that, even after the Horizon 2020’s adoption, Brazil’s participation in research proposals is comparably small in relation to other countries, due mainly to the fact that most of these institutions consider themselves ill-informed about these programmes. At least 56.3\%\textsuperscript{230} of academic institutions considered themselves to be ill-informed in relation to FP7 and also in relation to Horizon 2020, which shows to a certain extent, the ongoing need for information and support concerning these European programmes within Brazilian universities.

This communication and information hurdle hampers Brazilian participation in projects at global level. In this sense, the INCOBRA programme appears to be an avenue for supporting policy dialogue established between the European Union and Brazil. In order to eliminate the difficulties encountered in Brazil’s participation in European research programmes, enabling universities and research centers to submit projects and participate in programmes such as Horizon 2020 and others to come.

\textsuperscript{227} In this case, for example, language is one of the factors that has made the bureaucracy of the agreement difficult: since Portuguese is not an official language, in order for the documents to be official in Brazil, it was necessary to translate into Portuguese.


\textsuperscript{229} https://www.incobra.eu/

\textsuperscript{230} Data of Survey report of cooperation between Brazil and European Union.
5. Circulation of higher skills – a way to strengthen relations between Brazil and the European Union

Whereas this paper is intended to reflect on how this partnership has been developing between Brazil and the European Union in a sample of situations, the type of migration arising in “higher education” is explored here in the context of data collected from double degrees at master and doctorate levels involving the University of São Paulo (USP).

Concentrating on the double diplomas awarded at master and doctorate levels, gives insight into the first steps on the researcher’s career path. In addition, the double degrees are akin to a dual diplomacy.

An assessment of how this partnership is developing today requires shows the considerable breadth of scope of academic lethe EU-Brazil scenario. The strengthening of relations with the signing of the AS&T in November 2005, served to strengthen older agreements, to embark on frequent meetings for the discussion of social, political and economic interests between both players, and importantly, establishing a fresh “starting point” for the ongoing partnership. In 2007, with the first EU-Brazil Summit the Sector Dialogues were put into practice on several areas classified as common interests, amongst them, it was also highlighted the exchange of students and researchers. The exchange of researchers, both at the master and doctorate levels, must be understood as a practical indicator of the evolution of this partnership has been developing ever since. Moreover, migration in higher education provides an interdisciplinary understanding as an essential issue to promoting and maintaining this partnership until today.

Considered in this way, university agreements creating joint or double degrees, reinforces the notion of “brain exchange” or “brain circulation” through HSM (high skilled migration). Foremost, the double degree aims to promote and provide a path to developing scientifical cooperation (with foreign universities), to establishing contacts between research teams from a Brazilian university with the European partner university. Unlike student exchange as such, the double degree creates an institutional link between these universities and the student produces knowledge for both. In other words, the student/researcher promotes scientific and technological development in their own area of expertise as much for the destination country as for his own country. This explains the significant increase in the flow of students ever since.
In the first two years (2007 and 2008) we can observe that the number of students is very similar: 14 and 13 students, Brazilian and European in exchange, have participated of double degree programmes with the University of São Paulo. Of this initial period, it is possible to highlight what really marks the beginning of a political partnership between both economic poles: the stability in the number of agreements shows the basic objectives established by the partnership suffered no setbacks. For the subsequent two years, in 2009 and 2010, a significant jump in the number of agreements can be explained by significant investments being made in order to achieve these goals. Despite the drop in the number of students in 2011, 2012 and 2013, when compared to the “boom” of 2010, it is important to observe that the numbers never dropped below those of the same period. 2011 marked the end of the first period established to the AS&T, and was followed by renewed phase for the partnership, beginning in 2012 and set to last for another 5 years. Practically speaking, the partnership agreement intensified the migratory flow of researchers between Brazil and Europe, thereby fostering a continuous exchange of researchers.

A better way to approach the effective exchange between European and Brazilian student researchers to observe each in turn in terms of the mobility of researchers:
In this second graph, we can observe more clearly the number of European and Brazilian students circulating due to the partnership developed between Brazil and the European Union. For the most part, the number of Brazilian students and researchers is significantly larger than the number of European students that Brazil country receives. However, this aside, there is also a certain initial progress made in the number of European students that Brazil receives, and could even be considered something of a “boom” beginning 2010, remaining at similar levels the following year and preserves a continuity in the flow of the students over the following years, without abrupt variations.

Despite this difference, the increase in the circulation of researchers from both Partners is apparent and, above all, the increase in the number of qualifications involving academic research. Cooperation in research based
on the academic research agreement, in addition to promoting an educational improvement in university environments, aims to promote scientific and technological progress in both countries. Thereby, the brain circulation in higher education has been a essential contributing factor to the significant growth in new Brazil-EU research initiatives, and these initiatives are part of the European Union’s social and economic development programme for the next years\(^{232}\) which is integral to the EU’s current ten year blue print for the joint action of the EU 28 Member States: the *Agenda 2020 Strategy for smart, sustainable, inclusive growth*, adopted back in March 2010.

![Figure 3: Double degree agreements: Framework agreement of european countries and University of São Paulo. SOURCE: USP. 2017. Available on request from Pro-reitoria de Pós-Graduação](image)

This third graph show us the direction of the flows of primary researchers: France both receives and sends the most students. In France, Brazilian students, both in the masters and in the doctorate level, spend a significant part of their stay in laboratories in order to acquire new research methods and enable the process of evolution of the research they perform.

\(^{232}\) Horizon 2020.
Considering, then, the bilateral relations between Brazil and each of the Member States of the European Union, France demonstrates a constant partnership at the level of academic research with Brazil and stands out. French and Brazilian students are included with the references of research in several areas, both in what concerns science, and the humanities in general.

One way to highlight the importance of this bilateral agreement is through the number of scholarships offered by the Brazilian federal government (considering the sandwich-doctorate\textsuperscript{233} scholarships granted by the Brazilian Capes programme): between 2007 and the end of 2016, 1,377 such sandwich scholarships were awarded. Within this number, approximately 12.05\%\textsuperscript{234} of the grants were awarded for programmes with French universities, which leaves the country in second place in the list of countries receiving Capes scholarships, behind only the US (with approximately 32\% of the scholarships).\textsuperscript{235}

As a way to promote brain circulation, scholarships granted by both parties also characterize the investment in the Partnership. Of the total of 1,377 scholarships granted by the end of 2016, at least 700 were implemented for student researchers who were part of the research in EU Member States. Investment in this stage of education is also a way to reduce the barriers that hamper the partnership between Brazil and the European Union, notably language issues. Language poses a special challenge to such partnerships and in the case of Brazil, Portuguese (even though it is an official EU language), is not yet one of the most widely spoken languages within the European academic context\textsuperscript{236}. However, gains greater visibility in the global context, and English and other languages are more easily incorporated into the Brazilian academic environment. Reducing the language barrier facilitates communication and the exchange of information between the researchers and these countries and, thus, a higher skilled migration becomes a facilitator for future partnerships and projects.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{233} PDSE – Programa de Doutorado Sanduíche no Exterior: Is a program of CAPES to support and invest in high-level of education (Ph D)
\item \textsuperscript{234} This value corresponds to 166 grants awarded during this period for French universities.
\item \textsuperscript{235} Data taken from a Capes report in May 2017.
\item \textsuperscript{236} This is still an issue to be explored, but although Portuguese is a well-known language worldwide, in the European academic context, its demand is still recent.
\end{itemize}
\end{footnotesize}
It is important to consider that circulation of knowledge can contribute to several areas of academic research:

Within these areas, it is important to highlight that those focusing on health, information and communication, sustainable agriculture and food, are among the main areas of common interest between Brazil and the European Union. We can notice that in 2016 the areas that stood out were human sciences (included here, political sciences and international relations – an area that is also present in the agreement signed in 2005, before its renewal), health and medicine and, finally, ICT. The flow of exchange in these areas shows that, as far as “double diplomacy” is concerned, the participation in training is clearly reflective of the areas covered by the S&T Agreement.

Also in the same year, one of the courses classified as “education” was called “School Psychology and Human Development”\(^{237}\). This dual-diploma project, for example, despite being linked to education, shows that even the

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\(^{237}\) Data of University of São Paulo, in May 2017.
areas that are not addressed in the agreement bear important characteristics of the goals established through the Brazil and EU partnership – in this case, human development and human rights.

The ICT area present in the documents and agreements signed between the two, is an important area to be considered within higher education: when explored within higher education, technologies aimed at facilitating information and communication tend to improve the quality of teaching and even in the acquisition of skills, thus promoting an expansion of access to information both within the country and within the global context. The revolution in information technology is one of the decisive impact both on education and the economies of countries. The presence of students developing research in this area in 2016 in Brazil and in Europe reinforces the importance of the Partnership: by comparison, in 2007, only one Brazilian student developed research focused on the ICT area, while in 2016, at least 5 students were developing research within this area. Despite what seems a low absolute number, the percentage increase is considerable.

While in 2007 there were no double certifications for the area of nuclear technologies, in 2016 we already have students developing research in these areas. At the time of the first Brazil-EU summit in 2007, according to data provided by the University of São Paulo, in addition to the low number of enrollments for double diplomas, the range of research areas is lower. Thus, by 2016, the increase in the number of students exchanged for research leading to double diplomas has been accompanied by an increase in the range of areas for research.

Several areas for bilateral Brazil-EU dialogue are dedicated to “science and technology” and “education, youth and sport” sectors. The first focused on research and technology, while the second concentrates on the exchange of people. Both are highlighted as priorities in the Join Action Plan signed in 2008 and 2011: “Brazil and European Union agree to construct a comprehensive Strategic Partnership by promoting science, technology and innovation [...] and promoting people-to-people exchanges.”

Considering this, the years following JAP I and JAP II (see figure 1 above), the number of students/researchers participating in exchanges increased in

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238 World Bank publications, 2003
239 JAP I, signed in 2008.
2009 and the number of students in 2012 stabilised. After the second JAP the “boom” in the increase of interchanges has been apparent since 2014, having only small growth in previous years. What is important to consider about the JAP is that it has prioritized the promotion of practical areas through the Sector Dialogues for the development of the Brazil-EU Strategic Partnership. Considering that the double degree is a way to promote science and technology, as well as the exchange of people, the JAP further complements and reinforces other actions Brazil-EU under the Strategic Partnership.

6. Knowledge, a key for a partnership: today and future perspectives

The European Union programmes to promote scientific research and innovation involve Brazil. A recent report, in 2016, however, indicates a low submission by Brazilian partners of projects to the programmes Horizon 2020 and FP7, when compared to bilateral agreements with EU member states. Among the reasons for this low number of submissions were the lack of funding from Brazilian institutions and lack of information about European Union’s STI (Science and Technology Information) programmes\(^{240}\).

It is important to note here that Brazil participated and both programs, although small compared to the bilateral agreements mentioned earlier. Considering the thematic fields of survey, the Brazilian institutions\(^{241}\) (mostly universities) in terms of participation, ICT was the most significant area, followed by energy, sustainable agriculture and engineering\(^{242}\). Where participation in the H2020 program is more targeted than in FP7, as well as being better known in Brazilian institutions. The report confirms that one of the major problems for Brazil’s participation in EU programs is the issue of communication.\(^{243}\)

\(^{240}\) (2016) Research and Innovation Survey report.

\(^{241}\) In the report it was considered as institutions of research: universities, public and private research institutes, small / medium / large enterprises, public authorities and agencies.

\(^{242}\) (2016). Research and Innovation Survey report. In: “Basic characteristics of the sample: analysing the Brazilian institutions within the context of the survey”

\(^{243}\) The data provided by USP did not specify these EU Programs
Following the data provided by the University of São Paulo in terms of double degrees there has been a gradual increase in the number of students developing scientific research in partnership with European universities. However, this important increase for the University of São Paulo does not reflect the reality of the country as a whole. According to the analysis carried out by the European Commission, despite investments made to date, few students participate in research projects involving both players.

The increase in the number of bilateral agreements with member countries of the European Union does not directly imply an absolute increase in the Brazilian participation in the European programmes. Nevertheless, this relative increase in agreements provides a useful sample that is indicative of an active and growing partnership. Currently, the Brazilian government is financing a total of 155 scholarships – out of a total of 277 – for sandwich courses with European universities, mostly for doctorates.

As at May 2017, at least 55% of ongoing grants, provided by CAPES, awarded to Brazilian students were for European universities, showing its majority in relation to agreements with other nations (for example: agreements with US, Canada, etc). In absolute terms by country,
the United States continues to be the nation with the most double diplomatic agreements with the Brazilian government, but the agreements that have grown with European universities show that the European Union has become an important partner in the Brazilian development in the global market. The several bilateral agreements with EU Member States constitute an important basis for the European presence in the development of the EU Scientific and Technological agreement of 2005.

Thinking about the current data, we can observe that despite the economic difficulties indicated by the Brazilian government, there is a clear current investment in the highest levels of academic research. We cannot ignore that the current political scenario in the run up to the 2018 general election creates insecurities and it is difficult to predict what is to come. The number of double diplomas may continue to grow, especially if research areas remain. As far as human sciences are concerned, there have always been double degrees in this field, but there is a possibility of a change in the areas of external political relations: in the S&T Agreement signed in 2005, this area was described as essential and of common interest to Brazil and the European Union, but in the renewal of the scientific and technological agreement in 2012 and in subsequent meetings, the matter of double degrees has been discussed less.

In 2014, at the time of the last round table, the importance of a migration of knowledge was highlighted and of the need for an increase in the migration of students between Brazil and the EU in coming years. In the case of INCOBRA, in the area of technology and innovation new investments and new programmes may be emerging, and although it is politically difficult to define cooperation between Brazil and the European Union, the partnership remains solid today despite political instabilities on both sides. The eventual impact on research and innovation as well as the future direction of Brazil’s international cooperation, will only become apparent as of next year, after the general election in Brazil.

7. Conclusions

Today’s economic growth is linked to the development of “knowledge”. The exchange of young researchers at postgraduate level is one way of opening up the possibilities for developing countries (or in Brazil’s case, an
emerging economy) to gain more space in the global market and for them to contribute to the ambitions of developed countries to continue to advance in technology and innovation.

The revolution in the level of communication and of information exchange, which has led to an acceleration in technological development and has allowed a greater integration at global level. In this sense, for development to continue, development of what we consider to be “knowledge” has become something essentially linked to the economy. Education nowadays is an important factor in a country’s development. Mobility of people at the level of higher education contributes both to the internal growth of a country and importantly also to the global international governance.

In terms of the European Union and Brazil Strategic Partnership, as far as technology and innovation is concerned, higher education is a first step towards overall progress in their joint development planning. The mobility of people promotes a “qualified” migration that enriches both the sending country and the receiving country. Since the establishment of the first S&T Agreement of cooperation in 2005, Brazil and the Member States of the European Union have increasingly intensified their relations by means of highly skilled migration tools. Under this economic and political partnership today, the European Union is one of the largest investors in and global partners of Brazil.

Based on bilateral agreements between EU member states and the University of São Paulo (considered one of the most important in Latin America), the number of students participating in exchanges has – on the whole, apart from a few exception short periods – increased continuously. This shows us that over time the European presence in Brazil has intensified progressively. It is important to consider that the academic agreements with USP do not necessarily reflect the general Brazilian scenario, but already point to an ongoing and fixed partnership with this specific university.

Several round tables have been held between the committees representing both players, agreements have been renewed and new programmes such as INCOBRA, are being implemented in order to promote the growth of this Strategic Partnership. Therefore, this Partnership, considered important for

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both Brazil and the European Union, is a well established long-term one, which in turn supports the considerable potential of the Partnership. It is true that, considering the current economic and political situation in Brazil, the future of cooperation is fraught with uncertainties. As a emerging country, Brazil still does not invest the same as the European Union (quantitatively) in projects and must surmount the challenges of not having a globally relevant language. However, the efforts made by Brazil and the EU as global partners, demonstrate the importance of the Strategic Partnership not only in economic terms, but in terms of culture and common goals of human development.

References


PART 2. CLIMATE CHANGE AND ENERGY: GOVERNANCE COMPARED
Chapter 7.

Legal and political aspects of the evolution of the energy matrix: obstacles and challenges in Brazil and in the European Union

Patrícia Bianchi

1. Introduction

The great global challenges currently facing Brazil and the European Union are inextricably linked with the theme of “energy”. Among those challenges is the shift away from the burning of fossil fuels, which significantly and negatively interferes with our climate because of the release of high levels of carbon dioxide and other greenhouse gases into the atmosphere. The consequent increase in the temperature of the planet causes harmful effects in many ways, such as the decrease of the yield of the crops, the melting of the ice of the mountains, more devastating storms aggravating floods and droughts, and the increasing number of forest fires. All this alters and destabilizes terrestrial ecosystems, and the continuous increase in temperature supports predictions of further extreme climate events.

One of the ways to mitigate climate change is the adoption and use of energy from renewable sources. This is due not only to climate change but also to the finiteness of the current resources used for the production of energy, the so-called fossil fuels, which lead to the need for an evolution in the energy matrix, moving towards more reliance on renewable energy sources. The theme of energy has always been an important component of the development of States and their economic policies. Looking to the future, a

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global sustainability framework for energy involves a complex mix of issues including national and international policy, technological investments, social and labour rules, as well as consumer consumption patterns and behaviour.

This contribution critically analyses the legal and political aspects of the evolution of the energy matrix in Brazil in parallel with the European Union, identifying the main obstacles and challenges here. Energy and climate change are both the subject of bilateral co-operation in the international relations between the two, and section 2 of this paper discusses the Brazilian legal and institutional framework in terms of its contribution to joint efforts to mitigate climate change. The guiding principles and themes are presented compared and contrasted, as well as the institutional framework competent to deal with issues related to climate change commitments.

Section 3 discusses energy efficiency and the need for a progressive substitution of fossil fuels for renewable energy sources, where some considerations will be made on the Brazilian scenario and the current framework of the European Union regarding the subject. The change in the direction of the energy matrix is a matter of paramount importance nowadays, a need of the contemporary world, not only because of the exhaustion of what are finite resources of fossil fuels but also for urgent climatic and human or public health reasons.

Section 4 deals with obstacles and challenges in the evolution of the energy matrix in Brazil and in the European Union, exploring the main bottlenecks and perspectives inherent in the process.

This study aims to present, although not exhaustively, a strategic legal-political framework regarding the changes in the directions of the Brazilian and EU energy matrix, bringing critical and current reflections to a topic that has great legal, economic, and socio-environmental relevance, and which is perceived as a way to address climate change, at the national level as well as in the broader scenario of their international relations.

Finally, in terms of methodology, the monographic procedure has been followed for the development of this work, and the hypothetical-deductive method as procedure method. Material and research conducted as part of recent field research at the European Commission and the European Parliament in Brussels is used.
2. Climate Change: the legal, institutional and strategic framework in Brazil

Climate change is among the great global challenges of our time, scientifically proven to be the result of industrialization since the industrial revolution, and concerns to mitigate or reverse the effects has been mobilizing governmental and social actors increasingly over the last two decades in particular. A 2009 study by a team of scientists at the Massachusetts Institute of Technology concluded that the effects of climate change will be twice as severe as those projected six years ago: instead of a likely global temperature rise of 2.4 degrees Celsius, they now predict a rise of 5.2 degrees Celsius.¹

In the context of the Intergovernmental Panel on Climate Change (IPCC) (2014), it is agreed that there had been an increase in global average temperature in the period between 1951 and 2010, with the emission of greenhouse gases being the main cause of surface temperature of the Earth, which temperature increased between 0.5°C and 1.3°C within that period. So that the average temperature of the globe does not exceed 2°C in relation to the indices found at the beginning of the industrialization process, the concentration of carbon dioxide (CO2) in the atmosphere should be around 450 ppm.²

Studies carried out and disseminated at the IPCC 2014 predict that climate change will lead to increases in the movement of people around the world, cause more exposure to extreme events – particularly in low-income developing countries – and is also likely to increase the risk of violent conflict, poverty and economic shocks. Risks associated with temperatures above 4°C include the substantial extinction of species as well as global and regional food insecurity. It is observed that currently, risks related to climate change due to extreme events – such as heat waves, intense precipitation and coastal floods – are considered moderate. With 1°C additional heating, these will be considered “high risks”.³

In 1997, in order to mitigate climate change, 167 countries signed the Kyoto Protocol, under the auspices of the United Nations (UN) acting as

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³ Idem, p. 16, 19, 72.
Legal and political aspects of the evolution of the energy matrix: obstacles and challenges in Brazil and in the European Union
Patrícia Bianchi

Coordinator of the event. This was a pioneering attempt to set limits on greenhouse gas emissions, in which a target was set for developed countries to reduce emissions by 5% by 2008-2012 compared to the level of 1990 emissions. Developing countries, on the other hand, have committed themselves to the voluntary implementation of sustainable development systems. In 2012, the Protocol was extended to 2020 at the 18th United Nations Conference on Climate Change (COP-18) in Doha, Qatar.

However, in practice, in developing countries, the major rhetoric of development is basically: increased export flows, usually of primary products, which leads to increased deforestation, logging, institution of monocultures with the overuse of agrochemicals, with the resulting contamination of water resources, etc.; increased imports of luxury goods and consumption; payment of interest on foreign debt, and above all the purpose of attracting new foreign investments, even if speculative. Socio-environmental issues are usually secondary, and subject to national economic agendas and policies.

Because of that reality, issues relating to ecological sustainability remain remote from the actual reality of Brazilian politics, inferring that a merely symbolic character is attributed to the various legal norms related to the theme. Paradoxically to this framework, and in order to internalize the voluntarily established goal of the Framework Convention on Climate Change (CQMC), Brazil established the National Policy on Climate Change (PNMC), through Law No. 12,187 of 2009, regulated by Legislative Decree No. 7,390/2010, in order to reduce greenhouse gas emissions by between 36.1% and 38.9% of the projected emissions by 2020.

Thus, it was defined that the National Plan on Climate Change (PNMC) would be integrated by action plans for the prevention and control of biome deforestation, and by sectoral plans for the mitigation of and adaptation to climate change. These plans also aim to consolidate a low-carbon economy in all economic sectors.

With regard to energy planning in Brazil, it is responsibility of the National Energy Policy Council (CNPE) to establish policies and guidelines aimed at sustained national development. The Brazilian State exercises, in the form of the law, the functions of planning, which is determinant for the public sector and indicative for the private sector. It should be mentioned
that, according to art. 3 of Decree No. 7,390/2010, among the sectoral plans to be considered, is the 10-Year Energy Expansion Plan (PDE).\(^{248}\)

The Decennial Plans elaborated within the scope of the electricity sector constitute one of the main instruments of planning of the electro-energetic expansion of the country. From 2007 on, these plans have expanded the scope of their studies, incorporating an integrated vision of the expansion of demand and supply of several energy sources, including electricity.

The 10-Year Energy Expansion Plan (PDE 2024) sends important signals to guide actions and decisions, aimed at balancing the country’s economic growth projections and the necessary expansion of supply, in order to guarantee society adequate energy supply at affordable cost, founded on a technical and environmentally sustainable basis. In this sense, it is worth mentioning the forecast of the continuity of the presence of renewable sources in the Brazilian energy matrix, of 45.2% in 2024, which is a higher indicator than that of 2014, of 39.4%.\(^{249}\)

The National Energy Plan (PNE 2030) aims at long-term planning of the sector, trends and alternatives for expansion of this segment over the coming decades. PNE 2030 consists of a series of studies that seek to provide inputs for the formulation of agreements with an integrated view of available resources.\(^{250}\)

The choice of which sources will be contribute to the new matrix of expansion of electricity generation is based on technical studies, but should be considered as a strategic government decision. Social and environmental concerns are factors present in these studies, supported by the inclusion of clean sources. The strategic option of investing in energy efficiency is considered under the plan as the least environmentally damaging option, creating jobs and a growing expectation of increasing competitiveness in relation to other options, increasing the energy supply.\(^{251}\)


\(^{249}\) Idem.


\(^{251}\) Idem, p. 20.
The Interministerial Commission on Global Climate Change (CIMGC), created by the Decree of 07/1999, articulates the actions of the Brazilian government within the scope of the Convention, as well as adopting the guidelines established in the Clean Development Mechanism. To this end, the CIMGC presents itself as the Designated National Authority for the approval of projects under the Clean Development Mechanism (CDM) of the Kyoto Protocol, becoming responsible for all CDM actions in the country252.

According to Article 6, item V, of Law No. 12,187/2009, the resolutions issued by the Interministerial Commission on Global Climate Change are considered instruments of the National Policy on Climate Change. Also, according to Article 7(II), of that law, the CIMGC itself constitutes an institutional instrument for the performance of the National Policy on Climate Change253. The heads of the bodies that make up the CIMGC shall appoint their representatives and alternate representatives, who shall be appointed by the Minister of State for Science and Technology. This ministry will act as the Executive Secretariat of the Inter-ministerial Commission and will provide it with technical and administrative support.

The governance of the National Policy on Climate Change (PNMC) is incumbent on the Interministerial Committee on Climate Change (CIM), which guides and elaborates the implementation, monitoring and evaluation of the National Plan on Climate Change, established by Presidential Decree No. 6,263/2007. It also established, within the framework of the CIM, the Executive Group on Climate Change (GEx), with the purpose of elaborating, implementing, monitoring and evaluating the National Plan on Climate Change. The CIM is permanent in character, and is responsible for supporting the international coordination necessary for the implementation of joint actions, exchange of experiences, technology transfer and training, as well as identifying necessary research and development actions and promoting the dissemination of the National Plan on Climate, besides proposing its periodic...

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253 Idem, p. 5.
The Committee is composed of 16 Ministries and the Civil House, which co-ordinates the Committee, being a representative, holder and alternate of the following bodies: Civil House of the Presidency of the Republic, which will coordinate it; Ministry of Agriculture, Livestock and Supply; Ministry of Science and Technology; Defense Ministry; Ministry of Education.  


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255 Idem.  

In the context of the implementation of public policies related to climate change and energy, the basic legal structure of the governance of the Brazilian environmental sector is defined in Law No. 6,938/81, of the National Environmental Policy (PNMA), which establishes the National Environment System (Sisnama). In this context, decentralization – which is understood as the transfer of authority and decision-making power to subnational instances, and PNMA’s goal – occurs in a fragmented, discontinuous and selective manner. This results from the combination of factors such as the political-institutional conjunctures that present distinct focuses in each political period; besides the structural problems of the formation of the Brazilian state, which has historically been centralizing and patrimonialist. This also has negative consequences for state and municipal governments, which are left with the task of assuming their own, but systemic, competences and responsibilities.\footnote{MOURA, Alexandrina Sobreira de; BEZERRA, Maria do Carmo. Governança e Sustentabilidade das Políticas Públicas no Brasil. In: MOURA, Adriana Maria Magalhães et al (Org.). Governança ambiental no Brasil: instituições, atores e políticas públicas. Brasília: IPEA, 2016. p. 95.}

Brazil undertook a voluntary commitment under the UNFCCC, during COP 15, in 2009, to achieve GHG emission reduction targets, based on the significant reduction of deforestation in the Amazon. According to this report, annual estimates of greenhouse gas emissions in Brazil, between 2005 and 2014 Brazil experienced an 18% reduction in emissions in the land use and forestry change sector. However, there was an increase in emissions in other sectors: notably in the energy sector the increase was 37%. In order to reduce emissions in strategic sectors of the economy, the Brazilian government has defined certain sectoral plans for mitigation of and adaptation to climate change through guidelines and strategic actions, focused, for example, on the inclusion of biofuels produced in a sustainable way in the energy matrix.\footnote{LUEDEMANN, Gustavo et al. Brasil: esforços nacionais sobre as mudanças climáticas. In: MOURA, Adriana Maria Magalhães et al (Org.). Governança ambiental no Brasil: instituições, atores e políticas públicas. Brasília: IPEA, 2016. p. 291-92.}
Another relevant issue is that the country is guiding its economy to a large extent in natural resources linked to the climate, such as agriculture and hydroelectric power generation. Hence the importance of investments in diversification of the Brazilian energy matrix, even taking into account that the country has the geography and climate conditions to highly favour the development and production of solar and wind energy, for example.

Thus, despite all the efforts and results obtained in terms of public policies in the area of climate change mitigation in Brazil, and more specifically in the context of public energy policies, there are some shortcomings in this system. There is talk, for example, of the lack of Brazilian adaptability, including the reduction of possible future damages and how to deal with the consequences.

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According to Moura; Bezerra, sectoral plans and programmes established at the governmental level, including the Decennial Energy Plan itself, “are elaborated without an aggregating concept and coordination actions at the inter-institutional level.” According to the authors, government plans ignore the idea of governance, which would lead to power struggles in a fragmented government structure, with organs and ministries, with predominantly overlapping assignments. Here, naturally cross-cutting themes, such as regional, urban and environmental policies, would be most harmed.260

In terms of administrative structure, the environmental agencies in Brazil have a lack of human and material structure, as well as problems of internal articulation. These are bodies that need a greater level of integration and information, in order to produce a coordinated policy in practice. According to Moura and Bezerra,

“MMA, for its part, has not been able to integrate environmental policy, that is, to carry out coordination between the sectors (horizontal coordination) and levels of government (vertical coordination), despite having the discourse of transversality as one of its goals. As noted, this is due less to a lack of understanding on the way forward than to the lack of institutional and political articulation of the federal government.”261

Finally, at the international level, in December 2015, Brazil signed the Paris Agreement, to bring about a low carbon economy by the end of this Century by all the signatories of the agreement. Brazil committed itself to reducing greenhouse gas emissions by 37% by 2025 and to a 43% reduction by 2030. Both percentages are compared to 2005 levels. Among other things, the Paris Agreement aims to ensure that the signatories contribute to keeping the global average temperature rise well below 2°C in relation to pre-industrial levels.262

However, overcoming the climate crisis makes it necessary to establish a new ethic and changes in behavior and consumption patterns. Investments in public policies and strategies aimed at the evolution of the national energy

260 Moura; Bezerra, op cit., p. 102.
261 Moura; Bezerra, op cit., p. 107.
matrix towards the adoption of “cleaner” sources, is essential in order to minimize the current socio-environmental impacts. Such policies should address issues of effectiveness with regard to their coordination and actual implementation, taking into account the principles and rules of good political and administrative governance in the area under discussion.

3. Energy Efficiency and the need for investment in renewable energy sources

Energy is one of the most important resources for any country’s development. Its global demand has tripled over the past 50 years, and forecasts are predicted to triple again in the next 30 years. If the demand for industrialized countries was previously responsible for the increase in demand – 90% of which was fueled by fossil fuels – in the future it is estimated that most of the energy demand will come from developing countries, taking into account their projects and growth targets, combined with population growth, if compared to developed countries.263

Issues relating to global environmental problems had already been dealt with, particularly at the UN conferences in Stockholm in 1972 and at the United Nations Conference on Environment and Development in 1992. But it was at the World Summit for Sustainable Development of Johannesburg in 2002 in South Africa that multilateral discussions on changes in the direction of the world energy matrix were initiated, including targets and deadlines for an increase in the share of renewable energy in this matrix. Today, the expectation is that renewable energy sources will have an increasing share in the global energy matrix.

Currently, renewable energy sources provide approximately 8% of the world’s energy (22% if biomass uses are included). In several countries the use of this type of source has been increasing significantly, with wind energy being the fastest growing energy resource in the world, followed by photovoltaic energy. It should be noted that today, hydroelectric power

provides 17% of the energy consumed on the planet. Recent studies indicate that renewable sources should increase their participation to 30-40% of the total by 2050, taking into account global commitments and public policies on environmental issues, especially those related to climate change.\footnote{Idem, p. 179-80.}

### 3.1. The Brazilian Scenario

The agreements and Brazilian domestic legislation imply the need for a progressive increase in the adoption of energy from renewable sources. In the generation matrix, renewables should represent close to 86% in 2024. What is projected over the period is the beginning of a process of diversification of the electric energy matrix, which although still predominantly based on hydraulic energy, growth of other renewable sources.\footnote{BRASIL. Ministério de Minas e Energias. *Plano Decenal de Expansão de Energia 2024 (2014).* Disponível em [http://www.epe.gov.br/PDEE/Relat%C3%A93%B3rio%20Final%20lo%20PDE%202024.pdf](http://www.epe.gov.br/PDEE/Relat%C3%A93%B3rio%20Final%20lo%20PDE%202024.pdf). Acesso em 14 de dezembro de 2016.}

The energy matrix of Brazil is reasonably low in carbon, since the national matrix is formed by about 45% of renewable sources, standing out the hydropower and biomass. But the growing demand for energy will require a reconfiguration of the Brazilian matrix, as well as conciliation with environmental issues and commitments.\footnote{DÍALOGOS SETORIAIS. União Européia-Brasil. Mudança climática. 6ª Convocatória. *Eficiência Energética e Mudança climática.* Disponível em [http://sectordialogues.org/pt-br/acoes-apoiadas/586](http://sectordialogues.org/pt-br/acoes-apoiadas/586). Acesso em 14 de dezembro de 2016.}

In Brazil, some laws deal with the energy issue, and one of the most important is Law No. 9,478/97, setting out the National Energy Policy, is considered the most important regulatory framework on the subject, including in relation to renewable energies. This Law provides for the National Energy Policy, the activities related to the oil monopoly, and also established the National Energy Policy Council and the National Petroleum Agency.

Borges understands the National Energy Policy as a “system” that would encompass a so-called Sustainable Energy Law in the Brazilian legal order. The author points out as “subsystems” of that policy, in the fulfillment of its principles and objectives, the following elements: “a) Emergency Strategic Program for Electric Energy; b) Emergency Program to Reduce...
the Consumption of Electric Energy; c) National Policy of Conservation and Rational Use of Energy; d) Incentive Program of Alternative Energy Sources (PROINFA).”

In 1985, the Federal Government created the National Programme for the Conservation of Electric Energy (PROCEL), the objective of which was to promote the rationalization of electricity consumption, combat waste and reduce costs and sector investments, increasing energy efficiency. There is also the Procel Energy Saving Seal, which indicates to the consumer those products that present the best levels of energy efficiency within each category.

Federal Law No. 10,295/01 provides for the National Policy for the Conservation and Rational Use of Energy and establishes that this policy aims at the efficient allocation of energy resources and the preservation of the environment (article 1). It also provides that the Executive Branch shall establish maximum levels of specific energy consumption, or minimum energy efficiency, of energy consuming machines and appliances manufactured or marketed in Brazil, based on pertinent technical indicators (Art. 2). At this point, Borges observes that “the inappropriateness of the measures proposed under the title of rational use cannot be left out, since the fixing of maximum consumption limits surely ration rather than rationalise use.”

Another important milestone for the Brazilian electricity sector was Law No. 10,438/2002, which created the Incentive Programme for Alternative Energy Sources (PROINFA), aiming, according to its Article 3, to increase the share of electricity produced by enterprises of independent producers in the National Interconnected Electric System, with its design based on wind power sources, small hydroelectric plants and biomass. With the program, Eletrobrás has sought regional solutions for the use of renewable energy sources, with the purpose of encouraging the growth of the national industry.

PROINFA also aims to reduce emissions of greenhouse gases in the order of 2.8 million tons of CO2/year by including clean sources in the country’s
electricity production. It also has the purpose of allowing the distribution of energy production in Brazil, in order to achieve a greater distribution of jobs and income among the states, in addition to providing training for technicians and industries in new technologies for electric power generation.\textsuperscript{270} The Incentive Programme for Alternative Sources of Electric Energy is the responsibility of the Ministry of Mines and Energy, and has as its first step the contracting for a period of twenty years of purchase of energy distributed equally among small hydroelectric plants and facilities that take advantage of wind and biomass, and which started operation until 30 December 2006.\textsuperscript{271}

Regarding energy efficiency, in Brazil, the Brazilian energy efficiency structure is officially led by the Ministry of Mines and Energy (MME), which, in relation to the functioning of programmes and initiatives in this field, is competent to formulate energy policies, although others have important functions. MME’s Planning and Development Secretariat (SPDE) is responsible for formulating and coordinating all energy efficiency actions. Subordinated to SPDE are the National Electricity Conservation Programme (PROCEL) and the National Programme for the Rationalization of the Use of Petroleum Derivatives and Natural Gas (CONPET), respectively, the energy efficiency programmes of the electricity sector and the oil and gas sector. The Department of Energy Development (DNDE) is part of SPDE, with the responsibility of conducting actions in the area.\textsuperscript{272}

In Brazil, labeling and standardization aim to increase the efficiency of end-use equipment, and use two procedures: labeling, which informs the user of the efficiency of the equipment they are purchasing, and standardization, which usually eliminates less efficient equipment.

operate 144 plants, totaling 3,299.40 MW of installed capacity. The plants of the program will be responsible for generating approximately 12,000 GWh/year - a quantity capable of supplying approximately 6.9 million homes and equivalent to 3.2% of the country’s total annual consumption. The 3,299.40 MW contracted are divided into 1,191.24 MW from 63 Small Hydroelectric Plants (PCHs), 1,422.92 MW from 54 wind farms, and 685.24 MW from 27 biomass-based plants. All of this energy has guaranteed hiring for 20 years by Eletrobras.”\textsuperscript{270} Idem.

Also associated with the labeling are the PROCEL and CONPET seals, which classify the best products using the results of the Brazilian Labeling Program (PBE), without resorting to the fiscal incentive mechanisms observed in other developing countries. The ESCOs in Brazil are engineering companies created to operate in the implementation of energy efficiency measures, through performance contracts, with little capital, making it difficult to obtain financing. In this way, the BNDES created the PROESCO linking the borrower financing to the scheme, which is intended to leverage this market.\footnote{DIÁLOGOS SETORIAIS. União Europeia-Brasil. Climate change and energy efficiency. EE and Climate Changes integration actions in Brazil. Hamilton Pollis, May 2013. Disponível em <http://sectordialogues.org/sites/default/files/acoes/documentos/relatorio_perito_hamilton_pollis.pdf>. Aceso em 14 de dezembro de 2016. p. 5.}

Acting in parallel is the National Electric Energy Agency (ANEEL), which exercises regulatory and supervisory activity for the electricity sector, and is responsible for the implementation of the Energy Efficiency Plan (PEE). Likewise, there is the National Petroleum, Natural Gas and Biofuels Agency (ANP), which also performs the functions of regulation and supervision in the oil, natural gas and biofuels sector, and also has the mission to promote energy efficiency, but has not created a space for it.\footnote{DIÁLOGOS SETORIAIS. União Europeia-Brasil. Climate change and energy efficiency. EE and Climate Changes integration actions in Brazil. Hamilton Pollis, May 2013. Disponível em <http://sectordialogues.org/sites/default/files/acoes/documentos/relatorio_perito_hamilton_pollis.pdf>. Aceso em 14 de dezembro de 2016. p. 4.}

Another outstanding player in the structure of energy efficiency promotion is the Energy Research Company (EPE), which is responsible for formulating studies and research to support energy sector planning. The National Institute of Metrology, Standards and Industrial Quality (INMETRO) also develops a very important support activity for energy efficiency programmes, which with its labeling programme, implemented in partnership with PROCEL and CONPET, promotes the labeling of many equipment and products. Another important supporting actor is Banco Brasileiro de Desenvolvimento, (BNDES) which created a fund for the financing of ESCOs called PROESCO.\footnote{Idem.}
Finally, concerning the diversification of the energy matrix, it is understood that, despite considerable investment in terms of energy production from large hydroelectric plants, the Brazilian State is moving, albeit in slow steps, to diversify its energy matrix more towards renewable energy and investments in “clean” energy, especially in comparison to large investments in biofuels and large hydroelectric plants.

It should be noted, therefore, that these two options are still not considered as the best, at least in terms of socio-environmental, since investments and programmes, parts of public policies of the State, more incisive in the generation of energy from wind, and would be the most pertinent choice for a country that has characteristics favourable to the implementation of these technologies, and which is committed to sustainability both nationally and internationally.

3.2. The Scenario in the European Union

According to Article 11 of the Treaty on the Functioning of the European Union (TFEU), environmental protection must be integrated into the definition and implementation of the policies and actions of the Union, in particular with a view to promoting sustainable development. The Member States are responsible for the financing and implementation of environmental policy, without prejudice to certain measures adopted by the Union (Art. 192, paras. 1 and 4).

In terms of energy efficiency and the need for renewable sources of energy, the countries that make up the Union are experiencing a complex situation in order to face the considerable challenges of: guaranteeing access to energy import sources; make energy available at the best possible prices, while at the same time; preserve the environment, and to become a low-carbon society by 2050.

Europe depends on the external market in energy terms. The EU is the world’s second largest economy, consuming one-fifth of the energy produced globally, with very little energy reserves. From another view point, Europe has an “energy portfolio”, known as the “energy basket”, which is well diversified. This can be seen by the numerous dams in Austria, coal mines in Poland and nuclear power stations in France, oil exploration in the North Sea and natural gas fields in Denmark and the Netherlands, etc. This is an
advantage, provided that there is solidarity among Member States to take advantage of this diversity, since energy dependence has great consequences for the economy.\textsuperscript{277}

As regards renewable energy sources, Directive 2009/28/EC of 23 April 2009 introduced a 20\% greenhouse gas emission reduction target of at least 1990 levels, by 2020. There is also:

- 2030 Target: 40\% reduction of greenhouse gas emissions; 27\% of the EU energy, at least from renewable sources; 27-30\% increase in energy efficiency; 15\% of electricity interconnection (ie. 15\% of electricity produced in the EU can be transferred to other EU countries)

- 2050 Target: 80-95\% reduction of greenhouse gas emissions compared to 1990 levels.

The so-called Roadmap for Energy 2050 shows how to achieve this goal.\textsuperscript{278}

Art. 194 TFEU sets the EU the following objectives, which should be considered in the context of the establishment or functioning of the Internal Market, and taking into account the need to preserve and improve the environment, in a spirit of solidarity between Member States:

(a) to ensure the functioning of the energy market;
(b) ensure the security of the Union’s energy supply;
(c) promote energy efficiency and energy savings, as well as the development of new and renewable energies, and;
(d) promote the interconnection of energy grids.\textsuperscript{279}

The European Union seems to be well on track to achieve the targets to be achieved by 2020. This is because greenhouse gas emissions fell by


18% between 1990 and 2012. The share of renewable energy rose from 8.5% in 2005 to 14% in 2012. Thus, the target of 20% is feasible today. These objectives brought change to the European scenario, for example, the considerable reduction of the cost of technologies in this area; in addition to the growth of the “green” technology sector, which employs more and more people in Europe.

Article 194 TFEU provides that some areas of energy policy fall under the shared competence of the EU and the Member States, which is a step towards a common energy policy. Nevertheless, because of the shared competences in energy actions at EU level, each Member State retains its right to determine “the conditions for exploiting its energy resources, its choice between different energy sources and the overall structure of its energy supply” (Art. 194(2)). With regard to the policies formulated by the European Union in the area of energy, competence is shared.

According to Peeters, the EU environmental legislation on competence, including climate change, adopts shared competence, which means that both the EU and the Member States can exercise their competence. However, Member States exercise their powers in so far as the Union has not exercised its powers. In addition, because of the principle of subsidiarity, the Union intervenes only where the objectives of the action cannot be fully achieved by the Member States. The principle of proportionality requires that the content and form of Union action must not go beyond what is necessary to achieve the objectives of the Treaties.

The European Parliament’s Resolution of 23 June 2016 emphasizes the importance of identifying and sharing good practices in terms of national policies on energy from renewable sources and the adoption of a more

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convergent European model, favouring stronger co-operation and co-ordination between Member States. In addition to the importance of the role played by national plans and reporting obligations in monitoring the progress of Member States, it is stated that these obligations should be maintained in the post 2020 period. Parliamentarians further recognize that the definition of the energy mix of the Member States remains a national competence in the context of Article 194 TFEU, each Member State being responsible for promoting the development of its own forms of renewable energy.283

In the Treaties that underpin the Union there are some specific provisions on energy policy such as:
- security of supply (Art. 122 TFEU);
- energy grids (Arts. 170 to 172 TFEU);
- coal: Protocol 37 clarifies the financial consequences of the expiry of the ECSC Treaty in 2002.284

As regards nuclear energy, the Treaty establishing the European Atomic Energy Community (Euratom Treaty) is the legal basis for most of the European actions in the field of energy nuclear. Other provisions affecting energy policy: internal energy market (Art. 114 TFEU); external energy policy (Arts. 216 and 218 TFEU).

The Green Paper entitled “A framework for climate and energy policies in 2030” (COM(2013) 0169) published by the Commission in March 2013, opened the debate on post-2020 objectives and policies. The preparatory policy describes a number of scenarios in the Commission Communication

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entitled “2050 Energy Roadmap” (COM(2011) 0885), which reflects on the challenges and opportunities facing the EU as it moves towards long-term decarbonisation.\(^{285}\)

In 2011, the European Council agreed on the objective of achieving the internal energy market by 2014 and eradicating the EU’s “energy islands”. This objective was reaffirmed by the Council in 2014. The third legislative package in the field of energy, the Regulation on guidelines for trans-European energy infrastructure (Regulation (EU) No 347/2013) and the Regulation on integrity and transparency in energy markets (Regulation (EU) No 1227/2011) are some of the main legislative instruments aimed at contributing to the better functioning of the internal energy market, and an explanatory note is also available in the form of the Fact Sheet 5.7.2 on the internal energy market.\(^{286}\)

In 2012, the decision was taken to set up a mechanism for the exchange of information on intergovernmental agreements between Member States and third countries in the field of energy (T7-0343/2012). But the cornerstone of the EU energy efficiency policy is Directive 2012/27/EU of 25 October 2012 on energy efficiency, which aims to put the Member States back on track to meeting the 2020 targets.\(^{287}\)

Parliament is in favour of diversifying energy sources and supply routes, in particular the development of the Southern Gas Corridor, closer co-operation with the Caspian countries and, more generally, gas and electricity interconnections across central and south-eastern Europe along a north-south axis, through the creation of more interconnections, the diversification of liquefied natural gas terminals and the development of gas pipelines, thus opening up the Internal Market in these sectors.\(^{288}\)

The European Parliament, in its Resolution of 23 June 2016 on the report on progress in renewable energy (2016/2041 (INI)), at paragraph 1,
welcomes the Commission’s commitments in the field of renewable energy; and considers whether under the Renewable Energy Directive, the current combination of mandatory national targets, national plans for renewable energy and biennial monitoring has been a key factor in developing the EU’s renewable energy capacity.\textsuperscript{289}

The energy policy of the European Union affects all Europeans, since the law established in the Union strongly influences national legislation on energy. The legislative procedure on this subject is drawn up jointly by the European Parliament and the Council of Ministers, with the exception of nuclear energy and energy taxation, which are drawn up exclusively by the Council of Ministers. However, the Member States have all been involved in the drafting of the European legislation since its inception, through national committees of experts, in a process involving professional organizations and civil society, which views are heard throughout the various stages of the process.\textsuperscript{290}

With regard to the technology to reduce CO2 emissions, in 2013, the European Commission proposed to update the Union’s strategic plan for low-carbon energy technologies. This is a priority for research and innovation to ensure the integration of low carbon technologies into the energy system, in addition to introducing new competitive products onto the market. The great challenge is to make such technologies less costly as much as cost effective.\textsuperscript{291}


At the European level, the EU has put in place an energy labeling system to enable its citizens to acquire electrical equipment in an enlightened way. This labeling covers many home appliances and office products, among others. Manufacturers have been encouraged to propose energy-saving products, since the total price of a product is not only the purchase price, but also the price of its use.292

Finally, in spite of the difficulties experienced – especially in terms of governance, and even because of the bloc’s massive structure – the European Union’s energy policy objectives, and all the legislation that involves them, provide the Union with a stable political framework regarding the emissions of greenhouse gases, renewable energy sources and energy efficiency. And that certainly contributes to greater sustainability in the political, economic and ecological spheres, in regional terms.

4. Obstacles and perspectives in the evolution of the Brazilian and the EU energy matrix

From the point of view of actions, joint or integrated with the Climate Change sector, some points of energy efficiency policies should receive special attention, such as improving the legal framework to stimulate the energy efficiency market. Brazil currently has a vast legal and regulatory framework, which would not invalidate other measures such as, for example, changes in tariff regulations for electricity and gas distribution services, allowing for profits with energy efficiency programs, and regular and more intensive tax incentives for more efficient equipment and processes.293

The institutionalization and intensification of environmental assessment criteria are matters of particular relevance. These actions should be institutional in nature with participation of the sectors that take care of climate change.

292 Idem, p. 9.

change in the labeling programme in MMA. There are many opportunities to include not only new criteria for equipment already covered, but also for new equipment. For example, manufacturers might have to have reverse logistics programs for all products.  

Facilitating access to permanent sources of funding is another area that deserves further attention. Following the publication of Law No. 12,783/2013, which created great uncertainty about the future of the resources of the Global Reversion Reserve (RGR) for energy efficiency, it is fundamental to create new sources of financing for energy efficiency or to promote the redirection of some existing sources. As PROCEL and CONPET are co-ordinated and supported by Eletrobrás and Petrobras, this law may also affect these programs. Considering the Federal Government’s policy of reducing energy costs, and also the fact that these companies are now aiming to provide profits to their private shareholders, they are under the threat of suffering cuts in their budgets and their staff.

In general, policies to reduce taxes, tax incentives, easy credit and reduce taxes and fees for the purchase of efficient vehicles and equipment have been another tool used in many countries, but it is still not widely used in Brazil. The government has sporadic tax cuts for efficient products as a result of actions to increase sales in crisis, or in situations of energy shortages, as in 2001. These actions are not characterized as permanent and institutionalized. Such benefits could revert to gains for society and the economy, given the increase in sales and consequent increase in the number of jobs and tax revenues, and therefore, it would not be a mere tax exemption applied in times of crisis.

\[\text{Idem, p. 64.}\]

\[\text{Idem, p. 64.}\]

\[\text{Idem.}\]

\[\text{Idem.}\]
With regard to industrial policy, energy efficiency plays an important role in the quality and productivity of industries in general. This could substantially improve the competitiveness of industries in the global market. In this case, reducing energy consumption can generate not only financial gains, but also considerable gains in reducing the environmental impacts of these industries. The inclusion of energy efficiency as the basic principle of government industrial policy formulation must be developed in conjunction with the climate change sector, which may eventually contribute to the process.298

During the 7th Brazil-European Union Summit held in Brussels, Belgium in February 2014, the partners highlighted the possibilities for expanding bilateral cooperation in renewable energy research and development, including joint initiatives on energy efficiency and sustainable biofuel production. Renewable energy plays a crucial role in expanding access to energy, with the potential to generate social development in a sustainable way, and to help reduce poverty. Thus, the meeting reinforced the importance of global efforts to promote the use of renewable energy sources, and the development of business relations between small and medium-sized enterprises in Brazil and the European Union, focused on this sector.299

The challenges facing Europe in the field of energy include issues such as increased dependence on imports, high and volatile energy prices, increasing global energy demand, security risks affecting producer and transit countries, the growing threats posed by climate change, slow progress in energy efficiency and the need for greater transparency, integration and interconnection of energy markets. As such, a series of measures were adopted to achieve an integrated energy market, security of energy supply and sustainability of the energy sector.300

As for the future prospects, according to Tulèj, Head of Unit of the European Commission, today the Commission’s main energy project would

298 Idem. p. 65.
Part 2. Climate change and energy: governance compared

revolve around energy security, sustainability and competitiveness. That would require a paradigm shift and a transition of the energy sector, moving away from a scenario still dominated by fossil fuels. Tuléj argues that the EU needs technological advances in the generation of renewable energy, as well as innovations to integrate the renewable variables into the energy system. To address these challenges and turn them into opportunities for Europe, the European Commission has recently adopted the proposal for a new directive on renewable energy (its reference 2009/28/EC).301

For Tuléj, heating and cooling are clearly identified as sectors where the share of renewable energy, which represents around half of the EU’s energy consumption, is expected to increase. In the transport sector, the revised directive explores the potential of renewable fuels, including advanced biofuels and renewable electricity, and encourages their further deployment. The revised renewable energy directive ensures that the EU will continue to consume only sustainable bioenergy. In particular, it strengthens the EU’s sustainability criteria to ensure that the production of forest biomass for energy does not lead to the risk of over-exploitation or loss of forest carbon stock.302

In its Resolution of 23 June 2016 on the report on progress in the field of renewable energy (2016/2041 (INI)), progress in the field of renewable energy is foreseen. The resolution states in its Item 2 that while the EU is well on track to meet the 2020 objectives, there is concern about the large number of Member States (Belgium, France, Luxembourg, Malta, the Netherlands, Spain and the United Kingdom) that – according to the Commission’s 2015 Progress Report on renewable energy 2014-2020 – may need to strengthen their policies and instruments to achieve the 2020 targets, while Hungary and Poland are not even sure achieve their goals.

In these terms, Members of the European Parliament have urged Member States that are lagging behind in progress to meeting their targets, to take additional steps to get back on track. They welcome the fact that some


302 Idem.
Member States have already met or will soon meet their 2020 targets well ahead of schedule, such as Bulgaria, the Czech Republic, Denmark, Estonia, Croatia, Italy, Latvia, Lithuania, Austria, Romania, Finland and Sweden.\textsuperscript{303}

The Commission report on progress in renewable energy deplored the fact that there were no country-specific recommendations for the adjustment of its policies and instruments to achieve the 2020 targets. It was also noted that the existence of a variety of different policies to promote renewable energy risks further widens the competitiveness gap between the EU countries. Hence the need to establish an EU financial mechanism to reduce the high costs of capital derived from the risk of renewable energy projects.\textsuperscript{304}

Lastly, in paragraphs 15 and 19 of the Resolution, MEPs emphasize the need for stronger cooperation and coordination within and between Member States and regions, as well as an integrated approach to public investment and funding aimed at technical improvements, the development and installation of smart grids, network capacity and adaptation, intelligent metering systems, storage, demand management, energy efficiency and the production of innovative renewable energy. They also note that increasing regional cooperation on renewable energy is essential to ensuring the further development of renewable energy sources.\textsuperscript{305}

From another point of view, according to Tulėj, the European Commission has a specific strategy regarding the acceleration of clean energy innovation. In this context, it is intended to address the entire value chain of innovation in order to achieve the best objective of total decarbonisation of the energy system. This strategy aims to create market conditions to attract private sector investments in low carbon technologies, increasing the attractiveness of low carbon solutions and reducing their level of risk.\textsuperscript{306}


\textsuperscript{304} Idem.

\textsuperscript{305} Ibidem.

\textsuperscript{306} TULĖJ, Piotr. Chefe de Unidade da Comissão Europeia. Direção-Geral de Investigação e Inovação, Unidade G3 “Fontes de energia renovável”. [mensagem pessoal]. Mensagem recebida por patriciana@macchi@gmail.com. Em 19 set. 2017.
To this end, the Commission’s strategy identifies research and innovation support as priority areas. The European Commission will support the improvement of existing renewable energy solutions by reducing their costs, such as offshore wind. In addition, the Commission will support the development of innovative materials, significantly improving the efficiency of current solutions, such as the next generation photovoltaic energy based on thin films or transparent materials that can be directly integrated into buildings.\textsuperscript{307}

Another important point when thinking about the matrix transition and/or energy efficiency, whether in Brazil or in the European Union, is about issues that involve governance. The European Parliament’s Resolution (2016/2041 (INI)), in its Item 29 on “Renewable energy sources for the future”, stresses the need to define a robust, transparent and implementation of the 2030 target for renewable energy. This is due to national competences to determine the energy mix, while allowing full democratic control of energy policies. In this sense, the MEPs support an intensive repetition of the current and, according to them, successful system of national targets and plans for renewable energy and bi-annual reports. There should also be a responsible, efficient and transparent monitoring of Member States’ commitments and the implementation of the existing European legislation in order to prepare the ground for a functional European Energy Union.\textsuperscript{308}

Concerning the frequently put question of, “How can one ensure that at least 27\% of the EU’s overall objective is achieved in the absence of national targets”, Tuléj says that the entire package of measures creates a structure in which renewable energy thrives. The new revised Directive on Renewable Energy (in the process of approval) in particular, sets out a number of measures in the various sectors to promote the deployment of renewable energies. This ambitious set of actions will allow the EU Member States together and, for the EU as a whole, to at least achieve the target 27\%. In

\textsuperscript{307} Idem.
addition, Energy Union Governance defines an interactive process through which the Commission and the Member States will interact and analyze the planned national measures. In this way, Tulėj believes that this is a process whereby Member States will propose ambitious national contributions to the EU objective.309

According to the Head of Unit of the European Commission, if despite these measures, gaps still exist, the Union’s Energy Governance system has mechanisms for Member States to present all the shortcomings. Governance lists several measures that Member States can take but leaves flexibility for them to choose the most appropriate measures.310

Thus, despite all the problems faced by States with a view to making their policies effective, it is understood that the element of “governance” is essential for this purpose. According to Weiss, “governance is the ability to transform the government act into public action; results from the sum of the various ways in which people and institutions, public and private, manage their affairs in common through continued processes that accommodate conflicting interests.”311

Weiss further states that, “Greater or lesser governance capacity depends, on the one hand, on the possibility of institutionalized, legitimate and efficient channels, on the one hand, and on community mobilization and involvement in policymaking and implementation on the other.”312

It is highlighted that the efficiency of the institutionalized channels is of great relevance for governance to beneficially affect the scope of public energy policies. It is about the ability to convey and implement the guidelines and goals of a given policy.

Roger, Hale and Andonova initially point out that domestic policy clearly “matters” in defining how actors participate in governance initiatives


310 Idem.


312 Idem, p. 343.
transnationally. Thus, opening up to the international system is itself endogenous to domestic politics.\textsuperscript{313} Citing the example of the guidelines established in the Paris Agreement, the authors state that,

“[...] domestic and transnational governance of climate change reinforces each other. The building of productive ties in these spheres is therefore of central importance for the emerging climate regime to provide the necessary public goods to which it aspires.”\textsuperscript{314}

In terms of governance, Hale and Roger still talk about the orchestration process, defining it as “a process by which states or intergovernmental organizations initiate, guide, refer to the subset of transnational governance involving sub- and non-state actors.”\textsuperscript{315} It is an important process through which transnational climate governance is created and shaped. Orchestration can allow states and international organizations (International Organisations) to multiply their influence, calling for multisector networks to address a governance problem.\textsuperscript{316}

So, for Hale and Roger, orchestration would be “... a strategy through which States or IOs bring new capabilities and resources to the provision of global public goods, strengthening or catalyzing transnational governance


\textsuperscript{314} Roger; Hale; Andanova, op cit. p. 1-33. Available in <https://dx.doi.org/10.1080/030050629.2017.1252248>. Access in May 15 2017. p. 32. “Knowing that the actions of cities, companies, regions, and other sub- and non- state actors are reinforced by domestic policies suggests that the post-Paris regime may benefit from an upward spiral of climate actions in which domestic and transnational governance of climate change mutually reinforce one another. Building productive linkages across these spheres is, therefore, of central importance if the emerging climate regime is to deliver the muchneeded public goods to which it aspires.”

\textsuperscript{315} HALE, Thomas; ROGER, Charles. Orchestration and transnational climate governance. In: The Review of International Organizations. Springer Boston, 2013. p. 60. “(...) orchestration is a process whereby states or intergovernmental organizations initiate, guide, broaden, and strengthen transnational governance by non-state and/or sub-state actors.”

\textsuperscript{316} Hale; Roger, op. cit., p. 61. “It is an important process through which TCG is created and shaped, but remains under-explored in the academic literature and underused by policymakers. Orchestration can allow states and IOs to multiply their influence by convening multisectoral networks to tackle a governance problem.”
schemes.”

Concerning orchestration, Hale and Roger commented that “The European Union, for example, did not use this strategy effectively, although it seems to be a logical way to advance the EU’s objectives in the face of the multilateral standstill.  

Finally, Brazil and the EU have many points in common on energy. Both have extensive domestic markets, with energy needs, and well-established industries with considerable know-how. Both partners consider the potential of renewable energies to address socio-environmental issues and the purpose of development to be important. However, as discussed earlier in this paper, there are several challenges and obstacles to be overcome, both in terms of energy efficiency and in terms of a restructuring and evolution of the energy matrix in Brazil and also in the European bloc.

5. Final Remarks

Climate change is one of the major contemporary problems globally. Nowadays, we are in an era of global warming that results from anthropic actions initiated after the Industrial Revolution. In view of these problems, both Brazil and the European Union have established a legal-institutional framework to promote mitigation of the effects of climate change and its causes.

Brazil and the European Union recognize the need to work towards a guaranteed and sustainable energy supply. Both see in the promotion of renewable energy, efforts to improve energy efficiency and access to energy

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317 Hale; Roger, op. cit., p. 63. “In contrast to the above, orchestration is a strategy through which states or IOs bring new capacities and resources to the provision of global public goods by strengthening or catalyzing transnational governance schemes.”

318 Hale; Roger, op. cit., p. 80. “The European Union, for example, has not employed this strategy effectively, even though it would seem to be a logical way to advance EU goals in the face of multilateral gridlock. Nor has the International Energy Agency or the United Nations Development Programme, which have both been playing increasingly prominent roles with respect to climate change.”

an important contribution to sustainable development, as well as to achieving greater energy security.

Brazil’s energy matrix is reasonably low in carbon, since the national matrix is made up of about 45% of renewable sources, especially hydropower and biomass fuels. The Brazilian government foresees and executes some incentive programmes for alternative renewable sources. However, in practice, government policy appears inadequate to guide the market in favour of such technologies. This is evidenced by comparing current investments in energy from wind and solar sources, for example, and what is invested in the hydroelectric sector or biomass.

Thus, the Brazilian economy is largely based on natural resources linked to the climate, such as agriculture and hydroelectric power generation. Hence the importance of investments in diversification of the Brazilian energy matrix, even taking into account those countries where the geography and climate is highly favourable to the development and production of solar and wind energy, for example.

Brazil currently has a vast legal and regulatory framework on energy issues, which should not prevent the adoption of other measures that would lead to greater efficiency and sustainability for the sector, such as the regular and more intensive use of fiscal incentives for more efficient equipment and processes, as well as facilitating access to permanent sources of funding. In general, tax reduction policies, tax incentives, easy credit and tax and duty reduction for the purchase of efficient vehicles and equipment could be intensified in the country. Today the government adopts sporadic tax cuts for efficient products as a result of actions to increase sales in the crisis, or in situations of energy shortages. Such policies should be constant and permanent.

The investment in energy efficiency could bring to the Brazilian State important advances in terms of both economic efficiency and environmental gains. It is also necessary to invest in effective procedures for monitoring and verifying the results of current projects involving energy efficiency in order to expand the energy supply.

Brazil still has problems with energy governance. Decentralization, for example, the goal of the National Environmental Policy, occurs in a fragmented, discontinuous and selective manner. This is due to political-
institutional conjunctures that present distinct focuses in each political period; besides structural problems of the formation of the Brazilian State, historically centralizing and patrimonialist. This fact has negative consequences for state and municipal governments, which are left with the task of assuming their own, but systemic, competences and responsibilities.

Plans and sector programmes established at the Brazilian government level, such as the Decennial Energy Plan itself, lack an aggregating concept and coordination actions at the inter-institutional level. Such plans ignore the idea of governance, leading to a fragmented governance structure. In addition, environmental agencies in Brazil have a lack of human and material structure, as well as problems of internal articulation.

As for the European Union, the countries that integrate it are experiencing a complex situation, facing up to the challenge of guaranteeing access to energy import sources and making energy available at the best possible prices while at the same time, preserving the environment, all in the aim of becoming a low-carbon society by 2050.

Although Europe does not have as many reserves and favourable technical conditions (such as year-round sunshine, intensely windy regions) compared to Brazil, Europe does have a well-diversified energy portfolio. This is an advantage in itself and is due to the institution of the principle of solidarity, so that one can take advantage of this diversity, which brings positive consequences in economic terms for the bloc.

At present, there is concern about the large number of countries (Belgium, France, Luxembourg, Malta, the Netherlands, Spain and the United Kingdom) that – according to the Commission’s 2015 Progress Report on renewable energy 2014-2020 – may need to strengthen their policies and instruments to achieve the 2020 targets, while Hungary and Poland are not even sure to achieve their objectives.

In this context, there is a need for stronger cooperation and coordination within and between Member States and regions, as well as an integrated approach to public investment and funding for technical improvements, development and deployment smart grid, network capacity and adaptation, storage, demand management, energy efficiency and the production of innovative renewable energy.

Another important point when thinking about matrix transition and/or energy efficiency concerns issues that involve governance. Here, as far as
the Union is concerned, there is a need to define a robust and transparent governance system that will ensure the implementation of the 2030 target for renewable energies. Here we note the great difficulty of the bloc in reconciling the interests of the Member States, and this is to some extent reflected in the progress of the EU’s objectives.

Finally, the importance of joining efforts in the areas of energy efficiency and climate change is clear. Overcoming the climate crisis makes it necessary to establish a new ethic and changes in behavior. It is essential that there be investments in public policies and strategies aimed at the evolution of the national energy matrix towards the adoption of “clean” sources, in order to minimize the current socio-environmental impacts, besides the economic sustainability. Such policies should address issues of effectiveness with regard to their coordination and actual implementation, while observing the principles and rules of good political and administrative governance in the area in question.

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Legal and political aspects of the evolution of the energy matrix: obstacles and challenges in Brazil and in the European Union

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Chapter 8

Strategic Environmental Assessment for renewable energies: Brazil and the EU compared

Paula Galbiatti Silveira

Abstract

In an age of concern about the effects of climate change worldwide, both Brazil and the EU have assumed commitments in several international fora, notably the Paris Agreement, to reduce greenhouse gas (GHG) emissions, and renewable energies are a core sector for mitigation of emissions. However, adverse social and environmental impacts go hand in hand with the mitigation potential offered by renewable energies, and should necessarily be considered in the design, implementation and governance of the rolling out of the technologies and projects within Brazil and the European Union.

The Strategic Environmental Assessment (SEA) first emerged at UN level as a central tool in sustainable development internationally, regionally and locally. It was preceded by the Environmental Impact Assessment (EIA) which dates back to the 1970’s, assessing the environmental impacts of large scale projects. Today, the SEA should be a precursor to the EIA: it is both broader in scope in that it extends for example to social impacts, and also deeper in reach than the EIA in that it lays down a forward planning framework in the early stages of public policies, plans and programmes,

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Strategic Environmental Assessment for renewable energies: Brazil and the EU compared
Paula Galbiatti Silveira

standards and legislation. The SEA is intended to shape the context for a specific project EIA. This paper explores this instrument in terms of its application to renewable energies both in Brazil and in the EU in the context of climate change. It extends to the relations between Brazil and the EU regarding climate protection and energy, taking account of the concept and importance of environmental evaluation for the climate mitigation potential of renewable energies. The SEA instrument is defined, and comparison is drawn on the approaches to its implementation in the EU and in Brazil.

To do so, a comparative methodology is followed, explaining how the instrument is regulated through the legislative or regulatory contexts, and evaluating the results, all while highlighting the differences and similarities between the Brazilian and EU approaches. A primary sources and literature review reveals important similarities in goals and principles reflecting the original concept devised at UN level, and also distinguished the SEA from the Environmental Impact Assessment (EIA) instrument both in Brazil and the EU. Important differences are apparent in this comparison between the EU and Brazil. Given the indigenous and traditional communities’ territories in Brazil, the treatment of socio-environmental impacts of renewable energies projects in Brazil presents a particularly important challenge for effective application of any strategic approach to assessing the socio-environmental impacts of these projects. In Brazil there is a notable absence of the SEA as an instrument. The EIA is employed, for given projects but makes no provision for indigenous peoples and traditional communities’ territories, or the bigger picture of combined longer-term implications throughout Brazil and its States. While there have been important steps in favour of giving the SEA more legal form and a Plurinannual Plan, there is no concrete vision today for the SEA.

By contrast, in the EU at regional integration level and at the level of the EU Member States, even with an established practice in the SEA, the instrument still needs improvement. For both Brazil and the EU, the SEA offers a considerable potential to support and improve the environmental

and social impacts if renewable energy projects in Brazil, including the involvement of society in the process of sustainable development and climate change mitigation in particular.

**Keywords:** Strategic Environmental Assessment; renewable energy; climate change; Brazil; European Union.

1. Introduction

Climate change is a major topic in the context of Brazil-EU relations. Climate protection is a worldwide concern and needs integration and cooperation in order to mitigate CO2 emissions and cut greenhouse gases emissions, as well as in adaptation efforts. In order to achieve those targets and to give societies a better environment and a better quality of life, partnerships and cooperation need to be improved and strengthened. Both Brazil and EU hold themselves out as world leaders in battle against climate change, and following the Paris Agreement of 2015, renewable energies are accepted as the principle sector for mitigation purposes. Both Brazil and the EU alongside the other signatories to the Paris Agreement, have agreed plans and projects to support and finance renewable energies and clean energy technologies.

Renewable energies at the same time, involve their own risks of emitting GHGs throughout the production chain and in nature, and also raise important concerns as to the protection of social rights. Especially in Brazil, with its indigenous peoples’ territories and other traditional groups where land rights are protected by the Brazilian Constitution and various downstream laws.

The dichotomy in the positive and negative implications of renewable energies for mitigating climate change, demands that planning and implementation must be capable of being adapted overtime and public participation respected. To this end, the Strategic Environmental Assessment offers a tool to anticipate and frame the evaluation of public policies, plans and programmes, and projects.

This paper studies the SEA and its application for renewable energies as a mitigation response for climate change, both in Brazil and in the EU. The paper is divided into four parts. First, renewable energies are presented in
the context of climate change to reduce GHG emissions, and the way in which Brazil and the EU have committed to renewable energies. Second, the relationship between Brazil and the EU regarding climate protection and energy is described, demonstrating that both share common interests in climate protection and in promoting and implementing renewable energies to mitigate GHG emissions and for energy security purposes. This enables a comparison to be made between their chosen methodologies. The third part explores the concept and importance of environmental evaluation for introducing and scaling up renewable energies, defining the SEA instrument and how it differs from the Environmental Impact Assessment. Finally, the fourth part traces SEA legislation in the EU, and then looks at how it is understood in Brazil by the literature, due to a lack of actual legislation on the subject.

The methodology used was the comparative method and begins with the functional question: Is SEA an instrument in Brazil and in the EU to consider environmental and social effects on renewable energies public policies, plans and programmes (PPPs)? The second step was to explain the context of the problem, followed by the description of how the instrument is regulated in both contexts. The next step highlights the differences and similarities as well as the reasons behind them, concluding with and evaluation of the results. Source documents, such as laws and reports, have been relied on together with the literature review.

## 2. Renewable energies in the context of climate protection

Electricity is a technology that societies cannot live without. Currently there is an important discussion about the access to electricity as a human right in the context of the United Nations Sustainable Development Goals. Goal 7 states that to “ensure access to affordable, reliable, sustainable and modern

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energy for all” is a must. Goal 7 sets targets that include a substantial increase of renewable energies; a double rate of improvement in energy efficiency; an enhancement of international cooperation; and an expansion of infrastructure in developing countries, all by 2030.

Current the world energy matrix is based on fossil fuels and a carbon economy. Fossil fuel extraction and burning is leading to resource depletion, to huge environmental and social impacts, and, especially, to climate change as a result of increasing greenhouse gases emissions. According to Intergovernmental Panel on Climate Change (IPCC) reports, climate change is undeniably caused by anthropogenic emissions of GHGs, mostly due to electricity production on a fossil fuel basis.

In order to mitigate climate change, countries have agreed to reduce GHG emissions, firstly within the framework of the United Nations Framework Convention on Climate Change of 1992, including through energy sources. The 1997 Kyoto Protocol to the 1992 Framework Convention, provides in Article 2 that the Parties shall increase energy efficiency and the research, the use and the development on renewable energies. Recently, the 2015

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325 Idem.
326 Idem.
328 Approximately 25% of greenhouse gases emissions derive from electricity production sector. Idem, p. 10.
Paris Agreement\textsuperscript{332} which combines legally binding and non-binding clauses, enhanced the global commitment to climate change mitigation and demands that Parties establish their Nationally Determined Contributions – NDCs – in order to reduce GHG emissions.

The importance of the Paris Agreement relies on its universal intention, including the world’s largest emitting countries that had previously refused to compromise: the USA, China and India. Moreover, the Paris Agreement maintains climate on the global political agenda so that political leaders and societies integrate climate protection in their future plans and programmes. Christina Voigt\textsuperscript{333} highlights the success of the Paris Agreement over its predecessors, as being due to the inclusion of renewable energies, which are currently seen as the main mitigation option, assuming that China – which is the world leader on renewables – is able to reduce its GHG emissions without compromising its economic growth\textsuperscript{334}.

The European Union also declares itself a leader on climate protection through GHG emissions reduction and is investing in clean technologies including renewable energies. This can be seen ambitious climate change protection programming undertaken by the EU in the form of three packages: the 2020 climate & energy package (2009); the 2030 climate & energy framework (2014); and the 2050 low-carbon economy (dated variously on 2009 and 2010 on the official website).

The 2020 package sets the 20-20-20 target, meaning: a 20% cut in GHG emissions from 1990 levels; 20% of EU energy sources from renewables, varying from country to country, and; 20% improvement in energy efficiency (the targets were set in 2007, and made binding through legislation in 2009)\textsuperscript{335}.

Built on the previous package, the 2030 climate & energy framework sets three targets: at least 40% cut in GHG emissions from 1990 levels; at least 27% share for renewable energy; and at least 27% improvement in energy

\textsuperscript{333} According to Christina Voigt, on class during climate change on the 9th June 2017, at the Federal University of Santa Catarina, Brazil.
efficiency. The benefits expected are to ensure affordable energy for all; to increase energy security; to reduce dependence on energy imports; and to create new jobs and growth\textsuperscript{336}.

The 2050 low-carbon economy aims to reduce 80\% of GHG emissions compared to 1990 levels and to achieve it predicts 40\% emissions cut by 2030 and 60\% by 2040, with contribution from all sectors. However, the potential for the reductions in the power sector are at the top of the league: it is expected that these emission can be totally eliminated by 2050 with electricity coming from renewable sources or other low-emission sources, notably in the nuclear sector\textsuperscript{337} and through investments in smart grids\textsuperscript{338}. Anticipated benefits expected from the 2050 low-carbon economy will include: job creation and growth through the development of clean technologies; Europe’s resource-use reduction; reduction in dependence on expensive imports of oil and gas, and; considerable health benefits, such as air quality\textsuperscript{339}.

In Brazil, the climate protection is established at the Law n. 12.187/2009 – \textit{the National Policy on Climate Change Law} – and regulated by Decree n. 7.390/2010. Among its goals and targets is the consolidation of a low-carbon economy and the generation and distribution of electricity. According to Brazil’s \textit{Nationally Determined Contribution} (NDC)\textsuperscript{340} towards the Paris Agreement commitments, Brazil has a long-term goal of a transition to energy systems based on renewable energy and on the global economy descarbonization, reaching 45\% of renewables by 2030 with the inclusion of others than hydropower plants, which represents 80.8\% of the country’s electricity production\textsuperscript{341}.

\begin{itemize}
  \item \textsuperscript{337} Although this paper discuss environmental assessments for renewables, it must be highlighted that nuclear energy is not a solution for the energy problem. It might not emit GHGs and might contribute to protect the climate, but its huge risks and extremely long lasting materials do not offer any benefit for society and ignores future generations rights and nature protection.
  \item \textsuperscript{339} Idem.
  \item \textsuperscript{340} UNFCCC. \textit{Brazil NDC}. Available: http://www4.unfccc.int/submissions/INDC/Published%20Documents/Brazil/1/BRAZIL\%20iNDC\%20english\%20FINAL.pdf. Access: 26 May 2017.
In this context of climate changes and GHG emissions reduction goals, renewable energies are a central mitigation response. The Working Group III Special Report on Renewable Energy Sources and Climate Change Mitigation - SRREN\(^{342}\) indicates that renewable energies have a big potential for the mitigation of emissions. This transition to a low-emission economy with a bigger participation of renewables implies the increase of investments in technology and infrastructure\(^{343}\).

However, although both the EU and Brazil have committed themselves to mitigate climate changes, according to independent scientific tracking\(^{344}\) they are classified as “insufficient” in term of their ability to meet the Paris Agreement goal.

Brazil is considered insufficient, because of its considered least ambitious reduction target and not consistent with the long-term Paris Agreement’s goal, combined with the economic recession, which expects a rise in the emissions. Furthermore, the tracking identified a worsening in the country’s climate policy implementation, going in a opposite direction of what agreed in the Paris Agreement\(^{345}\).

The EU is also insufficient, despite of its established reputation of global leader on climate policy. The insufficiency comes from the slowing and lack of effectiveness to the Paris Agreement limit. The tracking identified that the 2030 target is a slight slowdown compared to the predecessors and even so is not on a trajectory to meet this target, as it is not taking meaningful action in transport, buildings and renewable energies\(^{346}\).

It is clear that more needs to be done in order to achieve the global commitments to reduce GHG emissions and to mitigate climate changes and the energy sector is crucial to it.

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\(^{343}\) Ibidem, p. 24.

\(^{344}\) Cf. http://climateactiontracker.org. The Climate Action Tracker (CAT) is an independent scientific analysis produced by three research organizations tracking the progress towards the global Paris Agreement goal.


Electricity power plants are normally very important structures not only because of the sheer size, but also because of the damage they cause to the climate and the environment as well as to human health. Insofar as they are understood today, renewable energies as substitutes for fossil fuels are generally considered to offer the principal means of mitigating GHG emissions. However, despite solving the GHG problem, renewable energies raise new environmental and human health threats depending on the type of source used and on their location. For example, windmills can affect and even kill birds as well as diminish the visual landscape, while rolling out the production of biofuels in Brazil threatens to bring about competition for land by other uses – especially food production – and trigger land disputes with around protected areas or indigenous territories.

Thus, the renewable energy solutions sought to resolve the economic and industrial conflict with the climate and human health as a result of fossil fuel emissions, must be weighed against potential new socio-environmental conflicts deriving from those solutions. To present further environmental degradation and adverse socio-economic impacts as a result of renewable sources for electricity, strategic planning and evaluation of actual or potential damage becomes crucial. As the electricity sector is a key to any country’s infrastructure and economic growth and development, strategic planning in this area is core to whether the EU and Brazil will indeed meet their climate commitments and their “Goal 7” goals and targets established by the United Nations Sustainable Development Goals.

In order to integrate the protection of environmental, climate and social rights need to be well integrated into a complex renewable energy plan. The Strategic Impact Assessment is designed to be such an instrument, to enable decision-makers to capture the wider view of all these aspects, to consider all the issues and conflicts actually and potentially arising from it, and to be flexible to being adapted and responsive to new objectives taking account of public participation.
3. Climate and energy policy relations between Brazil and the EU – the Sector Dialogues

Over and above the multilateral commitments and endeavours shared by Brazil and the EU, Brazil-EU relations take a very practical joint approach on renewable energies through the medium of the Sector Dialogues. Thirty such Sector Dialogues so far cover several topics – aiming to further and enhance the 2007 EU-Brazil Strategic Partnership and bilateral relations\(^{347}\) between them by supporting the exchange of technical know. The aim is to exchange – in the broadest sense – information, experiences and political and technical practices of common interest of both parties\(^{348}\).

Diplomatic relations between Brazil and the European Community started in the 1960s, were strengthened in the 1980s and in 1992 a framework Cooperation Agreement [EC- Brazil Framework Cooperation Agreement] was signed, with the EU-Brazil Strategic Partnership being established in 2007, including joint actions in fields like environment and energy\(^{349}\).

As of 2010, multilateral discussions on climate change have increased, and Brazil has drawn closer to the EU position since the Durban Conference in 2011, although the two partners have not shared the same ideas on all matters. At the 2012 Conference on Sustainable Development in Rio de Janeiro, they disagreed on many important topics. On deforestation for example, which is has always been a delicate issue for Brazil, because of its commitment to reduce carbon emissions and deforestation at the one hand while on the other, it has challenged the Inter-American Commission on Human Rights to built Belo Monte hydropower plant, known for its huge environmental and social impacts in the Amazon region and for the corruption involved. In 2015, at the Paris Conference however, Brazil and the EU co-ordinated closely and launched a joint proposal for carbon market regulation\(^{350}\).


Environmental protection has been a leading subject for Brazil and the EU working together through the Sector Dialogues, which were introduced by the two partners through the 2007 Strategic Partnership adopted by the two, inter alia to institutionalise the bi-lateral co-operation Treaty of 1992. The Sector Dialogues, which before 2017 were divided into three phases with eight convocatories\(^{351}\), provide for collaboration between institutions in Brazil and in the EU through projects that facilitate the interchange of experiences and knowledge on common subjects\(^{352}\).

In terms of the topics on which the partners work together, environment, climate change and energy are all part of the so-called “global challenges” on the Sector Dialogues, in their first three phases, which ended in 2017. The first important one is the “environmental dimension of the sustainable development”, which includes biodiversity; air quality; payment for ecosystem services; waste management; pesticides; and access to genetic and traditional knowledge. At the beginning, this dialogue included climate change as a major topic, but later on, a specific dialogue was dedicated to this subject\(^{353}\).

The dialogue about climate change is very active and includes nine supported projects, such as deforestation control; monitoring and observation of climate change impacts; methodology options to identify vulnerability in Brazil; foment to wind power generation; and energy efficiency and climate change\(^{354}\). The inclusion of energy in this dialogue is due to the 20-20-20 EU target, which invested a lot in this sector and developed technology and experience in the implementation of projects regarding renewable sources to produce electricity\(^{355}\). Energy efficiency was included as an objective,

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because of Brazil’s energy matrix, based on hydropower plants, but that needs reconfiguration, integrating energy production with environmental matters\textsuperscript{356}.

There is also a specific dialogue about energy policy, recognizing the need to supply secure, clean, renewable and sustainable energy, including biofuels, solar and wind energy. It says that Brazil and the EU share several common interests in relation to energy, and both stand out for their sizable national/internal markets in energy, and therefore also comparable challenges in terms of energy needs\textsuperscript{357}. The calls on the energy policy Sector Dialogue include oil and gas offshore safety; advanced biofuels; smart grids, and; mining\textsuperscript{358}. It is also important to mention that the Sector Dialogue on science and technology also refers to climate change and energy efficiency in the seventh project call for funding on adaptive management of waters facing climate changes. The same can be said of the eighth call on Brazil-Europe interchange on nature inspired technologies to sustainable cities\textsuperscript{359}. Lastly, in the context of the small and medial enterprises – SME dialogue, the EU has committed €3.7m dialogue on small and medial enterprises in May 2016 to Brazil and Mexico under the EU’s Partnership Instrument for actions to help SMEs transition to low carbon economy.

It is important to highlight that, although environmental protection, climate change and energy efficiency were important matters during the previous three phases, in March 2017, to last until 2019, the sector dialogues have entered their forth phase and shifted the priorities, going away from sustainable development, climate change and energy for the coming years, which also a less budget committed. Agriculture was mentioned, and the priority given to science and technology. The previous three phases

\begin{footnotesize}


\end{footnotesize}
addressed regional and urban policies; environmental questions; and economic and financial matters, including in the environment, as said earlier, climate change and energy efficiency\textsuperscript{360}.

The relations between Brazil and the EU regarding climate protection and energy demonstrate that both have common interests on climate protection and on promoting and implementing renewable energies in order to mitigate GHG emissions and in the interests of energy security. The strategic partnership between them and the Sector Dialogues help to promote cooperation as well as the exchange of knowledge and good practices.

4. The SEA as an environmental evaluation

Environmental impacts assessment provides an evaluation instrument to determine at an early stage whether policies, plans, programmes and projects might cause negative effects in the environment and to search for alternatives while building transparency and trust between decision-makers and society. It brings together experts, government and civil society generally, in order to better understand the impacts of the kind of development and future they are all seeking to build together.

To study, analyze and evaluate likely negative environmental effects is an important prevention and precaution instrument, also limiting individual or private freedoms relating to the use of natural resources for a common goal. An environmental evaluation is made every time a policy, plan, programme or project might potentially cause damage to the environment as a result of human activities. Impact assessments intend to assess the consequences of individual projects through Environmental Impact Assessment (EIA) or while the Strategic Environmental Assessment (SEA) is a public planning instrument that provides the overarching framework for the policies, plans and programmes (PPPs) within which the EIA is carried out.

The EIA and the SEA as environmental evaluations (impact assessments) and their respective scopes, can be better pictured by means of the following Figure:

**Figure 1:**

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Environmental Evaluation (Impact assessments)

EIA  SEA

Projects  PPP
(policies, plans and programmes)
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Source: the author

The EIA is a process of evaluating the possible environmental impacts of a specific project. At the source of this policy instrument is the United Nations Environmental Program (UNEP), which defines the EIA “as a tool used to identify the environmental, social and economic impacts of a project prior to decision-making”, in order to predict environmental impacts at an early stage\(^{361}\). Principle 17 of the Rio Declaration on Environment and Development states further:

“Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority”\(^{362}\).

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The EIA applies to a specific project in implementation of the SEA. The scope difference between SEA and EIA and the wideness of policies, plans, programmes and projects is depicted in the following figure:

**Figure 2:**

<table>
<thead>
<tr>
<th>SEA</th>
<th>SEA</th>
<th>SEA</th>
<th>EIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy</td>
<td>Plan</td>
<td>Program</td>
<td>Project</td>
</tr>
</tbody>
</table>

Source: the author

The SEA has a wide, proactive approach and needs flexibility in order to influence PPPs, as well as legislation, in the long-term. It differs from the EIA, because is prior to decision making, while the EIA is made when decisions have already been done. The SEA also considers synergetic and cumulative impacts as observing from a wider scope.

The SEA has become an important planning tool due to (i) negative social and environmental impacts of PPPs and (ii) to the limitations inherent of the EIA, that only analyses specific projects and rarely addresses to cumulative impacts and other planned projects in the same region\(^{363}\).

Comparing EIA and SEA, the EIA is usually reactive to a development proposal; assesses the effect of a proposed development on the environment and direct impacts and benefits; addresses a specific project and its specific impacts; has a well-defined beginning and end; focuses on mitigation; and has a narrow perspective and a high-level of detailing\(^{364}\).


The SEA, on the other side, is pro-active and informs development proposals; assesses the effect of policies, plans or programmes on the environment, as well as cumulative impacts; addresses areas, regions or sectors of development; is flexible and a continuing process; focuses on maintaining a chosen level of environmental quality; and has a wide and overall perspective and low detailing\textsuperscript{365}.

5. Strategic Environmental Assessment – SEA in Brazil and in the EU

The Strategic Environmental Assessment (SEA) is also an environmental impact assessment designed to make an early evaluation of policies, plans and programmes, and is intended to provide a framework for the Environmental Impact Assessment. Some authors\textsuperscript{366} see the SEA as also a tool for integrating environmental considerations into draft laws. They have been in existence for some time in the European Union, the United States regulations about EIA and Canada. Current debates concerning the SEA involve its nature and scope: whether it should be limited to environmental matters or encompass others issues – which is relevant in Brazilian context, specially because of social issues addressing indigenous people and traditional communities territories; whether the procedures for policies should be the same as for plans and programmes; whether the SEA is suitable for developing countries that do not have adequate experience with EIA; whether extending the scope would be possible given the lack of political and institutional will; among others.

Because of the different approaches to defining and implementing the SEA, there is some confusion among decision-makers in countries where it is not compulsory, such as Brazil. To address this, the SEA process should achieve certain goals and principles irrespective of whichever procedure or format is followed in adopting and implementing national regulations\textsuperscript{367}.

\textsuperscript{365} Idem.
\textsuperscript{366} Ibidem, p. 2.
These principles are summarized by Verheem and Tonk\textsuperscript{368} as: screening for all strategic decisions that might potentially harm the environment; publication of the assessment results, to ensure that all parties affected parties are taken into consideration; monitoring of the decisions implementation, so as to provide sufficient information about the current impacts insofar as necessary to amend the decision; timing the assessment’s results, to make the results available as early as possible so that they may be effectively used effectively in the SEA under consideration; environmental scoping effectively, with all the relevant environmental information provided; socio-economic scoping of the availability of sufficient information on other factors, including other related or indirect yet nevertheless important factors; views of the public; documentation of the assessment’s results, with easily understandable and available results of the assessment; and periodic quality review of processes and information. This widely used definition is offered by Sadler and Verheem\textsuperscript{369} in 1996 as:

“systematic process for evaluating the environmental consequences of proposed policy, plan or programme initiatives in order to ensure they are fully included and appropriately addressed at the earliest appropriate stage of decision-making on par with economic and social considerations”\textsuperscript{370}.

In this context, one of the most important features of SEA is its reach, in that it addresses cumulative and large-scale effects. While the EIA as an instrument is intended to do so as well, it is harder for this more limited assessment focusing on one specific project, to encompass certain types of cumulative effects and large-scale environmental change, the result of multiple actions and which might cross-cut other policies and ecological boundaries\textsuperscript{371}.

\textsuperscript{368} Ibidem, p. 179.
\textsuperscript{370} Idem.
\textsuperscript{371} Ibidem, p. 6.
By contrast, because of the SEA’s broad scope, in particular its provision for the early assessment of negative impacts, its importance is comparably far more ambitious and capable of greater impact than the EIA. Applied to the implementation of renewable energies in order to mitigate climate change, the broader industrial and societal context and planning for a nationwide energy policy, plan or programme is crucially relevant because the very complex interplay of related impacts, and demands consideration of, for example soil use, biodiversity, water resources, protected areas, and many other considerations, such as energy security, supply and trade, or agricultural priorities and land use for food crops.

Given that strategies developed by decision-makers will establish future decisions and projects as well as the direct investments and public resources necessary to achieve the strategic objectives, the SEA is a determinant tool providing early information for decision-makers working with public participation in elaborating EIAs. Renewable energies planning is part of a global challenge to mitigate climate change and should not be adopted without assessing and evaluating its own impacts on nature and social rights. Given that energy demands huge infrastructure and investment from the State and several stakeholders and lock in states and the entire production chain to a long-term energy production matrix, the cumulative impacts and broad scope of the SEA is well suited directing renewable energy PPPs.

5.1. SEA in Brazil

While the Environmental Impact Assessment (EIA) is an important instrument in Brazil, and under the Brazilian Federal Constitutional combined with several laws and resolutions is compulsory for projects potentially having significant impacts on the environment, there is no

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373 Article 9, III of the National Environmental Policy Law, Law n. 6.938/1981.
provision for an SEA as such in Brazil. In the early 2000s many initial steps were made towards putting in place a SEA in Brazil for petrol and gas exploitation, mining and hydropower plants. However, they were not according to any legal requirements or financial institution, but voluntary and scholars have concurred on the total inefficacy of this approach in Brazil.

The Brazilian Environmental Ministry has made several studies on the subject. Some have recommended that the SEA be implemented through a law that is not linked to the environmental licensing procedure but rather, that it be integrated in the Pluriannual Plan. The Brazilian Court of Auditors gave another impulse to the implementation of the SEA after analyzing it at Federal level. The discussions about the SEA in Brazil has followed the global tendency to considering environmental matters within broader strategic actions and to fulfil the requirements set by international funding agencies in order to receive investments.

Some examples of SEA between 2002 and 2007 on first reading seem to exist in the literature: the Eletrobras Indicative Plan 2003-2012; the South Touristic Development Program and the North Coast Touristic Integrated Development Plan; oil and gas exploitation and production planning on the Camumu-Almada basin; the Madeira River hydropower plant complex; the Rio de Janeiro petrochemical complex; the Sao Paulo Metropolitan road roller, and: the Minas Gerais road programme. However, in reality, any reference to the so-called SEA is effectively only referring to EIAs for mega-projects.

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380 PELLIN, Angela, et. al., op. cit., p. 30.
Two other SEA experiences in Brazil are also questionable: the Brazil-Bolivia pipeline construction of 1990, and; the Madeira River hydropower plants complex. Both of these SEAs were made in response to a pre-requisite of the Interamerican Development Bank loan for their construction. However, in the first case, the study was made after the Brazilian government had already given an environmental license and, in the second case, the political decision granting sectoral planning for implementation of the complex had already been made, and after the environmental license procedure had been started, attesting to the nature of these evaluating instruments as being EIAs for mega-projects rather than true SEAs.\footnote{Idem.}

The Interamerican Development Bank and the World Bank have been influential in promoting the SEA as the appropriate instrument for establishing an integrated approach to project evaluation in Brazil. However, the approach of these agencies in doing so has proved limited or lacking in any actual strategic effect. While the SEA approach they have been advocating has given the impression of providing a broad approach of the benefits, impacts and social and environmental risks of individual projects, this SEA approach does not even refer to PPPs at any point, as there is no provision for later strategic discussion after decisions have already been taken.\footnote{Ibidem, p. 34.}

Another confusion surrounding the SEA in Brazil is the so-called Integrated Environmental Assessment (IEA), which has been used to study cumulative impacts on a river basin resulting from the construction of a hydropower plant, as a complement to the Brazilian energy policies and plans, including the construction of many vast “mega” dams in the Amazon region. The IEA as an environmental evaluation (impact assessment), differs from the SEA because it is used to evaluate and analyze impacts on the basin within pre-existent policies, plans or programmes, and which can be used by the SEA to identify and evaluate proposed scenarios in the PPPs.\footnote{TUCCI, Carlos E. M.; MENDES, Carlos Andre. *Avaliação ambiental integrada de bacia hidrográfica*. Ministério do Meio Ambiente. Brasilia: MMA, 2006, p. 236.}

The UN Convention on Biological Diversity [1992], to which Brazil is a Party, states at Article 14(1)(b), that each Party shall take adequate measures
to assure that the environmental negative impacts on the biological diversity are considered in its policies and programmes\textsuperscript{384}. By not so doing, Brazil is not fulfilling its compromise taken on the Convention.

According to Sanchez\textsuperscript{385}, the SEA does not progress in Brazil for several reasons. The lack of legislation is an obvious reason, followed by an as yet immature debate on the topic, especially in the energy sector, being the hydropower plants the best examples, such as Sao Luiz do Tapajos and Belo Monte dams. The experience with this sector shows that every time projects with huge impact potential are evaluated under the EIA and the environmental license, the impacts are “ignored”, as well as the indigenous people and traditional communities. Sanchez concludes that the actual contribution that can be made by the SEA is highly uncertain. He finds little discussion or research studies about the potential for the SEA to bring about less controversial PPPs, and concludes that the SEA should not be limited to projects already subject to environmental licensing, but should better consider public policies whose social and environmental effects are currently ignored, both by decision-makers and society alike\textsuperscript{386}.

As part of the SEA discussion its scope – only environmental matters or also other issues – and in Brazil, as also mentioned, there is a noticeably “invisibility” of indigenous and traditional communities: it is important to mention that according to the laws and decrees on EIA mentioned earlier, the social benefits and also the impacts caused on the area and on the people living there should included in the projects.

Furthermore, it must be highlighted the existence of the Study of Indigenous Component (\textit{Estudo de Componente Indigena – ECI}). In the environmental license procedure of a project or activity, the ECI is mandatory for those that includes Indigenous Territories and its surround area, according to the Interministerial Ordinance 419/2011, reedited in 2015 to make the process faster, which confirms the invisibility the government gives to those people and the understanding of those assessments as “mere procedures”


\textsuperscript{385} SANCHEZ, op. cit., 2017, p. 177.

\textsuperscript{386} Ibidem, p. 177-178.
that disturb the use of resources and the economic growth. This Ordinance regulates the actions of the National Indigenous Foundation (FUNAI); the Cultural Palmares Foundation (FCP) that deals with “quilombolas”, a traditional community in Brazil; the National Historical and Artistic Heritage Institution (IPHAN); and the Health Ministry regarding environmental licensing at federal level. It is the FUNAI and the FCP duty to evaluate the prospective impacts in the licensing project to indigenous people and “quilombolas”, respectively.

To exemplify the importance of the SEA as a wider environmental and social assessment in the context of indigenous people and traditional communities in Brazil, the Belo Monte hydropower plan must be mentioned. It was built in the middle of the Amazon rainforest impacting directly and indirectly several indigenous territories, which are of their permanent possession and any use of it must be done with previous consultation and consent, according to Article 231 of the 1988 Brazilian Federal Constitution. This previous consultation is an obligation in Brazil due to the 169 Convention of the World Labour Organization, which Brazil ratified. In the Belo Monte dam, the EIA were delivered to the competent environmental institution without any ECI and the indigenous leaders protested against the decisions taken without any participation of their people. Several judicial decisions were taken in order to paralyze Belo Monte’s construction because of the lack of indigenous consultation. However, the hydropower plant was built, but its operation is currently suspended, due to judicial decision, because of the lack of sanitation, which was one of the conditions that the building company should provide in order to operate it.

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388 For all, see TRF1 (Federal Regional Court of the First Region), Appeal n. 0025999-75.2010.4.01.3900-PA, judged on 26 March 2014.
389 According to the TRF1 (Federal Regional Court of the First Region), decision n. 0053298-77.2016.4.01.000- PA, judged on 06 April 2017.
5.2. SEA in the EU

In the European Union, the SEA takes its legal basis from:

- the Protocol on Strategic Environmental Assessment (SEA Protocol, Kyiv 2003) to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)\(^{390}\) and;

- the Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, also known as the SEA Directive\(^{391}\).

The Protocol is an international law instrument adopted through the United Nations Economic Commission for Europe (UNECE). It was adopted in 2003 and ratified in 2008 during the Ministerial “Environment for Europe” Kyiv Conference, “ensuring that individual Parties integrate environmental assessment into their plans and programmes at the earliest stages, and thus help in laying down the groundwork for sustainable development”. The Protocol entered into force on 11 July 2010\(^ {392}\) and has 38 Signatories and 32 Parties from within and without the EU\(^ {393}\).

The Protocol\(^ {394}\) intends to include environment and health considerations into the preparation and adoption of plans, programmes and also policies and legislation, by establishing clear, transparent and effective procedures, providing for public participation and designing future sustainable development, as per the objectives set out in Article 1.

The difference between the SEA Protocol and the EIA in the European Union legislation can be summed by the following figure:

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SEA is well defined in the Article 2(6) of the Protocol as:

“[…] the evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying-out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme.”

The Protocol states that the SEA is mandatory for energy, town and country planning or land use and other matters listed in Annexes I and II, including thermal power and large dams and reservoirs. The step-by-step procedure for the analysis and communication of environmental and health considerations requires screening, scoping, documentation, consultation,
decision-making, and monitoring. Screening is the first step, in order to
determine whether the SEA is necessary in the given context, followed by
scoping with the determination of the relevant information to be included in
the environmental report, which shall contain the information specified in
Annex IV.

To improve transparency and trust in the decision-making process, public
consultation is required, making the draft plan or programme and the
environmental report available at a reasonable time to public, providing
opportunities for public opinion to be expressed. It shall also be made
available for health and environmental authorities, or even transboundary
consultations, where applicable. The decision that adopts the plan or
programme must take account of the conclusions of the environmental
report, the preventive measures to reduce or mitigate the adverse effects,
and the comments received from the general public and the authorities. After
the plan or programme has been adopted, its effects on environment and
health must be monitored to identify early unforeseen adverse effects and to
undertake appropriate actions, the results of which must be made available.

The SEA Directive transposes the Protocol in the EU law. The Directive
aims (see Art.1), at a high environmental protection and to integrate plans and
programmes for sustainable development when they might cause significant
effects on the environment. Plans and programmes are understood very
widely in the Directive including modifications and those co-financed by the
European Community, which are elaborated or not by an authority or
required by the legislation. The importance of an environmental assessment
to implement the principle of environmental integration is clear:

“Environmental assessment is an important tool for integrating environmental
considerations into the preparation and adoption of certain plans and programmes
which are likely to have significant effects on the environment in the Member
States, because it ensures that such effects of implementing plans and programmes
are taken into account during their preparation and before their adoption.”

In terms of procedure, the Directive refers to plans and programmes but not to policies. There are some sectors for which all plans and programmes require an SEA, including energy, town and country planning or land use (Art. 2 (2)(a)). Others, such as the use of small areas at local levels or minor modifications, should be assessed only if Member States determine that they might cause significant effects on the environment, examining it case-by-case or/and by specifying types of plans and programmes, as per Annex II. Plans and programmes that solely serve national defence or civil emergency or that have financial or budget content, are not subject to this Directive, having the same requirements as the Protocol on this subject.

To summarise the Directive, the procedure runs as follows:

a) the environmental assessment shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative legal procedure to adopt it;

b) an environmental report with relevant information needs to be prepared and made public, according to Annex 1, including identification, description and evaluation of the likely significant environmental effects and reasonable alternatives considering its objective and geographic scope;

c) the general public shall be consulted and their views taken into account;

d) if the plan or programme is likely to have significant effect in other Member States, there must be consultations with the relevant authorities and the public concerned, which should also should be taken into account;

e) if the obligation of the assessment concerned runs simultaneously with another – such as the conservation of wild birds or water policy – these other assessments must be coordinated or treated together under in joint procedures, and to avoid duplication;

f) the decision on the plan or programme shall be informed to the authorities, to the public and to other Member States, where applicable, including a summary with all the considerations, consultations and reasons for the final adoption;

g) carry out monitoring of the results and make them available to the public.
The SEA Protocol and the SEA Directive have similar procedures, objectives and scope. However, the Protocol includes health considerations, going beyond the purely environmental, as the Directive does also. The Protocol further states that environment and health concerns must be integrated to the preparation of policies and legislation, not only plans and programmes as is the case under the Directive. The Commission elaborated a Guidance on Integrating Climate Change and Biodiversity into Strategic Environmental Assessment in 2013. It specific talks about impacts that may appear to have positive climate change benefits, like renewable energy infrastructure, but that might affect biodiversity (wind turbines on bids, for instance). Integrating climate change and biodiversity into the SEA is a challenge, but the exploration of reasonable alternatives can be made, as well as the assessment of significant effects and the identification of monitoring measures, and providing the opportunity to identify negative impacts or mitigation pathways at an early stage, as well as vulnerability.

Regarding the application and effectiveness of the SEA Directive, the European Commission has issued two reports in 2009 and 2017 respectively. The 2009 Report took into account the experience of the Member States from 2004 to 2007 and the 2017 Report assesses the implementation of the Directive from 2007 and 2014. Based on a questionnaire addressed to the EU Member States about the application of the SEA Directive, the Report highlighted the limited experience in the application of the SEA, but

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398 Idem.


gave a positive picture of changes in the mindsets of planners. Also, no major problems in the application of the Directive were reported, varying the models of transposition to national legislation\textsuperscript{401}. More transparency on the planning process was reported, and early consideration of environmental needs decreased the need for expensive mitigation measures. Also, an enormous amount of time and resources are spent in public consultation procedures. However, the overall conclusion is that it contributes to systematic and structured considerations of environmental concerns\textsuperscript{402}.

According to the 2017 Report, “The strategic environmental assessment (SEA) process is about helping policy makers take well-informed decisions, based on objective information and the results of consultation with the public/stakeholders and relevant authorities”\textsuperscript{403}. Also, all Member States have transposed the SEAD and have not encountered challenges in determining the scope of its application. The main challenges faced related to the preparation of the environmental report because of the availability and the quality of the data and the experience of the experts and the authorities in charge of preparing it and reviewing its quality. As for alternatives to be presented, Member States have defined into their legislation locational; qualitative and quantitative (changing scale or size or intervention); and technical alternatives (design of future projects)\textsuperscript{404}. The Report concludes that all Member States have acknowledged that the SEA has influenced the planning process and improved the quality of plans and programmes, which in turn is more likely to influence small scale and regional plans and programmes rather than national plans and programmes, depending on the final decision and the specifics in the decision-making process. In the period analyzed, the Member States did not raise major implementation concerns, however major uncertainties remain about some concepts, such as what “reasonable alternatives” actually means\textsuperscript{405}.

\textsuperscript{401} EUROPEAN COMISION. Report 2009, op. cit.
\textsuperscript{402} Idem.
\textsuperscript{403} EUROPEAN COMISSION. Report 2017, op. cit., p. 2.
\textsuperscript{404} Idem.
\textsuperscript{405} Idem.
Conclusions

The world energy matrix is currently based on fossil fuels, the burning of which is responsible for the GHG emissions that have caused climate change. Renewable energies is seen as the sector with the biggest potential for mitigation of the emissions leading to climate change. However, renewable energies also imply negative social and environmental impacts, so that the transition to renewable energy sources demands the integration of these considerations into national level planning and the evaluation policies, plans, programmes, projects and legislation.

Regarding Brazil and EU commitments on reduce climate change, it was found that they are insufficient, according to independent tracking. Furthermore, the cooperation between them as per the Sector Dialogues shifted in their fourth phase away from environmental issues, climate protection and energy efficiency, which confirms the evaluation on its effectiveness of protection policies.

The SEA is the model instrument devised at UN level for evaluating the environmental impacts of PPPs. It is very important for the early examination of energy sector projects, to make provision for their potentially cumulative and synergetic impacts. The comparison made between the approaches adopted to applying Strategic Impact Assessment in Brazil and the EU, reveals the lack of any legislative provision for SEA, and therefore, this study relied on the literature. While the literature names various examples of SEAs in Brazil, in reality these assessments amount to no more than Environmental Impact Assessments for various mega-projects. It is fair to conclude that the instrument referred to as “SEA” in Brazil cannot be considered as such in practice. These examples are, rather, EIA instruments that have been applied to mega-projects where synergetic impacts have been dealt with. Further, the EIAs implemented do not consider the social impacts on indigenous people and traditional community. In the EU, in the contrary, the SEA has been applied, but with little potential on large scale PPPs and also with some problems on the definition of ‘alternatives’ on the report. By contrast, the EU has implemented the UN Protocol by means of an EU level Directive, which can be researched through reliable and periodic reporting on its implementation and evaluation, including what
needs to be improved and how the Member States have experienced this implementation of the SEA instrument so far.

There are similarities to be found between the literature in Brazil and the EU: both declare the same goals and principles for the implementation of the instrument, and both recognize the need for improvement and that the procedures might vary. However, it must be said that the literature, in Brazil and internationally, finds that the SEA should be applied to policies, plans, programmes and also legislation, and that the EU Directive only considers plans and programmes, despite the fact that the Protocol also states that it might be applicable to policies and legislation. Also, while the Protocol addresses environmental and health effects, the Directive only relates to the environmental effects of plans and programmes.

Perhaps the most striking difference between Brazil and the EU on the matter is that the literature in Brazil places considerable importance on social effects, mainly as regards indigenous people and traditional communities because of their constitutional right to their land and culture, highlighting the unique potential impacts of infrastructure projects on the environment in Brazil.

The reasons why the SEA has being discussed in Brazil and in the EU and adopted in the EU vary. In Brazil, after the literature review, some so-called SEAs were a pre-requisite from international funding agencies to grant loans for mega-projects, while in the EU the environmental and planning concern guided its adoption. Regarding the energy sector, Brazil’s use of environmental evaluation and strategic and integrated assessments mostly relate to vast and controversial hydropower plants, mainly in the Amazon region. In the EU, the SEA is mandatory for PPPs regarding energy.

Finally, despite of the EU having many years of experience with SEA legislation and its implementation – and while Brazil has given no legal form to it as such – the SEA remains to be improved in order to meet its full potential to better address environmental impacts on PPPs, through its influence on decision-makers and by including the full range of social actors in the process of national planning for large-scale infrastructure projects.
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Strategic Environmental Assessment for renewable energies: Brazil and the EU compared

Paula Galbiatti Silveira


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PART 2. CLIMATE CHANGE AND ENERGY: GOVERNANCE COMPARED


Chapter 9

Environmental legislation and changes in Brazilian greenhouse gas emissions: from the New Forest Code to the World Climate Conference (COP 23) Bonn

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ABSTRACT

In Brazil over recent years, changes in the climate and levels of GHG emissions mean that deforestation no longer drives emission of these gases. With the approval of the New Forest Code [2012], new regulations and challenges for the Brazilian forestry sector have brought about changes in GHG emissions. The purpose of this study was to review the scientific literature concerning shifts in the GHG emission levels induced by changes in the key sectors of land and forest use and of agriculture and animal husbandry, particularly with regard to the Brazilian environmental legislation. The chief advances, opportunities and challenges implied by the adaption to the main emission targets and other relations of the Conferences of the Parties on Climate Change (COPs) were described. The main command and control instruments related to the subject were analyzed, based on literature review and document analysis. The results suggest that the goals established by Brazil’s National Plan for Climate Change (PNMC) can be met, provided that economic instruments are created and stimulated, e.g., Payments for
Environmental Services (PES), Environmental Reserve Quotas (ERQ), economic incentives for forestry restoration, and policies of Reducing Emissions from Deforestation and forest Degradation (REDD+).

**Keywords**: Climate Changes, land and forest use, agriculture and animal husbandry, Brazilian environmental legislation, command and control instruments.

1. Contextualization of the subject

In 1992, Rio de Janeiro hosted the United Nations Conference on Environment and Development (UNCED), known as the Rio Earth Summit or Rio92. This international framework for the dissemination of sustainable development concepts resulted in the creation of the United Nations Framework Convention on Climate Change (UNFCCC). The goal is the stabilization of the concentrations of greenhouse gases (GHGs) in the atmosphere at a level that would prevent anthropogenic interference with the climate system, giving the ecosystems sufficient time for a natural adaptation to the climate changes, without threatening food production and allowing for sustainable economic development (UNFCCC, 1992).

For the UNFCCC (1992), the term “climate changes” relates to shifts in the climate caused directly or indirectly by human activities that can affect the atmospheric composition, and the emission process is defined as GHGs released per area and period. Some additional key concepts related to any GHG-releasing process or activity include: source - aerosol or a precursor of a GHG in the atmosphere; reservoir - components of the climate system where GHG or a GHG precursor is stored; and sinks - processes, activities or mechanisms that remove GHGs, aerosols or a GHG precursor from the atmosphere (UNFCCC, 1992).

With regard to the global emission estimates according to UNFCCC targets for 2030, a reduction of approximately 29 GtCO₂eq would be required, whereas emissions are estimated to reach 61.5 GtCO₂eq by 2030, according to Gouvello (2010). In this context, the annual emissions from Annex I (industrialized) countries would increase from 21 to 22.1 GtCO₂eq
by 2030, while most global emissions (50% to 70% of the potential for emission mitigation) would come from non-Annex I (developing) countries.

1.1. History of GHG emissions and the forestry sector in Brazil

The sectors accounting for GHG emissions in Brazil: energy, industrial processes, agriculture and animal husbandry, waste, and land and forest use changes. The subcategories include fugitive emissions, emissions from fossil fuel combustion (energy), emissions from hydrofluorocarbon (HFCs), chemical industry, metal production, mineral products, use of sulfur hexafluoride (SF6), non-energy use of fuels and solvents (industrial processes), rice cultivation, enteric fermentation, animal waste management, burning of crop residues and agricultural soils (agriculture and livestock), treatment of domestic effluents, treatment of industrial liquid effluents, disposal of solid waste and waste incineration, changes in land use, liming and forest residues and land use, land-use change and forestry (LULUCF).

In 2010, the forestry sector represented the main source of GHG emissions in Brazil, a fact that shifted over the years owing to environmental monitoring and control programmes. For Brazil, this is a step towards reaching some of the United Nations sustainable development goals (SDGs) with a view to reaching the targets of climate and forest change to be achieved by 2030, e.g., urgent measures to combat climate change and protection, recovery and promotion of sustainable forest management and use (UNO, 2015).

1.2. Changes in land use and GHG emissions

For Shayer and Betiol (2009), the initial goal of Brazil’s National Plan for Climate Change predicted a reduction in average annual deforestation of 40% between 2006 and 2009 compared to the average of the previous 10 years (1996-2005), corresponding to 19,500 km² of felled forest. In 2008, approximately 12,000 km² were deforested and in the two following quadrennia (2010-2013 and 2014-2017), the reduction per period should
be over 30%, compared to the average of the previous four years. In 2017, the annual deforestation rate of 5,000 km² is expected to prevent 4.8 billion tons of CO₂ from being released into the atmosphere. If these goals are met, Brazil will no longer emit 4.8 billion tons of carbon dioxide into the atmosphere.

Comparative analyses of the two National Inventories of Greenhouse Gas Emissions and GHG reduction targets become increasingly necessary. In December 2010, Decree 7.390 was established, regulating the Articles 6, 11 and 12 of Law no. 12.187, of 29 December 2009, which set Brazil’s National Plan for Climate Change (PNMC) in force and established other measures; Article 5 deals with the projection and goals of GHGs, as described below:

“Art. 5 The national greenhouse gas emissions for 2020, detailed in the single paragraph of Art. 12 of Law no 12.187, 2009, are estimated at 3,236 million tonCO₂eq, as detailed in the methodological description in the Appendix to this Decree, containing projections for the following sectors:

I - Land Use Change: 1,404 million tonCO₂eq;
II - Energy: 868 million tonCO₂eq;
III - Agriculture and animal husbandry: 730 million tonCO₂eq; and
IV - Industrial Processes and Waste Treatment: 234 million tonCO₂eq.”

(BRAZIL, 2009)

For Mather and Needle (2000), high deforestation rates in a country are usually linked to population growth and increasing poverty, with shifting agriculture in extensive areas. In Brazil, the historical context was influenced by public policies of agricultural expansion in the 1960s, basically focused on the population occupation of the Midwest and northern regions and by the emergence of new agricultural practices that re-defined the GHG emission matrix of the country.

In the past decades, economic growth was mainly sustained by the availability of large tracts of land for crops and pastures, transforming agriculture and animal husbandry into crucial sectors for the country’s development (GOUVELLO, 2010). According to this author, agriculture and livestock represented on average 25% of the Brazilian GDP in the last decade. Due to the constant expansion of areas used for these activities, a
greater amount of native land had to be converted to fields and pastures, making land use change the main source of GHG emissions in the country.

Deforestation in the Amazon, indicated as the main source of GHG emissions in Brazil, is driven by certain core factors: expansion of urban borders, establishment of agrarian reform settlements, expansion of agriculture, the implementation of new infrastructures, mainly roads, electoral aspects, and other factors (LAURANCE, 1999; LAURANCE et al., 2001; SKOLE et al., 1994; FEARNSIDE, 2006; SOARES-FILHO et al., 2004; ALENCAR et al., 2004; RODRIGUES-FILHO et al.; 2015). In the last 13 years, the contribution of deforestation to the reduction of GHG emissions was around 6 billion, corresponding to two-thirds of the annual global emissions, due to recent efforts of forest protection of the Brazilian government (MMA, 2014; NEPSTAD et al., 2014).

In Brazil, agriculture accounts for one-third of land use change and approximately 257 million hectares were used for agricultural practices in 2008, a number that is expected to expand by 7%, resulting in 276 million hectares in 2030 (GOUVELLO, 2010; SPAROVEK et al., 2010). The agricultural expansion in Brazil resulted mainly from the increase in soybean and livestock production, in detriment of the conservation of the country’s natural resources, as for example the use of areas near riverbanks, expansion of production areas beyond legal limits, removal of native vegetation to implement pastures and plantations, making Brazil the world’s second largest emitter of carbon dioxide (CO2) in 2010 (GOUVELLO, 2010).

The variations in land use changes have been correlated with government policies and legal regulations of agricultural activities in studies conducted in recent years. Mainly the impacts of land use changes on GHG emissions and their relationship with environmental legislation and economic instruments were well-documented (SPAROVEK et al., 2010; BRANCALION et al., 2016; HOUGHTON et al., 2015; LANSING, 2013; ELLISON et al., 2011).

For Brazil, the emission rates in 2014 were reduced by 600 million tonCO2eq, due to the decline of deforestation in Brazil (MMA, 2014). In a global context, Brazil is the only country that met the goal of reducing deforestation-related GHG emissions, as determined at the UNFCCC Durban Climate Change Conference (COP 17) in South Africa in December 2011.
1.3. Brazilian environmental legislation related to the subject

The importance of preserving the environment for future generations through a sustainable development, as reinforced at the Conference for the Human Environment in Stockholm in 1972, is anchored in the Brazilian Environmental Policy (PNMA) (Law 6.938/1981). Article 4, item I of the PNMA deals with the conciliation of economic-social development with the preservation of the environmental quality and ecological balance, currently requiring the involvement of all stakeholders in the process of adaptation and use of natural resources.

At the Rio Earth Summit in 1992, Brazil committed to the reduction of GHG emissions. After this period, the voluntary commitment to reduce GHG emissions was officially formalized in the National Plan for Climate Change in 2008, which defined actions of climate mitigation and adaptation and was approved in Law 12.187 in 2009, and regulated by Decree 7.390/2010.

Law 12.187 established the National Policy on Climate Change (PNMC), with the objectives: reconciliation of economic and social development with protection of the climate system (i); reduction of the diverse anthropogenic GHG sources (ii); enhancing anthropogenic removals by GHG sinks throughout the country (iii); implementation of measures promoting the adaptation to climate change in the three spheres of the Federation (Union, States and municipalities), with the participation and collaboration of the agents or beneficiaries, especially those vulnerable to the adverse effects of climate change (iv); preservation, conservation and recovery of environmental resources, mainly of the great natural biomes considered National Patrimony (v); consolidation and expansion of legally protected areas and promotion of reforestation and restoration of vegetation cover in degraded areas (vi); and estimation of the development of the Brazilian Market of Emission Reduction (MBRE). A special paragraph emphasizes the objectives of the PNMC, which should be along the lines of sustainable development to pursue economic growth, eradication of poverty and reduction of social inequalities.

The Brazilian legislation on climate change is broad and comprises a series of laws and legal initiatives. For example, the Presidential Decree No. 6.263/2007, which attributed the governance of the PNMC to the Inter-ministerial Committee on Climate Change (CIM) and its Executive Group
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(Gex), the National Climate Change Fund (Law 12.114/2009) with decree 7.343/2010, the Environmental Conservation Support Programme - *Bolsa Verde* (Decree No. 7.572/2011), the Programme for Promotion of Productive Rural Activities (Law 12.512/2011). There are also bills (PLs) before the National Congress on possibilities for climate change mitigation. These are the PLs relating to the National System for Reducing Emissions from Deforestation and Degradation (REDD+) (PL 212/2011), the National System of REDD+ (PL 195/2011), and Payments for Environmental Services (PES) (PL 792/2007, PL 276/2013, PL 5,487/2009, PL 312/2015). Recently, the Paris Agreement was ratified by the Presidency of the Republic as a result of the commitments of the Conference of the Parties on Climate Change (COP 21) in 2015. In 2016, COP 23 established new targets and financing conditions to combat climate change, also in the context of the Paris Agreement.

Law 12.651/2012, which established the New forest code, popularly known as the New Forest Code, made several changes to Brazilian environmental legislation that directly interfere with GHG emission options and their mitigation possibilities. The New Forest Code established the Rural Environmental Registry (CAR) to regulate and map the current land use in the country, created the Environmental Reserve Quotas (CRA) where rural properties with little or no legal reserve area have the possibility to establish a “condominium” system with other properties that hold native vegetation with a stock higher than legally required and creates initiatives for the commercialization of ecosystem services, such as the PES.

The New Forestry Code requires further analysis with regard to the difficulty of maintaining the forest cover and the recovery of deforested areas. These difficulties may increase in view of the onerous expenses in the accreditation of rural properties to the CAR defined by Presidential Decree No. 8,235/2014, transactions involving CRAs and not legal regulations on REDD+ and PSA which, when they arise, are not regulated by law.

Therefore, the objective of this chapter was to analyze the emissions of the Brazilian forestry sector for the Legal Amazon (region of all seven states of the North Region (Acre, Amapá, Amazonas, Pará, Rondônia, Roraima and Tocantins), as well as Mato Grosso state in the Center-West Region and most of Maranhão state in the Northeast Region), as defined by
the New Forest Code in function of the new instruments designed to allow the fulfillment of the goals established by the PNMC. The emission record of the Plan for the Protection and Control of Deforestation in the Amazon (PPCDAm) established in 2004 was also used. The opportunities for GHG reduction in the forest context of the Paris Agreement and COP 23 Bonn will also be verified.

2. Methodology

The methodology used in this study consisted of the analysis of scientific articles and Brazilian environmental laws, and material from International Conventions on climate change. Data on the PPCDAm and related economic instruments of the forest code were also analyzed.

3. Results and Discussion

3.1. New Forest Code and GHG emissions scenario

Law No. 12.651/2012 introduces new instruments, such as the Environmental Regularization Plan, the Environmental Reserve Quotas and the Rural Environmental Registry to deal with the Brazilian forest issue. The New Forest Code maintains conservation requirements for legal reserves (LRs) and areas of permanent protection (APPs) (Tables 1 and 2), i.e., land that may not be cleared (SOARES-FILHO, 2014). The restitution or recovery of APPs in agreement with Decree 8.235/2014 of the Rural Environmental Registry, reinforces the characteristics on the examples of existing APPs and their mandatory restitution or recovery in case of loss of natural vegetation in these areas.

Table 1 – Conservation requirements of permanent protection areas (APPs), as defined by the New Forest Code (Law 12.651/2012). CU – Conservation Units; MF - Fiscal Modules.
### Recovery of APPs

<table>
<thead>
<tr>
<th>Types of APPs</th>
<th>Property &lt; 1 MF</th>
<th>Property of 1 - 2 MF</th>
<th>Property of 2 - 4 MF</th>
<th>Property of 4 - 10 MF</th>
<th>Property &gt; 10 MF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water courses</td>
<td>5 meters</td>
<td>8 meters</td>
<td>15 meters</td>
<td>Respective strip</td>
<td>Respective strip</td>
</tr>
<tr>
<td>Permanent springs and sources</td>
<td>15 meters</td>
<td>15 meters</td>
<td>15 meters</td>
<td>15 meters</td>
<td>15 meters</td>
</tr>
<tr>
<td>Natural lakes and ponds</td>
<td>5 meters</td>
<td>8 meters</td>
<td>15 meters</td>
<td>30 meters</td>
<td>30 meters</td>
</tr>
<tr>
<td>Veredas (watercourses in the Cerrado region)</td>
<td>30 meters</td>
<td>30 meters</td>
<td>30 meters</td>
<td>50 meters</td>
<td>50 meters</td>
</tr>
</tbody>
</table>

**Maintenance of residences and infrastructure associated with agroforestry activities**

Consolidated, provided that the life or physical integrity of persons is not endangered

**APP in an integral protection conservation unit (CU)**

Unconsolidated areas

**River basins considered critical**

Targets exceeding those established for the consolidated areas

<table>
<thead>
<tr>
<th>Recomposition Requirement</th>
<th>10%</th>
<th>10%</th>
<th>20%</th>
<th>20%</th>
<th>20%</th>
</tr>
</thead>
</table>

Agrarian Settlement Reform Program (mandatory recovery)

Observed the limits of each individually demarcated area, object of contract of use concession, until registration by the National Institute of Colonization and Agrarian Reform - Incra

The first draft of the Forest Code in 1965 served as an effective legal restriction to reduce deforestation on private lands (NEPSTAD et al., 2014). The new forest code states that for properties where the native vegetation in LRs exceeds the minimum value required by law, the Environmental
Reserve Quotas (CRA) can be negotiated with and/or payments obtained for environmental services (PES) from properties that do not have the minimum LRs required by law or governments, private companies and non-governmental organizations (NGOs), The only condition, in the case of CRA, is that of belonging to the same biome.

Tabela 2 – Tipos de Regularização de Reservas Legais (RLs) conforme a Nova Lei Florestal (Lei 12.651/2012).

Table 2 - Forms of regularization of Legal Reserves (LRs) according to the New Forestry Code (Law 12.651/2012).

<table>
<thead>
<tr>
<th>Recovery of legal reserves (LRs)</th>
<th>Recovery</th>
<th>Compensation</th>
<th>Natural Regeneration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Completed within 20 years</td>
<td></td>
<td>Property in CAR and even Bioma and LR</td>
<td></td>
</tr>
<tr>
<td>Every 2 years a minimum of 1/10 of the total area</td>
<td>Outside the State, areas identified as priority (Union or States)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interplanting of native, exotic or fruit species in an agroforestry system, economic exploitation allowed</td>
<td>Watersheds, ecological corridors, conservation of protected areas and conservation or restoration of ecosystems, endangered species</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Up to 4 MF with LR</td>
<td>Donation or concession granted by owners of rural property with insufficient Legal Reserve area to the public agency in charge of the Conservation Unit of an area located within a Conservation Unit of public domain, to be created or depending on land regularization.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owners or tenants of rural properties in the Legal Amazon and their heirs have a LR index of more than 50% of forest cover and did not suppress the vegetation at the allowed percentages may use surplus LR to declare areas as environmental service areas, Environmental Reserve quotes (CRA) and other instruments</td>
<td>Area occupied with native vegetation; new conversions for alternative land use forbidden</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exempt from promoting recovery, compensation or regeneration for required percentages</td>
<td>Allow natural regeneration of the vegetation in the LR area</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The Rural Environmental Registry (CAR) is a tool to check whether the land use on rural properties can become financially costly for small landowners. Because of this and other reasons, such as the depletion of the command and control rules related to the mandatory inclusion in the registry and the prorogation of the respective registration deadlines over the last years, the vast majority of rural landowners, indigenous lands and other Brazilian territories failed to adhere and overlapping territories were declared in the platform of the System CAR (SICAR), making the registration process incomplete and questionable.

The contribution of Brazilian government programmes such as the creation of the PPCDAm (Plan of Action for the Prevention and Control of Deforestation in the Legal Amazon), aside from the new forest code, the inclusion of the Public Ministry and other ministries widely disseminated the awareness for the issue of combating deforestation. The country was also affected by restrictions in the consumption of products from recently deforested areas in the Amazon, due to campaigns launched by NGOs such as Greenpeace, named “Soy Moratorium” and “Zero Deforestation” (NEPSTAD et al., 2014, TOLLEFSON, 2016).

For Nepstad et al. (2014), the deforestation deceleration prevented emissions of 3.2 Gt of CO₂ into the atmosphere and ranked the country as world leader in mitigating climate change. In the period 2004-2016, the historical series of annual deforestation rates showed a reduction in deforestation rate of 72% for the entire Legal Amazon over more than a decade of monitoring (Figure 1). According to Nepstad et al. (2014), the results of public policies for the sector, economic restrictions and NGO campaigns on deforestation and products from these areas as well as the new forest code explain this reduction in deforestation rates and respective reduction of GHG emissions for the sector.

The data for a change in the pattern of Brazilian emissions shows a reduction in deforestation between 2009 and 2014 and a slight increase in 2015 and 2016. The increase in deforestation rates in 2013, may have occurred for being the first year of implementation of the new forest code with intense debates about the amnesty of rural producers who deforested before 2008, followed by an increase in 2015 and 2016, caused by the extension of the time limit of insertion in the CAR, with a drop in the command and control
standards. According to Tollefson (2016), this raises concerns whether the country could be losing control over a decade of reduction in deforestation rates.

In 2012, the deforestation rate was the lowest of the entire period between 2004 and 2016, with 4,571 km² in the Legal Amazon. Thereafter, deforestation rates rose again until 2016. According to Tollefson (2016) the rates increased from 4,571 in 2012 to 7,989 km² between August 2015 and July 2016, representing significant increases of 75% and 29% for the first and second period, respectively. The trends of increasing deforestation levels can be explained by the implementation of the new Forest Code in 2012 (see Figure 1).

Figure 1 – Historical data series of deforestation rates in the Legal Amazon (km²/year) of the Plan of Action for the Prevention and Control of Deforestation in the Legal Amazon (PPCDAm).

For the historical analysis of Brazilian GHG emissions between 1970 and 1989, data were available to calculate GHG emissions for the sectors energy, industrial processing, agriculture and animal husbandry, and wastes. Highest GHG emission rates of this period were found for the sectors agriculture and animal husbandry (4,527,024,939 t CO2eq) and energy (3,245,841,770 t CO2eq) (DE AZEVEDO, 2016). In the period from 1990 to 2015 however, aside from the sectors of industrial processes, agriculture and livestock and residues, the sector of land use change was also included, and GHG emissions rates were highest for the sector land use change (37,148,128,230 t CO2eq), followed by agriculture and animal husbandry (9,292,676,279 t CO2eq) and land use (7,969,671,352 t CO2eq) (DE AZEVEDO, 2016).

3.2. Future Challenges of the New Forest Code

The new Forest Law is not free of some environmental setbacks, e.g., the withdrawal of environmental protection of sensitive areas, granting of amnesty for fines imposed for violations of the former environmental legislation, permission to maintain agricultural and livestock activities and infrastructure in protected areas, and the non-compulsiveness of a total recovery of the native vegetation, ruling out the possibility of forest restoration of 29 million hectares across the Brazilian territory (BRANCALION et al., 2016; RIBEIRO, 2014). Neglecting the environmental impact caused by these setbacks impairs the achievement of more ambitious targets for reducing GHG emissions for the land use sector as well as the promotion of improvements in the environmental quality and ecosystem services provided by forests.

In 2016, the total area registered in the Rural Environmental Registry (CAR) corresponded to 406,280,957.62 ha, in 3,198,327 properties (BRAZIL, 2016). With regard to the regularity of the properties, an area of 46,091,209.41 ha was registered in 45,502 properties while 213,327,694.26 ha in 1,586,654 properties adhered to the Environmental Regulation Plan (PRA). Another 2,924,146 real estates need to regularize legal reserves and 1,239,427 have to restore areas of permanent protection, corresponding to areas of 149,792,665.78 ha and 3,482,992.56 ha, respectively (BRAZIL, 2016).
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Considering some factors related to PES, the practice of could generate legal uncertainty, for not having been regulated so far, when applied in APPs and LRs for only a group of small or large landowners, involving payments to only a group of rural landowners and not all (GANEM, 2015). Along with the possible scenario of legal uncertainty, there is the possibility of increasing deforestation rates if the CAR fails to achieve the registration of the entire Brazilian territory, leading to a weakening of the legal command and control norms and a decline in ecosystem carbon services in the APPs and LRs of 53%, as well as shrinkage of the areas to be recovered (GANEM, 2015, BRANCALION et al., 2016). Considering the variation in the historical series covering 12 years of the PPCDAm, the states with highest deforestation rates were Mato Grosso, Pará and Maranhão (Figure 2).

Figure 2 – Historical data series of changes in deforestation rates (km²/year) in the states of Legal Amazon of the Plan of Action for Deforestation Prevention and Control in the Legal Amazon (PPCDAm) in the periods 2004-2015 and 2014-2015.

As an initiative for the reduction of global GHGs by the Paris Agreement, the signatories were encouraged to implement, support and include actions destined to increase carbon stocks in developing countries and through Intended Nationally Determined Contributions (NDCs). In Brazil, the INDC or NDC are directed to implement REDD+ activities and pay for the results, in compliance with the new Forest Code; the reduction of illegal deforestation to zero in the Brazilian Amazon, the restoration and reforestation of 12 million hectares of forests by 2030 for multiple uses, as well as compensation for greenhouse gas emissions from legal suppression of vegetation by 2030 (BRAZIL, 2015, UNFCCC, 2015). In the scope of COP 23, the call for an increased volume, flow and access to funding of climate projects, transferring enhanced capacity and technology from the developed to developing countries, was articulated. Moreover, the commitment of mobilization of US$100 million on the part of the developed countries together with the construction of NDCs per country by 2030 was re-affirmed (UNFCCC, 2016). In addition the resolutions of COP 23, in consensus with the Paris Agreement and their rapid entry into force through intended NDCs, will have a direct effect on reducing GHG emissions and a rapid adaption to climate change, supporting the SDG agenda.

According to the UNFCCC goals for a reduction of 29 GtCO2eq by 2030 and according to data on a GHG emission reduction target of 1,404 million tonCO2eq for land use change in PNMC, in 2014, Brazil accounted for 6 billion tons of CO2 or 3.2 GtCO2eq (NEPSTAD, 2014, GOUVELLO, 2010, MMA, 2014). In this context, alternatives such as REDD+, carbon PSA and the valuation of CRAs, based on maps of land use and vegetation cover of CAR represent possibilities for reconciling the option of preserving natural areas with a reduction in deforestation buy commercializing services provided by nature, such as carbon storage, reducing GHG emissions.

3. Conclusion

The New Forest Code still needs improvement, mainly in terms of conservation strategies of existing forests and recovery of deforested areas. To make the new forest code and control mechanisms more effective, in
order to prevent a further increase of deforestation rates and consequently GHG emissions, the country will need to reconcile information about the current status of native vegetation with economic instruments alongside other public policies, by creating incentives for forest conservation.

Therefore, Brazil has the status of a world leader in the reduction of GHG emissions in view of the reduction in deforestation rates and will most likely play a prominent role when the new goals of COP 23 enters into force. The implementation of the valuation of ecosystem services by the PES, REDD+ and CRAs, among other mechanisms, are some of the possible governmental strategies to promote and warrant that the future targets for GHG reduction are met, along the lines of the SDGs.

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Chapter 10

Traceability and the exchange of genetic resources in Brazil and EU relations

Vanessa Lemgruber

1. Introduction

The discussion on the legal protection of biodiversity resources and associated traditional knowledge is not a recent one, and since the advent of the United Nations Convention on Biological Diversity (CDB) and the Nagoya Protocol, guidelines have been established, based on three main objectives: biodiversity conservation; the sustainable use of its components, and; the fair and equal division of the benefits provided by the use of genetic resources. Ensuing debates continue in international forums and at national level. The phenomenon of “biopiracy” – or misappropriation of biodiversity resources with or without access to associated traditional knowledge – results from the development of biotechnology and a growing green market, where maximum profits are sought from of natural resources, plundering nature and encouraging irregular access to existing genetic variability.

This contribution explores the frameworks for monitoring and traceability of genetic resources under the CBD, the Nagoya Protocol and legal measures in Brazil and EU regulations. The objective is to identify the gaps in Access

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to Genetic Resources and Benefit Sharing (ABS) legislation between EU Member States and Brazil, and to identify regulatory and policy solutions, particularly on traceability issues. For this purpose, the perceptions and practices identified in other studies are relied upon.

This paper is based upon three premises from the report of Professor Elisa Morgera407. Firstly, “the premises that different actors have different approaches to genetic resources that are relevant in regulating ABS. Actors involved in upstream activities include collections (e.g. botanic gardens, culture collections and seed archives) and academic research institutions. These actors would be involved in activities like the import, storage, exchange, description and testing of genetic resources, as well as basic and non-commercial research on them. Upstream actors differ from the downstream actors, such as the biotechnology and pharmaceutical industry, who are engaged in activities characterized by the objective to develop and commercialize products.”

Despite traceability of Genetic Resources (GR) being important for on both sides, whereas both involve in Brazil and EU relations, this paper will mention cases involving downstream actors.

Secondly, the definition of utilization in Article 2(c) of the Nagoya Protocol covers all possible uses of GR, including researchers having or not, a commercialization objective, inasmuch as, “if non-commercial activities were to be exempted from the subject-matter scope of the Protocol and the EU ABS Regulation, it would be very difficult for the provider to keep track of the use of the resource after access. Moreover, any supporting and possibly simplified treatment of non-commercial research may create a possible loophole in the ABS system.408”.

Thirdly, it seems to be pointless to keep specimens that could not be used or transferred in the near or distance future. Since the objectives from non-commercial to commercial research could change in the value chain, no actor should be exempted from formal due diligence obligations409.

In terms of methodology, this study is based on literature review. Primary sources and selected relevant literature on the CBD, Nagoya Protocol, Brazil’s Law 13.123/2015, EU Regulation 511/14, TRIPS and ITPGRFA are also reviewed. The method of approach used in this study is deductive, scientific procedure, with use of bibliographic research technique.

Keywords: Nagoya Protocol – biopiracy – traceability – genetic resources

This paper is structured as follows:

Acronyms
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1. Introduction
   1.1. Objectives
   1.2. Methodology
2. Discussion
   2.1. General Aspects of Traceability
   2.2. Regulatory frameworks
      2.2.1. International Regulation: Convention on Biological Diversity (CBD) and the Nagoya Protocol
      2.2.1.1. CBD, ITPGRFA and TRIPS
      2.2.1.1.1. ITPGRFA
      2.2.1.1.2. TRIPS
      2.2.2. Brazilian Regulation by Federal Law 13.123/2015 and EU Regulation 511/14
      2.2.3. Traceability Systems examples
   2.3. Commentary on Fair and Equitable Benefit Sharing and ILO Convention No 169
3. Conclusion
4. Acknowledgments
5. Figures

Acronyms
ABSCH Access to Genetic Resources and Benefit Sharing Clearing House
CGEN Genetic Heritage Governing Council – in Brazil
CNP National Research Council – in Brazil CoO Certificates of Origin

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2. Biopiracy: Traceability challenges in EU-Razil relations

Brazil is a megadiverse country, hosting between 15 to 20% of all species on the planet. Due to the combination of species-richness and high degree of endemism, it is first on the list of 17 countries considered megadiverse, including Colombia, Indonesia, China, Mexico, South Africa, Venezuela, Ecuador, Peru, India, Australia, Malaysia, Madagascar, Republic of Congo and the Philippines. Together they hold about 70%\(^410\) of the world’s biodiversity.\(^411\) Brazil alone contains 60% of the Amazon Rainforest, which occupies 5,016,136.3 km\(^2\) and where one in ten know species in the world lives.\(^412\) Protecting this biological wealth is to protect the earth’s ecosystem services.


\(^{412}\) https://www.worldwildlife.org/places/amazon
Beyond command and control policies, one of the most effective ways to conserve and preserve nature is by modifying how biodiversity is exploited, favouring non-consuming uses or respecting the ecosystems’ speed of regeneration.

The situation of the Amazonian biome is emblematic and perfectly illustrates the issue: the uncontrolled clearing of the forest for logging or agricultural purposes generates only short-lived income, leaving behind a degraded environment with depleted and effectively useless soils. Since it is difficult for a government body to properly inspect an area of such proportions, finding ways to add value to the standing forest is the obviously effective route to providing protection. More than that, biodiversity can become a great advantage in the pursuit of national development if exploited concerning environmental principles of sustainability, that the polluter should pay, of precaution, equity and participation in policy and regulatory preparation and enforcement.

On value, in the international market, specimens of spiders can reach U$25,000.00; of beetles, U$8,000.00; and snakes, U$20,000.00. A single gram of coral snake venom – *Micrurus frontalis* – may exceed U$30,000.00413.

Although many available strategies and methods to synthesize new drugs, utilization of biological products is preferable because, throughout evolution, molecules have been constructed by natural selection to be able to induce specific responses. For instance, one can isolate active principles of jararaca snake poison to control blood pressure414, in order to produce an antihypertensive. Another example is the Acheflan topical anti-inflammatory, launched by Achê Laboratory in 2004, was a Brazilian innovation obtained from *Cordia verbenácea*, an Atlantic Forest shrub native.

Not only living specimen can be protected, but also traditional knowledge. Whereas it is desirable to share knowledge, it must be respected and valued. Some cases of Amazonian species and their derivatives patented in Europe, Japan or the United States, without full concern with benefit sharing are

413 *Amazônia Eterna*. (2012) [Film]. Brazil: Belisario Franca.

reported on the website Amazonlink.org, a nongovernmental organization that has conducted campaigns related to the protection of biological resources and traditional knowledge. For instance: cupuaçu (*Theobroma grandiflorum*)\(^{415}\) and its derivative, cupulate; Ayahuasca (*Banisteriopsis caapi*), a vine used for teas; and copaiba oil (*Copaifera sp.*).

Genetic resources associated with traditional knowledge is victim of biopiracy. The Rubber Tree Case is one of concerning Brazil and such subject. In the city of Santarém, state of Pará, Brazil, the botanic Alexander Wickham was responsible, as later he came to public and claimed so, for stealing about 70,000 rubber seeds (*Hevea brasiliensis*) in 1876. These seeds were dispatched to places known nowadays as Sri Lanka, Jakarta, Malasya and Singapore, for example\(^{416}\).

Rubber production in these other territories was very successful due the higher level of organization in the English colonies. In Brazil, trees were scatted in the forest. In these other tropical areas, rubber trees were planted in a row, a monoculture, avoiding plagues of fungi or insects that might kill or contaminate the rubber trees.

On the following four decades after the stealing, scientists and British farmers learned how to plant rubber trees by grounding homogeny plantations and extracting latex in an industrial scale. The higher quality and professionalization of this latex production were the cause why from 1914 it conquered international market. Brazil’s monopoly was broken. In 1905, the Amazon region produced 99.7% of the rubber sold in the world; In 1914, the figure had fallen to 39%, reaching only 6.9% in 1922.

Kew Gardens, England’s royal botanical garden in London, formally hired Wickham to do this theft. After hesitations and delays, Wickham made a good selection of the seeds - large quantity, good quality and disease-free - in the Tapajós and Madeira rivers, in the dry land near Boim, a small town next to Tapajós river. Although Brazilian regulations on the removal of native


plant materials from the country were loose, Wickham also succeeded in circumventing Brazilian customs surveillance in the port of Belém. Besides, seed mortality during the sea voyage to Europe was low. Months later, another pack of seeds, also stolen and transferred from Brazil, by another English biopirate, Robert Cross, also on service of Kew.

It was not an isolate case of biopiracy. In 1859, the same Kew Gardens also promoted the theft of various species of Cinchona, shrubs from which quinine peels are removed, used to combat the effects of malaria\textsuperscript{417}. However, back them, there was, in fact, no law at the time forbidding biopiracy on current terms.

More recently, other cases concerning benefit-sharing of genetic resources can be studied, such as the Novartis Case, as a temporal march on ABS application. In order to implement the provisions of the Convention on Biodiversity, Brazil preferred a thematic approach closer to private law, recommending free hiring as a basic idea of this system.

Bioamazonia is a research organization was created in 1999 to deal with issues arising from the management of genetic resources. There is already a task for the Government, both by Brazilian Constitution on its Article 225 and by the CBD, on Article 15 \textsuperscript{418}.

Through the bioprospecting contract between this Bioamazonia and Novartis AG, a representative of the pharmaceutical industry created in 1996 by the merger of Ciba-Geizy and Sandoz, the sending of 10 thousand bacteria strains to the Swiss company for the Original products to both parties was authorized. But only Novartis had exclusive and perpetual right, that may be licensing to others, to produce and commercialize any products containing the original compound, or any other derivative, as well as resulting patents and significant technologies.

The only counterpart to Brazil was the provision of a time-lapse payment from the beginning of the research until the launch of the product.


and the supposed transfer of technology, with the training of the researchers-technicians to harvest the microorganisms and extracts interesting to the Progress of the work, for submission to Novartis. It should be pointed out that the Swiss company was the one who declared the end of the investigation, which greatly hampered the inspection of the distribution of benefits between the contracting parties. The scientist Isaías Raw, of the Butantan Foundation, at the height of the discussions, stated that: it would be a legal way to carry out biopiracy. For less than a minimum wage, when delivering a strain, we will never know what resulted from it and will not reap anything other than to be consumers of the new drugs, at prices that the producing companies will define419. In fact, there was clear misappropriation of Brazilian biodiversity by a transnational company. The uneasiness with the hypothesis of biopiracy practice involved both the national scientific and the indigenous communities, who did not have guaranteed conditional access to the free, prior and informed consent of the knowledge used, and the Brazilian Federal Executive Power, which edited an legally binding act, named as Provisional Measure nº 2.186-16/01, also known as “MP of Novartis”, and suspended the contract signed with Bioamazonia. The arguments put forward by the scientists were based on abuse of power, by disposition of unavailable rights, as well as violation of property rights for landowners from which genetic resources and intellectual property rights would be withdrawn, as they would in future belong to Novartis.

Finally, after the discussion, the original contract was modified in the following terms: the investments would amount to 6.5 million Swiss Francs, and identified microorganisms would be sent to a special Brazilian collection at the Novartis headquarters in Geneva and will be property of Bioamazonia.

The Novartis case reflects the importance of adding value to biodiversity and regulation effectiveness on benefit sharing at the Brazilian level, without neglecting the private instrument for the materialization of ABS.

2.1. General Aspects of Traceability

As how have been demonstrated, biopiracy is an old problem between nations. In a globalized and interconnected world, it is unlikely for one country to keep only for itself its knowledge and genetic resources that may be beneficial for humankind. Market monopolies are neither desirable. The heart of the matter is on sharing profits and benefits from sustainable exploitation. In other words, how biotechnology profits could be shared with all actors.

CBD sought to encourage mechanisms of scientific and technological cooperation, aimed at generating wealth with equity between technology-rich areas and countries rich in genetic resources, in accordance with article 15 of the Convention.

To minimize this problem effects, traceability is the tool. In fact, not only a tool to a fair benefit sharing, but also to genetically modified organisms and consumers’ rights, which is object of another CBD Protocol, Cartagena.

The purpose of traceability is to allow fast and effective actions from the moment that identifies the damage generated. This allows not only to identify and hold accountable the tortfeasor, but also to control or eliminate the harm. In other words, the purpose of monitoring is the traceability back to origin so that benefits from economic exploitation can be shared with the initial source.

2.2. Regulatory frameworks

2.2.1. International Regulation: Convention on Biological Diversity (CBD) and the Nagoya Protocol

The idea of ownership of genetic resources and associated traditional knowledge started to be discussed only in the last decades of the twentieth century, with the Convention on Biological Diversity (CBD), that recognizes the sovereignty of each country over the genetic resources located in its territory.

The discussion started in 1982 with the Word Charter for Nature, followed in 1989 with the ad hoc working group on technical and legal experts and in
1992 discussions during Nairobi Conference, culminating with the advent of CBD.

The CBD is an international agreement. It opened for signature on 5 June 1992 during the United Nations Conference on Environment and Development alongside other multilateral documents such as the Climate Convention and Agenda 21. It establishes guidelines that must be followed to reconcile conservation and development, and it was signed and ratified by most of the countries belonging to the United Nations.

In Brazil, CBD was enacted by Decree Nº. 2.519/1998 and since its entry into force, genetic heritage has become a national wealth, and it is up to each country to legislate on the forms of access and distribution of the benefits generated.

Meanwhile, during the tenth Conference of the Parties (COP 10) in Japan, another step was taken: the signing of a protocol requiring the parties to take action to ensure that access to genetic resources and associated traditional knowledge. The Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of the Advance Benefits of its Utilization, also known as the Nagoya Protocol, due to the city where the conference took place, clarifies and details benefit sharing issues, such as the definition of monetary benefits. Clarified, as well as the modalities of contracts to be used between the parties.

The Nagoya Protocol entered into force on 12 October 2014 and also gives the basic guidelines for the creation of international mechanisms for cooperation, monitoring and regulation, emphasizing the need for conformity of national legislation.

The main contributions were the imposition of associated traditional knowledge, recognizing Traditional communities that hold them, rights over their Intellectual production; The creation of the Genetic Heritage Management Council, with the aim of, among others, deliberating on the most diverse issues legal provisions on biodiversity protection; and the application of sanctions, in the case of action or omission that violated its content.

The Nagoya Protocol aims to implement the Convention’s third objective Biological Diversity, what is the fair and equitable sharing of benefits arising from the utilization of genetic resources. It is the first environmental treaty
multilateral trading system to establish a global Investment, research and development in the genetic composition and alive organism biochemistry. Over time, this treaty can become a key to facilitating bio-economy growth.

The conception of Nagoya Protocol is simple and can be considered as an access of benefit sharing bridge supported by two pillars. The first pillar deals with the access and collection of Genetic resources within the law. It involves a competent national authority with the power to give Prior Informed Consent (PIC) and to establish Mutually Agreed Terms (MAT), which means access must be negotiated and approved by both sides. Although different terms are used, making them legally binding. However, the Protocol goes further, and details traditional knowledge Associated with genetic resources.

The second pillar comprises the responsibilities and obligations of countries to ensure that Genetic resources, and any associated with traditional rights, will be used only in accordance with the laws or requirements of the provider country, besides monitoring utilization of genetic resources. This new responsibility gives assurances: (a) to providers, that their laws Shall be respected; And (b) users, that they do not Will face unfair competition from users Acting out of the law.

CBD on article 17 further obliges parties to designate checkpoints for genetic resources utilization monitoring. By forming an arch on these two pillars, and connecting them, is a mechanism that allows to Know when genetic resources have been Legally obtained. This fundamental innovation was the Creation, under the Protocol, of Internationally Recognized Certificates of Compliance (IRCCs). Legal certainty and transparent procedures are then the fundamentals elements of the Access benefit sharing frame.

When a provider country issues an authorization access, it will be sent to a central Access intermediation and benefit-sharing Operated by the CBD Secretariat in Montreal. It publishes the authorization on the internet where it automatically becomes a Certificate of Conformity - and therefore, evidence Transparency of its legal guarantee. It can then be Used to monitor the use of resources covered by the Certificate and becomes an element Compliance.

The Nagoya Protocol provides legal certainty and transparency for suppliers and users of genetic resources. Not only the State, but primarily traditional knowledge-holding communities, such as indigenous and
quilombola communities will benefit, as they will be paid by companies that uses their knowledge.

There is an extensive debate on how traditional communities will be paid for sharing their knowledge. They are commonly treated as invisible by history and excluded from political debates, including when they affect the individual way of life\textsuperscript{420}. Although state law is not the only right that governs all relations of society, when speaking of traditional populations, it is recurrent the subjugation of these by the state, or the economic power manifested by state activity.

Even knowing there is no answer by this time due the deficient number of cases, it is important to highlight some unsolved lacks on benefit-sharing legislation when it comes about traditional communities: A- the legal framework process was made with no binding consultation of traditional communities; B- Who would be responsible to sign the research consentient term inside a community; C- Benefit sharing can be by pecuniary and non-pecuniary forms. What would be the non-pecuniary forms of benefit sharing that could become recurrent and how measure its fairness; D- How the national benefit-sharing fund will be managed; E- If there is a strong presence of international organisms in the research related to traditional knowledge; F- If communities have used the prerogative of not sharing their knowledge, and whether this refusal has been respected; G- If in these cases of refusal it would be possible for state intervention for authorization if great interest and evidence of health benefits or other equivalent fundamental right of non-knowledge society was demonstrated; and, finally, if most of the companies exploiting traditional knowledge would be micro-enterprises, small businesses or individual microentrepreneurs, and therefore would not need to share benefits.

This last question has its importance supported by article 17, §5º, I of Brazilian Law 13.123/2015. It says microenterprises, small enterprises, individual microentrepreneurs do not have to share benefits.

Having in mind these issues on how proceed to justly share benefits, countries must be part of Nagoya Protocol, besides internalizing a biodiversity-related Law.

Access and Benefit-Sharing Clearing-House is a platform for exchanging information on ABS and a key tool for facilitating the implementation of the Nagoya Protocol On ABSCH map, it is possible to see Brazil is signatory and non-party. EU Union is party to the Nagoya Protocol. All its members ratified, but Austria, Cyprus, Estonia, Greed, Ireland, Italy, Latvia, Lithuania, Poland, Romania and Slovenia are non-parties. (Figure 1).

ABSCH website also provides country profiles according to Nagoya specifications. In Brazil, ABS National Focal Point is the Head Environmental Division Ministry of Foreign Affairs, in Brasília. The only designated competent national authority for the country is the Genetic Heritage Governing Council. And the legally binding Provisional Act nº 2.186- 16 dated August 23, 2001 is the only Legislative measure on ABS.

In European Union, ABS National Focal Point is the Desk Officer for ABS, Environmental European Commission and there are three measures on ABS: EU Regulation No 511/2014 of the European Parliament and of the Council and the Commission Implementing Regulation 2015/1866. Besides those two legally binding legislative instruments, there is a guidelines documents on the compliance measures for users from Nagoya Protocol.

The EU Regulation 511/2014 came into force on 12 October 2014 and focus on compliance measures, such as: due diligence obligation; monitoring user compliance and due diligence declarations; checks; register of collections; and recognized best practices. In its turns, EU Regulation 2015/1866 came into force on 9 November 2015 and details rules regarding register of collections; monitoring user compliance and also best practices.

However, even Brazil not been a party, it does not exclude the country from identification and monitoring because Brazilian Decree No. 2,519, dated March 16 1998, promulgated the CBD in Brazil’s legal order. The CBD on Article 7 says:

421. https://absch.cbd.int/countries/BR
Each Contracting Party shall, as far as possible and as appropriate, in particular for the purposes of Articles 8 to 10:
a) Identify components of biological diversity important for its conservation and sustainable use having regard to the indicative list of categories set down in Annex I;
b) Monitor, through sampling and other techniques, the components of biological diversity identified pursuant to subparagraph (a) above, paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use;
c) Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques; and
d) Maintain and organize, by any mechanism data, derived from identification and monitoring activities pursuant to subparagraphs (a), (b) and (c) above.

The CBD does not have any mechanism capable of sanctioning noncompliance with its precepts; even so, some scientific research institutions and companies with ethical commitments seek to observe its principles\(^{423}\).

**2.2.1.1. CBD, ITPGRFA and TRIPS**

Due to the fact the Nagoya Protocol, at start, applies to all types of all possible uses, the Parties explicitly recognized in Article 4 that the provisions ABS standards also exist in a number of international instruments and processes outside the CDB. Article 4 refers to the relationship of the Nagoya Protocol with Other relevant international instruments and processes related to its purpose, content and operating mechanisms, such as the following: The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA, for its acronym in English); The International Convention for the Protection of New Varieties of Plants; The United Nations Convention on the Law of the Sea; The Antarctic Treaty System; The World Trade Organization

(WTO); The World Intellectual Property Organization (WIPO); The World Health Organization (WHO), and The Commission on Genetic Resources for Food and Agriculture (CGRFA) of the Food and Agriculture Organization of the United Nations (FAO).

In addition, Article 4 links the Nagoya Protocol with the work and practices developed by Relevant international organizations.

This Protocol does not intend to create a hierarchy between international instruments, except where actions would cause a serious damage or threat to biological diversity.

The parts can also be implementing other relevant international agreements. And this Protocol does not apply for the Party or Parties to the specialized instrument in respect of the specific genetic resource covered by and for the purpose of the specialized instrument.

Two other international instruments were selected to compare to CBD along this paper, due its importance.

CBD is the first international treaty to establish the concept of access to genetic resources and benefit sharing and to recognize the rights of traditional communities over associated knowledge. Major provisions of the Convention were summarized above.

After, the ITPGRFA recognised the rights of farmers over the genetic resources conserved by them. These rights on sharing in a fair and equitable manner with the providers are not recognized automatically, because they become available upon the provisions of national laws.

The TRIPS Agreement, that came into effect on 1 January 1995, dates a multilateral agreement on intellectual property and does not recognize the rights of the farmers. The TRIPS Agreement is not in conformity with the CBD. For instance, the recognition of the rights of the plant breeders over the varieties by them developed without recognizing the rights of the custodians of the plant genetic resources.

Provisions of the ITPGRFA and the TRIPS Agreement are summarized below.

2.2.1.1.1. ITPGRFA

The International Treaty was adopted by the General Assembly of the Food and Agriculture Organization of the United Nations (FAO) in November 2001 and entered into force in June 2004. The treaty responds to salient
issues that were not covered by the CBD. ITPGR deals specifically with the nature and needs of the agricultural sector. It sought to strike a balance between the interests of developed and developing countries and between the rights of farmers (varieties of farmers) and breeders (commercial varieties, breeders’ lines).

It is in harmony with the CBD and reflects some of its most important principles, including: The sovereign rights of states over their plant genetic resources; The sustainable use and conservation of plant genetic resources; Access to an exchange of information on “scientific, technical and environmental issues related to plant genetic resources for food and agriculture” with the prospect of contributing to benefit sharing thereafter, Participation in decision making on plant genetic resources.

ITPGRFA is highlighted because is the legally binding instrument pro Farmers’ Rights at the global level, as it recognizes the farmers on a same level of rights of innovators enterprises.

The majority guidance states that the use of genetic resources for specific purposes would be excluded from Nagoya, such as food and agriculture listed in Annex I of the ITPGRFA.

### 2.2.1.1.2 TRIPS

Currently, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), one of the pillars of the global trade regime, Intellectual property rights of the 153 member countries of the World Trade Organization (WTO), does not require the disclosure of the origin of genetic resources or knowledge giving rise to patents, as well as the prior consent of the country and the communities holding the patent. Traditional knowledge - where appropriate - in order to ensure that the CBD principles are followed. Thus, once the genetic material or information is sent illegally to the outside of the holder country, the possibility of a fair distribution of the profits generated and of punishment to the beneficiary of biopiracy is very small. On the contrary, if this illegal appropriation results in commercial innovation, the consumers of the violated country must pay the same as any other to use a product developed on its own natural heritage.

TRIPS and other trade agreements concluded under the WTO are subject to effective sanctions. The CBD, on the other hand, does not provide
sanctioning mechanisms for noncompliance with its precepts, which weakens its application. In addition, the unresolved divergences between the agreements also end up hampering domestic regulation in several countries. For this reason, the compatibility of international agreements is crucial to promoting sustainable and fair bioprospecting. The requirement that access has occurred by reasoned prior consent of its holders and sharing of benefits under the legislation of the country accessed should be considered a legal requirement for intellectual protection.

The very possibility of restrictions on the patenting of living beings or their parts is the subject of debate when trying to associate the two sets of rules. The ideals of the CBD defend the sovereignty of each country over its genetic resources, and it is therefore incumbent on them to decide on the application of patents to all living beings in their territory. TRIPS, in turn, allows its members to exclude plants and animals from patent protection, but requires that microorganisms be patented. In addition, it makes it possible for non-patentable biological material in your country of origin to be patented in another. The United States and Japan, for example, practically do not impose restrictions on the patenting of living beings, while Brazil allows only the minimum required by TRIPS to be patented.

Brazil with other countries rich in biodiversity, support the revision of TRIPS, incorporating mechanisms that allow for the cancellation of patents and punishments of biopirates. Few successes had been achieved in this direction until 2010.

The TRIPS Agreement, and other treaties establish minimum requirements which should be adopted by its parties in drawing up their legislation and protection policies to intellectual property. Such treaties delegate a wide power to its members in defining the provisions of their domestic legislation. Therefore, in developing their Member States may use mechanisms provided by the Treaties themselves. TRIPS says the full disclosure of the invention is one of its main pillars. But despite demonstrating the legality of access to the genetic resource, it does not prevent biopiracy, since such protection can be sought in another country that does not.

The major obstacle is the extent of Intellectual property rights, on the one hand, and the resources of Biodiversity and traditional knowledge, on the other, embodied in the by the shock of TRIPS with the CBD. At the moment,
there is no completely consensus on how TRIPS can cooperate with the objectives of the CBD.

These divergences show the need to regulate access to genetic resources and related traditional knowledge and guarantee benefits that may arise out of the use of genetic resources.

A same country can be party in all CBD, TRIPS and ITPGRFA, or only in one or two of them. The maps on figures 2, 3 and 4 shows this possibility. And, there so, the problem.

There are some inter-relations and contradicting issues between CBD, ITPGRFA and TRIPS as showed on Figure 5. All three concern with the ABS and bioprospecting, but quit differently. “The parties to the CBD have rights over their genetic resources bestowed to the local communities. The CBD has conferred sovereign rights over genetic resources to national governments. Likewise, the ITPGRFA has clearly recognized the rights of farmers over the genetic resources. It also advocated to ensure equitable sharing of benefits arising out of the use of genetic resources and related TK. However, the TRIPS Agreement does not recognize the rights of the farmers. It provides the rights to the plant breeders over their effort to develop new plant varieties”424.

2.2.2. Brazilian Regulation by Federal Law 13.123/2015 and EU Regulation 511/14

In Brazil biopiracy scandals involving research and development institutes and other private companies, such as the controversy BioAmazonia-Novartis transaction, have made the Executive to make an urgency decision, at which came out as a normative and provisory instrument, Provisional Act nº 2.186 -16, on March 23, 2001. Today, this measure has been replaced by Federal Law 13.123/2015.

Brazilian main provisions require:
- authorization of the CGEN (Genetic Heritage Governing Council) for access to resources Genetic resources and traditional knowledge

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424 PANT, Krishna Prasad. Access to Genetic Resources and Benefit Sharing Perceptions, Practices and Expectations of Farming Communities. Kathmandu, Nepal Farmers’ Rights Programme Forum for Protection of Public Interest (Pro Public). p.34
associated with Bioprospecting, research and development Technological development.

- Prior and informed information of the peoples and local communities, such as Condition of access to their genetic resources and / or Traditional knowledge associated with Genetic resources.
- distribution of benefits obtained from the Economic exploitation with suppliers of Genetic resources, whenever there is a Product or process resulting from access to the Genetic resources or traditional knowledge Associated.
- prior authorization from the National Defense Council, in areas indispensable to national security, or the Maritime Authority Council, in Brazilian marine areas.

The National System for the Management of Genetic Heritage and Associated Traditional Knowledge - SisGen, isn’t available to the public yet.

CGEN, a deliberative and normative body created by MP No. 2,186-16 under the Ministry of the Environment, is composed of representatives of 19 organs and entities of the Federal Public Administration (Ministry of Environment, Ministry of Science and Technology, Ministry of Science and Technology Ministry of Justice, Ministry of Agriculture, Livestock and Food Supply, Ministry of Defense, Ministry of Culture, Ministry of Foreign Affairs, Ministry of Development, Industry and Foreign Trade, IBAMA, Rio de Janeiro Botanical Garden Research Institute, CNPq, National Institute of Research of the Amazon, Evandro Chagas Institute, Embrapa, Oswaldo Cruz Foundation, Funai, National Institute of Industrial Property, Palmares Cultural Foundation) with voting rights.

The CGEN has five thematic chambers, of a technical nature, which subsidize the Council’s discussions. These are: Administrative Procedures, Associated Traditional Knowledge, Benefit Sharing, Genetic Heritage Maintained in ex situ Conditions and Access to Technology and Technology Transfer. The CGEN, through its Thematic Chamber of Procedures, is evaluating the best way to broaden the representation of society in the Council. The EU Regulation (EU) No 511/20145, on its turn, establishes rules to govern compliance with ABS by users in the Member States of the EU, and a mechanism for monitoring utilisation.

One of the users’ obligations (article 4) is that they must exercise due diligence on TK and GR utilization, showing accordance with applicable ABS legislation or regulatory requirements. The monitoring of the actor
compliance (art.7) via due diligence declarations are registered as a checkpoint communique on the ABS-CH, both at the stage of research funding and at the stage of final development of a project.

‘DECLARE’ is a on development online system that is the entry point for the EU Commission’s Environment Data Submission Portal, covering not only the Nagoya Protocol but also other policy domains. “DECLARE will streamline the collection, validation, analysis and dissemination of (among other information) due diligence declarations and information on the submitting organisations”425.

To know if the EU Regulation on Nagoya Protocol/CBD apply on a case, it could not be covered by the above mentioned specialized international instruments; and must be the intention to use, anon-human GR/TK, acquired after 12 Oct 2014, from a Nagoya Protocol Party with ABS laws/regulations. Therefore, users will have to exercise due diligence.

European Union is part of Nagoya and Brazil isn’t. Despite that, both are potential and factual actors on GR and TK exchange; and Brazil has its own regulation about ABS. There are differences between the Protocol and EU Regulation. Actually, there are even bigger differences between these and the Brazilian ABS Law. On Table 2, it is possible to check key terms differences between EU Regulation, Brazil Law and Nagoya Protocol.

Among all, it is important to highlight some lacks of terms correspondences. For instance, the term “genetic heritage” is only employed by Brazil Law, which, on its turn, do not employ the terms “genetic material” and “genetic resources”. Furthermore, it is added to “genetic heritage” the definition of “derivative”, which applies to the Nagoya Protocol and EU Regulation.

At a first look it could not be a problem. But, on traceability of GR and TK it could induce the false impression that the actors would be dealing with different objects, when,in fact, they refer to a coincident one.

Besides, the term “placing on the Union market” is employed only by the EU Regulation. Such kind of problems can be solved by the unification of tracking systems, for example, as we shall see below.

2.2.3. Traceability Systems examples

The main problem is, after knowing how to fix legislation gaps, how to seek effectiveness. For example, for more than ten years, the Genetic Heritage Council exists in Brazil, but there is still not enough security to be expected.

One way to extract economic value from biodiversity is through bioprospecting, which is defined as the systematic search for organisms, genes, enzymes, compounds, processes and parts from living things in general, which may have economic potential and eventually lead to the development of a product. It is relevant to a wide range of sectors and activities, including biotechnology, agriculture, nutrition, the pharmaceutical and cosmetics industry, bioremediation, biomonitoring, health, biomass fuel production, among others. The targets of bioprospecting are collectively called genetic resources.

The Brazilian economic potential of bioprospecting, especially with regard to the Amazonian biome has its importance. Although exalted as a great national wealth, Brazilian genetic resources are far from being used for income generation, or in an environmentally favorable and socially just manner.

Each sector can link material and ABS information in their own way, depending on purposes and GR forms. First of all, it is necessary to check if the GR is, based on current time, viable. In other words, if the GR can be re-propagated is viable. Non-viable if for museum and herbarium collections.

Second, the nature of GR will require a certain tracking system. For example, breeders must keep track of lineages to guarantee its safety.

And third, the ABS objects must be identified through mechanisms such as DNA sequences, compounds, taxonomic names and organisations.

To ensure a socially just manner, participatory public policies methods in Access to Genetic Resources and Benefit Sharing are needed. Following, two sectoral examples as best practices on traceability and, after, other systems and tools.

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One sectoral example of tracking practice involves Microbial collections. The workflow is simple: from deposit to cataloging and supply. The collection can be used in different sectors and by different actors that can be working together towards a common goal. Partnerships shared reports to provider countries and appropriate benefit-sharing are possible because a track-system.

Another sectoral example is on Pharmaceutical one. With the cheapening of genomic sequencing and genetic manipulation, companies can avoid large collections in the field and search for new genetic resources. So, the foundation of this sector best practice need focus more on PIC and benefit-sharing agreements. The workflow includes all information on GR origin and provider. Pharmaceutical companies like Novartis seek security, exclusivity and transparency. So, multiple databases are used to prevent misuse of data.

In addition, there are other systems practices, such as:

- Certification System: both the user and the supplier can feel protected and confident in fulfilling their obligations
- Promotion of cooperation and standard contracts: aiming to low transaction costs and legal uncertainty of transfer agreements, as Bonn’s guidelines identifies.
- Focal Point, National Authority and Clearing-house mechanism information: each point should provide Information on the Convention, the Bonn Guidelines, the Protocol of Nagoya, as well as National ABS laws, supplier country regulations and even the best Available experiences and positive experiences in the country.
- Control of imports of Genetic Resources: a system which registers the exchange and transfer of GRs could be a Useful instrument for monitoring trade and movement of GRs and would therefore help to Prevent the inappropriate use of GR.
- Monitoring and Tracking: is to say what happens to those resources once they have left the provider country and enter into use in a variety of forms, that may occur both in the adhesion phase as during the importation of genetic resources, the research phase and the at the time of application for intellectual property rights or Approval of the final product. Contractual negotiations are common and the terms usually include prior informed consent (PIC) and material transfer agreements (MTAs) and possibly Mutually Agreed Terms.
(MATs) and Certificates of Origin (CoO). This type of contract does not ensures completely the GR traceability, but it is indeed an important step towards it.

- Chain-of-custody Certification: increasingly important for sectors using natural resources, such as the sustainable forestry industry and natural products companies. Reaching this certification means higher standards for a company.

- DNA sequencing for geographical origin: the barcode markers to differentiate divergent species.

- MyEcoCost: developed by a EU project, it allows the traceability through a whole value chain, of any product, by a carbon footprint.

- Blockchain Concept: follows the decentralizing information trend to ensure more security. It is already explored in the financial world.

2.3. Commentary on Fair and Equitable Benefit Sharing and the ILO Convention No 169

The Nagoya Protocol on ABS also addresses traditional knowledge and benefit-sharing, in particular when genetic resources leave the country providing the resource. As professor Elisa Morgera elucidates427, ABS is both a field for environmental Law and international human rights Law. Traditional communities may be affected by the exchange of genetic resources.

In Brazil, it is currently estimated that a indigenous population amounts to 818 thousand people428, comprising 225 distinct peoples, who speak about 180


languages\textsuperscript{429}. About 60\%\textsuperscript{430} of indigenous people live in the central-western and northern regions of the country, a region with rich on natural resources.

Besides, it is estimated that there are 190 quilombos\textsuperscript{431} communities in Brazil\textsuperscript{432} currently. However, only on 2020 the official Brazilian demographic census may include questions for people who identify themselves as quilombolas\textsuperscript{433}. Therefore, it is necessary to point out about sharing benefits with traditional peoples, especially indigenous and quilombola ones. In this respect, the Brazilian legal system defines traditional territories as places of special protection by the State. Decree 6040/07, in its article 3, section II, that says:

“Traditional Territories: the necessary space for the cultural, social and economic reproduction of traditional peoples and communities, whether they are used permanently or temporarily, observed, with respect to the indigenous and quilombola peoples, respectively, as provided by articles 231 of the Constitution and 68 of the ADCT\textsuperscript{434} and other regulations”\textsuperscript{435}.

It also establishes the guidelines for those who may have recognized their traditional territories as a space of special protection in article 3, item I of Decree 6040/2007:

“Traditional peoples and communities: culturally differentiated and recognized groups that have their own forms of social organization, occupy and use territories and natural resources as a condition for their cultural, social, religious, ancestral and economic reproduction, using knowledge, innovations and practices generated and transmitted by tradition”.


\textsuperscript{430} Fundação Nacional de Saúde - Departamento de Saúde Indígena- POLÍTICA NACIONAL DE ATENÇÃO À SAÚDE DOS POVS INDÍGENAS

\textsuperscript{431} In short words, quilombos are settlements where runaway African and Afro-descendants slaves use to live after escaping on XVII and XVIII centuries. Despite end of slavery, quilombo communities still exists nowadays and the terms quilombola is a reference to its inhabitants.


\textsuperscript{433} In this regard, consult: Censo de 2020. Available at: [http://www.institutolula.org/censo-de-2020-podera-trazer-estatisticas-de-quilombolas]. Accessed on April 2018.

\textsuperscript{434} ADCT means Act of Transitional Constitutional Provisions and is at the end of the Brazilian constitution.

The Brazilian Federal Constitution\textsuperscript{436} recognizes in article 231 indigenous rights to social organization, customs, languages, beliefs and traditions. International conventions also applies in the Brazilian legal order, such as the ILO Convention 169\textsuperscript{437}, which was promulgated in Brazil by Decree No. 5051/04\textsuperscript{438}, says in its article 6\textsuperscript{439}:

“1. In applying the provisions of this Convention, governments shall: consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly”.

In addition, the UN Declaration on the Rights of Indigenous Peoples of 2007, provides in Article 32.2:

“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources”\textsuperscript{440}.

The consultation by the State should happen with a social and environmental assistance\textsuperscript{441}, however, the final word belongs to the community. The concept of intercultural dialogue should not pass unnoticed. In this sense, the Inter-American Court of Human Rights\textsuperscript{442} affirms that the people affected “must

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\textsuperscript{437} On EU framework, Denmark, Netherlands and Spain ratified the ILO 169 Convention.


\textsuperscript{441} In Brazil, this role is played by FUNAI- FUNDAÇÃO NACIONAL DO ÍNDIO, the official indigenist entity of the said nation.

\textsuperscript{442} Brazil recognize the jurisdiction of the Inter-American Court of Human Rights in 1998. The court was created by the Pact of San José and has the purpose of judging human rights violations cases in countries that are both part of the Organization of American States (OAS) and recognize their competence.
be consulted according to their own traditions” ⁴⁴³. Thus, there should be no prevalence of eminently technical information in the decision-making process by the State.

Through the elaboration of consultation protocols⁴⁴⁴, traditional peoples are able to explain to the State and any other stakeholders how to enforce the community representativeness and how they want to consult and consent natural and genetic resources exploitation on their lands and territories.

Finally, the Protocols can provide a pathway for dialogue between traditional communities and the various sectors interested in the exchange of genetic resources. Such tools elucidate notions and principles related to different forms of the traditional communities representativeness. There are already some Protocols on free, prior and informed consent in Brazil for indigenous peoples, such as those referring to the Krenak⁴⁴⁵ and the Wapãji⁴⁴⁶.

3. Conclusion

The path against biopiracy and environmental sustainability should pass through people empowerment and information, on how ABS is important and what documents or registrations are needed for particular situations. In other words, traditional communities and the general population must be aware of the genetic resources and associated traditional knowledge importance, not only on environmental and social aspects but also as an economic opportunity for growth.

In addition, it is imperative a dialogue between downstream and upstream actors and governments towards the identification of the ideal tracking system for a particular genetic resource. The use of a persistent global unique identifiers would

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be ideal for long-term ABS tracking. The existing procedures need to be reviewed to seek simplification, to be as simple and effective as possible and to maximize benefits to Brazil, traditional communities and EU partners\(^{447}\).

Due to multiple access rules, the lack of uniformity can bring problems for biodiversity as well as bioprospecting activities. So, at Brazilian national level, there is a need to ratify the Protocol for strong legislative measures to check biopiracy.

If Brazil ratifies the Protocol, it would contribute to meeting internationally agreed goals including the Sustainable Development Goals and it would enable to take advantage of monitoring use of genetic resources mechanisms and enforcing compliance with Brazil’s Access to Benefit Sharing rules.

Furthermore, the ability to track material could be improved if users and actors were required to deposit subsamples in CGen-recognized biological collections in Brazil before shipping genetic resources material overseas.

### 4. Figures

**Figure 1:** ABSCH Map.

![ABSCH Map](https://absch.cbd.int/)

**Source:** https://absch.cbd.int/

\(^{447}\) EMBRABA.Chamada para Ação. Available at: [https://www.embrapa.br/documents/1355163/31372968/Semin%C3%A1rio_Todos+as+apresenta%C3%A7%C3%B5es\_Di%5C3%5C1logo+Brasil-UE+Protocolo+de+Nagoia/a984e5aa-f8cb-729c-9e6b7f1ae0b-d90bd>. Accessed on April 2018.
**Figure 2:** CBD Map.

Source: [https://www.cbd.int/countries/](https://www.cbd.int/countries/)

**Figure 3:** ITPGFA Map.

Figure 4: TRIPS Map

Table 1: CBD, ITPGRFA, TRIPS - Inter-relations and contradicting issues

<table>
<thead>
<tr>
<th>Criteria</th>
<th>CBD</th>
<th>ITPGRFA</th>
<th>TRIPS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Coverage of genetic resources</td>
<td>All the genetic resources</td>
<td>Plant genetic resources</td>
<td>Plant genetic resources and micro-organisms</td>
</tr>
<tr>
<td>2 Access</td>
<td>Bilateral</td>
<td>Multilateral for 64 genera and bilateral for others (Annex 1 crops)</td>
<td>Open access</td>
</tr>
<tr>
<td>3 Prior informed consent (PIC)</td>
<td>PIC for donor governments</td>
<td>No provision of PIC</td>
<td>No PIC</td>
</tr>
<tr>
<td>4 Benefit sharing</td>
<td>Monetary and non-monetary</td>
<td>Monetary and non-monetary</td>
<td>No benefit sharing. Benefits biases towards innovators</td>
</tr>
<tr>
<td>5 Access to genetic resources</td>
<td>Benefit sharing required</td>
<td>No Benefit sharing required</td>
<td>Open access</td>
</tr>
<tr>
<td>6 Commercial use of resources and knowledge</td>
<td>Benefit sharing</td>
<td>Benefit sharing</td>
<td>Open access</td>
</tr>
<tr>
<td>7 Intellectual property rights (IPR)</td>
<td>IPR is available but it should be supportive of find and not run counter to the objectives of the CBD</td>
<td>No IPR that limits the facilitated access to PGRs in the form received from the Multilateral System</td>
<td>Very strong IPR on plant varieties, either by patenting or effective <em>sui generis</em>.*</td>
</tr>
</tbody>
</table>

**Source:** Access to Genetic Resources and Benefit Sharing. Perceptions, Practices and Expectations of Farming Communities. Krishna Prasad Pant, Ph.D.
<table>
<thead>
<tr>
<th>Term (English)</th>
<th>Term (Portuguese)</th>
<th>Nagoya Protocol</th>
<th>EU Regulation 511/2014</th>
<th>Brazil Law 13.123</th>
</tr>
</thead>
<tbody>
<tr>
<td>Genetic Resources</td>
<td>Recursos Genéticos</td>
<td>Genetic material of actual or potential value</td>
<td>Genetic material of actual or potential value</td>
<td>Not employed</td>
</tr>
<tr>
<td>Genetic material</td>
<td>Material genetic</td>
<td>CBD definition: any material of plant, animal, microbial or other origin containing functional units of heredity</td>
<td>Any material of plant, animal, microbial or other origin containing functional units of heredity</td>
<td>Not employed</td>
</tr>
<tr>
<td>Genetic Heritage</td>
<td>Patrimônio genético</td>
<td>Not employed</td>
<td>Not employed</td>
<td>Genetic information of plant, animal and microbial species or otherwise found in situ within the national territory, on the continental shelf, the territorial sea and the exclusive economic zone, including substances derived from the metabolism of these living beings.</td>
</tr>
<tr>
<td>Derivative</td>
<td>Derivados</td>
<td></td>
<td></td>
<td>Employed in definition if Genetic heritage</td>
</tr>
</tbody>
</table>
### Part 2. Climate change and energy: governance compared

<table>
<thead>
<tr>
<th><strong>Tradition</strong>know<strong>ledge associated with genetic resources</strong></th>
<th><strong>Conhecimento</strong>-<strong>mato tradicional associado ao patrimônio genético</strong></th>
<th><strong>Not defined</strong></th>
<th><strong>Traditional knowledge held by an indigenous community that is relevant for the utilisation of genetic resources and that is such described in the mutually agreed terms applying to the genetic resources.</strong></th>
<th><strong>Information or practices of indigenous peoples, traditional community or uses (direct or indirect) associated with the Genetic heritage</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition</td>
<td>Coleta</td>
<td>Not employed</td>
<td>Employed in definition of access</td>
<td>Obtaining animal, plant or microbial wild organism, either by removing the individual from its natural habitat whether by collection of biological samples</td>
</tr>
<tr>
<td>Access</td>
<td>Acesso</td>
<td>Not defined</td>
<td>Acquisition of genetic resource or of traditional knowledge associated with genetic resources in a Party to the Nagoya Protocol</td>
<td>Research or technological development carried out on genetic resources sample</td>
</tr>
<tr>
<td>Utilisation of genetic resources</td>
<td>Uso do patrimônio genético</td>
<td>To conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology as defined in Article 2 of the Convention</td>
<td>Nagoya Protocol definition</td>
<td>Utilisation is considered access</td>
</tr>
<tr>
<td>User</td>
<td>usuário</td>
<td>Not defined</td>
<td>Natual or legal person that utilizes genetic resource or associated traditional knowledge (draft guidance: not a person/entity only commercialises products based on utilization)</td>
<td></td>
</tr>
<tr>
<td>--------------</td>
<td>---------------------------------------------</td>
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<td>--------------------------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td><strong>Intermediate product</strong></td>
<td>Produto intermediário</td>
<td>Not employed</td>
<td>Not employed</td>
<td>Product whose nature is the use in the production chain, which will aggregate it in its productive processes as an input, excipient and raw materials for the development of another intermediate product or finished product</td>
</tr>
<tr>
<td><strong>Finished product</strong></td>
<td>Produto acabado</td>
<td>Not employed</td>
<td>Not employed</td>
<td>Product originated from GH or ATK access whose does not require any additional production process, in which the GH or ATK component is a key element of value adding to the product, and ready for use by the final consumer, whether natural or legal person</td>
</tr>
<tr>
<td>Result of utilisation</td>
<td>Resultado da utilização</td>
<td>Not employed</td>
<td>Products, precursors or predecessors to a product, as well as parts of products to be incorporated into a final product, blueprints or designs, based on which manufacturing and production could be carried out without further utilisation of the GR and ATK</td>
<td>Not employed</td>
</tr>
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<td>-----------------------</td>
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<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Placing on Union market</td>
<td>Colocação no mercado</td>
<td>Not employed</td>
<td>The first making available of product developed via utilisation of GR and ATK on the Union market, where making available means the supply by any means, for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge. Placing on the market does not include precommercial trials, including clinical, field or pest resistance trials, nor the making available of unauthorised medicinal products in order to provide treatment options for individual patients or groups of patients</td>
<td>Not employed</td>
</tr>
<tr>
<td>Internationally Recognized Certificate of Compliance</td>
<td>Certificado de Conformidade Internamente Reconhecido/Certificado de Regularidade de Acesso</td>
<td>A permit or its equivalent issued in accordance with Article 6(3)(e) and made available to the ABS-CH… as evidence of the decision to grant PIC and of the establishment of MAT, notified to the ABS-CH… as required by domestic ABS legislation or regulatory requirements of the Party providing PIC</td>
<td>A permit or its equivalent issued at the time of access as evidence that the GR it covers has been accessed in accordance with the decision to grant PIC, and that MAT have been established for the user and the utilisation specified therein by a competent authority in accordance with Article 6(3)(e) and Article 13(2) of the NP, that is made available to the ABS-CH established under Article 14(1) of that Protocol</td>
<td>Certificate of Access Regularity (CAR): administrative act by which the competent authority that access to GH or ATK complies with the requirements of this Law</td>
</tr>
<tr>
<td>Check point</td>
<td>Not defined</td>
<td>Competent authority: the body responsible for the application of the Regulation</td>
<td>Not defined, but CGEN fills this role</td>
<td></td>
</tr>
<tr>
<td>Registered collection</td>
<td>Coleção credenciada</td>
<td>Not employed</td>
<td>Not defined, but the law provides the registration of national institution which maintains a ex situ collection of samples containing genetic heritage.</td>
<td></td>
</tr>
</tbody>
</table>
Material Transfer Agreement | Termo de Transferência de Material (TTM) | Not employed. (Reference is made to mutually agreed terms throughout, and model contractual clauses for MAT in Article 19) | Only employed in the context of the ITPGRFA’s Standard MTA | Material Transfer Term: instrument firmed between sender and receiver for shipping abroad one or more samples containing the GH accessed or available for access, indicating, if applicable, if there was ATK access and establishing the benefit sharing commitment.

Traceability and the exchange of genetic resources in Brazil and EU relations

Vanessa Lemgruber