THE ROLE OF REGIONAL COURTS IN SOUTH AMERICAN INTEGRATION PROCESSES: A CROSS-EXAMINATION WITH THE EUROPEAN EXPERIENCE OF THE EUROPEAN UNION'S COURT OF JUSTICE

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After more than half a century of existence, the Court of Justice of the European Union (hereinafter CJEU) has developed an intense jurisprudential activity that was a powerful and efficient instrument integrating the EU's legal system. Thus, thanks to the presence of an autonomous court entrusted with the task of interpreting and applying the Treaties, the European legal sphere has experienced its own dynamic and, through the jurisprudence drawn up, the CJEU has been able to establish the authority of EU law in order to make it effective if it is not in proportion to that of international law. There is no doubt that the CJEU "has not only satisfactorily carried out its specific role of ensuring respect for the law at Community level, but has also made a decisive contribution to the progress of the integration process towards the achievement of Community objectives"[1].

South American integration presents a radically different picture. Although it is true that there is a unanimous consensus on the fact that integration must be deepened, it remains to be determined what conceptual outline or model of integration and what institutional design to adopt to achieve the desired union of the continent. In addition, the excessive ideological polarisation that characterises the political life of the region, is provoking serious diplomatic tensions and consequently a regional fragmentation that deteriorates the establishment of a calm political and legal framework conducive to integration at the continental level. And, as a direct consequence of this failure to implement a coherent regional project and political fragmentation, the history of South American integration has become a multiplication of processes sometimes ideologically antagonistic that contrasts with the policy of

[1] RODRIGUEZ IGLESIAS G. C. (1993). El Tribunal de Justicia de las Comunidades Europeas, in RODRIGUEZ IGLESIAS G. C. and LIÑAN NOGUERAS D. J. (Directors), *El Derecho Comunitario europeo y su aplicación judicial*, Civitas, Madrid, 1993, pp. 373-403, p. 394.

successive enlargement of European integration. From this "impressive word search puzzle"[2] we can mention the two most emblematic and consistent integration processes that our analysis will deal with, this is the Andean Community of Nations (CAN) and the Southern Common Market (MERCOSUR), UNASUR (the Union of South American Nations), which is possibly the initiative that attracts the most interest and attraction at the present time, but also historical processes such as the LAFTA (Latin American Free Trade Association), or ideological processes such as the ALBA (the Bolivian Alliance for the Peoples of Our America).

In this context, we intend to analyse the role played by the Regional Courts of the most developed South American integration processes, that is the Court of Justice of the CAN (hereinafter CJCA) and the Permanent Review Court of the MERCOSUR, within their respective processes and consider the influence of European jurisprudence on Andean and Mercosur jurisprudence. In turn, it follows from the reading of the Preamble to the Treaty establishing UNASUR that the Member States "understand that South American integration must be achieved through an innovative process, which includes all the achievements and advances made by the processes of MERCOSUR and the CAN, going beyond their convergence"[3]. We must, therefore, ask ourselves what prospects the dialogue between South American and European judges can offer in contributing to the progressive development of an integrated legal space at continental level.

I. The jurisprudence of the CJCA: an obvious but excessively circumscribed European influence

The CJCA was created in the image and likeness of its European counterpart[4] and, although not widely known, it should be noted that the judicial arm of the CAN

[2] MALAMUD C. (2008). La integración que no acaba de llegar, in *Revista de Libros. Segunda Época*, no. 143, Fundación Amigos Revista de Libros, 1 November 2008.

[3] Preamble to the Treaty establishing the Union of South American Nations, paragraph 8.
[4] See, for example, VIGIL TOLEDO R. (2011). *La Estructura Jurídica y el Futuro de la Comunidad Andina*, Thomson Reuters (Legal) Limited, p. 71.

is the third most active international court in the world, where only the European Court of Human Rights (hereinafter ECHR) and the CJEU are more so; other international courts and tribunals more intensively studied are less active than the CJCA[5].

The jurisprudence of the CJCA, although not as fundamental to Andean integration as that of the CJEU, nevertheless deserves to be highlighted. The most decisive and notable contribution of the TJCA was its ambitious jurisprudence on the protection of intellectual property rights. Moreover, in a reference article, academics Karen J. Alter, Lawrence R. Helfer and Florencia Guerzovich explained how the CJCA has progressively designed a successful "intellectual property rule of law island" in the Andean Community[6]. The authors emphasise that the judgments of the CJCA have contributed to the construction of an effective rule of law in intellectual property and ensure that legal norms, rather than signifying power, political influence, or bribery, determine the decisions taken by the member countries. As a result, the CJCA has helped the Andean countries resist US pressure to expand intellectual property protection in relation to foreign multinationals, contrary to what happens elsewhere in Latin America. In addition, the success of the CJCA in building an effective Andean legal system, although only in a limited political space, is highly notable, considering the decades of economic and political instability in which the Member States were

[5] They highlight it in a pioneer and reference work on the CJCA: ALTER K. J. and HELFER L. R. (2017). *Transplanting International Courts: The Law and Politics of the Andean Tribunal of Justice*. Oxford University Press, Oxford, 2017, p. 3 and ss.

[6] ALTER K. J., HELFER L. R. and GUERZOVITCH F. (2009). Islands of Effective International Adjudication: Constructing an Intellectual Property Rule of Law in the Andean Community. *The American Journal of International Law*, Vol. 103, No. 1, January 2009, pp. 1-47. Collected in ALTER K. J. and HELFER L. R. (2017). *Transplanting International Courts: The Law and Politics of the Andean Tribunal of Justice*, Oxford University Press, Oxford, 2017. This article was translated by VARGAS MENDOZA M. with the title: Casos aislados de jurisdicción internacional eficaz: la construcción de un Estado de Derecho de propiedad intelectual en la Comunidad Andina, in SAIZ ARNAIZ A., MORALES-ANTONIAZZI M. and UGARTEMENDIA J. I. (Coords.) (2011), *Las Implicaciones Constitucionales de los Procesos de Integración en América Latina: un Análisis desde la Unión Europea*, coed. Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, IVAP, Universidad del País Vasco, Universitat Pompeu Fabra, 2011, pp. 207-281.

immersed and the weakness of the legal systems of the States subject to the jurisdiction of the CJCA.

In addition, since the adoption of the Andean Charter for the Promotion and Protection of Human Rights on 26 July 2002, references to human rights and fundamental rights become more frequent. Thus, for the CJCA, the Community interest aims at "the protection of the fundamental right to health of the peoples"[7], which are "public health and the improvement of the standard of living of the inhabitants of the sub region"[8] and that the Community regulations should always be interpreted "within the framework of human and fundamental rights"[9]. With the judgment of *Comercializadora Business de Colombia S.A.* of Process 116-IP-2012, the CJCA will take a step forward establishing that

> "Human rights, including the right to life, health, physical integrity and a healthy environment, are fundamental minima without which it would be impossible to achieve the objectives of the sub regional integration process; they are *general principles of Andean Community law*. (...) Consumer protection is also developed on the basis of this set of principles, since the minimum that must be guaranteed in the market is that the acquisition of goods and services does not affect their fundamental rights.
>
> (…) In conclusion, the agreement under consideration cannot be understood without the protection of the fundamental rights of the inhabitants of the sub region".[10]

The subsequent sentences will follow this line[11], therefore, the dynamic initiated by the TCCA seems to be the ideal way to guarantee the protection of the

[7] CJCA, Process 114-AI-2004, sentence of 8 December 2005. Published in GOAC No. 1295, from 9 February 2006.
[8] CJCA, Process 114-AI-2004, *op. cit.*
[9] CJCA, Process 90-IP-2008, sentence *Procurador del Ministerio de Agricultura*, of 22 August 2008. Published in *GOAC* no. 1662, of 9 October 2008.
[10] CJCA, Process 116-IP-2012, sentence *Comercializadora Business de Colombia S.A.*, of 13 November 2012. Published in *GOAC* no. 2161, of 8 March 2013. The highlight belongs to us. Although the influence explicitly claimed is the Inter-American Court of Human Rights, the terms of the CJCA remind us of the *Stauder* judgment of the ECJ. To read further on this sentence, see ALTER K. J. and HELFER L. R., *Transplanting International Courts: The Law and Politics of the Andean Tribunal of Justice*, *op. cit.*, p. 105.
[11] See CJCA, Process 128-IP-2014, sentence *One Smart Start Limited*, of 22 January 2015. Published in *GOAC* no. 2459, of 4 March 2015.

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fundamental rights of the Andean citizen[12]. In short, the essential point that characterises disputes about the protection of intellectual property rights, is that the actions of the CJCA have prevented the member countries from breaching the Andean regulations to meet the requests of the United States and its companies, thus managing to strengthen the Andean legislation and, therefore, progressively guarantee the protection of "fundamental human rights, such as health and life"[13].

However, the jurisprudence of the CJCA is almost exclusively limited to the field of intellectual property and does not cover or influence other relevant areas of regional integration such as tariffs, customs and taxes. In short, and to continue with the metaphor, the "insular character" of the jurisprudential construction of the CJCA is very disappointing and problematic. Several arguments were put forward to explain the reasons why intellectual property law and its corresponding jurisprudence remain an exception that could not be declined in other legal areas. Among them the lack of knowledge on the part of the national judges and the legal actors of the member countries of the Community law[14], the Andean legal norms, except those of intellectual property, which are less precise and contain gaps limiting their applicability etc. But this legal reality reflects a broader political situation, in which the Andean governments are weakly committed to integration, since their most important trade relations are with other countries.

Despite this, it is important to remember that the manifestation of the creative action of European jurisprudence in the sixties that has allowed the elaboration of the principles that are pillars of Community law, has also coincided with periods of crisis

[12]CESPEDES ARTEAGA J. P. (2018). La protection des droits de l'homme dans l'intégration communautaire andine. In *Intégration et Droits de l'Homme*, Mare & Martin, collection Horizons européens, 2018, p. 267.
[13] CJCA, Process 112-IP-2012, sentence *Marca Avantra*, of 13 November 2012. Published in *GOAC* no. 2161, of 8 March 2013.
[14]CHAHÍN LIZCANO G. (2010). Interpretación prejudicial u optativa: una mirada desde la Comunidad Andina. *II Encuentro de magistrados de la Comunidad Andina y del MERCOSUR*, Andean Community Court of Justice, Cartagena de Indias, p. 79.

and stagnation in the sphere of action of European political actors[15]. Consequently, the consolidation of a stable rule of law in relation to intellectual property rights has shown that effective community jurisprudence is possible despite the vicissitudes and even serious political crises, of the sub region and the lukewarm commitment of the Andean governments to the integration process. And it is not unreasonable to imagine that in the not-too-distant future such jurisprudence would encourage, through mimicry, the construction of other "Islands of Law" in relevant legal areas of regional integration.

II. The jurisprudence of the Permanent Review Court of the MERCOSUR: a teleological interpretation method based on international law but inspired by Community law

Unlike the Andean negotiators, the member countries of MERCOSUR opted for an arbitration system consisting of an ad hoc Tribunal (hereinafter TAH) that acts in the first instance of the Mercosur arbitration system, and, since the 2002 Olive Protocol, of a higher instance: the Permanent Review Court.

Although Mercosur jurisprudence is rather scarce, the cases dealt with have nevertheless been "sufficient to establish an interesting jurisprudence, which has been invoked in various disputes"[16]. Thus, through an original and specific interpretative method to MERCOSUR, the TAH and the Permanent Review Court have developed a coherent jurisprudential *corpus juris*[17]. The method of teleological interpretation which guides Mercosur jurisprudence is fully based on international law

[15] PESCATORE P. (2005) reminds us of this. *Le droit de l'intégration. Emergence d'un phénomène nouveau dans les relations internationales selon l'expérience des Communautés européennes*. Bruylant, collection "Grands écrits", Bruxelles. Réimpression de l'éd. de Leiden, A. W. Sijthoff, Genève, 1972, pp. 81-82.

[16] CENTURIÓN GONZÁLEZ C. H. (2017). Aporte del Tribunal Permanente de Revisión al proceso de integración del MERCOSUR: reflexiones orientadas hacia la sociedad civil del MERCOSUR. *Revista de la Secretaría del Tribunal Permanente de Revisión (RSTPR)*, Year 5, no. 9, pp.78-100.

[17] MASNATTA H. (2002). Perspectivas para el sistema definitivo de solución de controversias en el Mercosur. *Revista de Derecho del Mercosur*, no.5, Editorial La Ley, p. 259.

but, in turn, is inspired by Community law, since the objective pursued by the Treaties is to achieve the strengthening of integration[18]. In other words, "the applicability of the norms and purposes of the Treaty of Asunción must also be realised, from an integrative perspective with the norms and principles that regulate international law"[19].

The willingness of the Mercosur arbitrators to establish international law as an interpretative basis for the MERCOSUR rules appears as the best guarantee to apply impartial concepts and, therefore, to respect the sovereignty of the States parties[20]. Above all, the fundamental principle which the jurisprudence "attaches relevance that needs to be considered when interpreting MERCOSUR rules"[21] to is the principle of free trade; enshrined in the Treaty of Asunción[22], this principle is the cornerstone[23] of the construction of the integration project.

Based on this, for the Mercosur jurisprudence there is only one principle, free trade, where certain exceptions can be first given preference to. This approach is nevertheless problematic as the Permanent Review Court's consideration of more demanding and more ambitious Treaty of Asuncion objectives than free trade is too timid and too limited[24], if not almost non-existent. This situation was reflected in the controversy between Uruguay and Argentina over the "Import Prohibition of Remolded

[18]In order to acquire a broad and in detail analysis on the method of teleological interpretation guided by Mercosur jurisprudence see the reference study by SUSANI N. (2008), *Le règlement des différends dans le Mercosur. Un système de droit international pour une organisation d'intégration*, L'Harmattan, Paris, p. 276 and ss.
[19]TAH, Judgment 02 of 27 September 1999, constituted to hear the claim of the Argentine Republic to the Federative Republic of Brazil on subsidies to the production and export of pork, consideration 56.
[20]SUSANI N. *Le règlement des différends dans le Mercosur. Un système de droit international pour une organisation d'intégration*, *op. cit.*, p. 278.
[21] TAH, Judgment 03 of 10 March 2000: "Aplicación de medidas de salvaguardia sobre productos textiles (RES. 861/99) del Ministerio Economía y Obras y Servicios Públicos", p. 13.
[22] Article 1, paragraph 2 in the Treaty of Asunción.
[23] TAH, Judgment 04 of 21 May 2001: "Controversia entre la República Federativa de Brasil y la República Argentina sobre aplicación de medidas antidumping contra la exportación de pollos enteros, provenientes de Brasil (RES. 574/2000) del Ministerio de Economía de la República Argentina", consideration 140.
[24]SUSANI N. *Le règlement des différends dans le Mercosur. Un système de droit international pour une organisation d'intégration*, *op. cit.*, pp. 283-284.

Tyres from from Uruguay". The trigger for this issue was the adoption by Argentina of a law banning the import of towed tyres from Uruguay, aimed at preventing potential damage to the environment and public health. Initially, the TAH constituted to resolve the dispute issued a judgment in favour of Argentine legislation that deserves to be highlighted: appealing to the "precautionary principle"[25] to validate the ban on the import of towed tyres imposed by Argentina, the TAH considered that

> "(...) the pursuit of integration and the enshrinement of its foundation in free trade can only make sense as instruments for implementing the well-being of human beings living in the region. Understand well-being as a broad concept, involving all the elements that contribute to improving the quality of life of men. In this context, free trade cannot enjoy absolute priority, since it is an instrument of human well-being not an end in itself. The concept of a barrier-free market must be tempered with other principles, equally enshrined in law, such as efficiency, cooperation among peoples, preservation of the environment, prevention, precaution, among others."[26]

The TAH concluded that "freedom of trade and its preservation as a way of structuring MERCOSUR cannot be considered an absolute and non-derogable principle, a true *deus ex machina* emerged to solve all the problems of trade relations and immune to any exception"[27] recognising the fundamental importance of environmental protection as a basic principle for MERCOSUR[28]. However, this interesting and ambitious statement of the TAH was revoked by the Permanent Review Court as it considered that the Argentinian law was "incompatible with the legal principles on which MERCOSUR is based"[29]. While claiming that we are not faced with

[25]TAH, Judgment of 25 October 2005, constituted to understand the Republic of Argentina in the controversy presented by the Eastern Republic of Uruguay on the "Import Prohibition of Remolded Tyres", considerations 69 and 70.
[26] TAH, Judgment of 25 October 2005, *op. cit.*, consideration 66.
[27] TAH, Judgment of 25 October 2005, *op. cit.*, consideration 94.
[28] TAH, Judgment of 25 October 2005, *op. cit.*, considerations 99 and 100.
[29]Permanent Review Court, Judgment no. 01/2005 of 20 December 2005, "Prohibición de importación de neumáticos remodelados procedentes del Uruguay", constituted to understand in the Appeal for

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two principles in confrontation but that there is only one principle, free trade, which certain exceptions, such as the protection of the environment[30], can be given priority to, the Permanent Review Court ordered Argentina to repeal or modify its ban against towed tyres as it considered it "restrictive to free trade and discriminatory"[31], but mainly because it "did not pass the test of justification and proportionality"[32]. This case illustrates the highly objectionable desire of the Permanent Review Court to put the principle of free trade before a fundamental right such as the protection of the environment, thus adapting its interpretation to the criteria established by the WTO[33], and therefore represents, in our view, a missed opportunity for the Permanent Review Court to develop an ambitious jurisprudence on fundamental rights.

Nevertheless, Mercosur jurisprudence recognises certain principles and characteristics of MERCOSUR law that derive from Community law. For example, despite the "absence of the long-awaited supranationality", it is up to the Permanent Review Court to impose the Mercosur norm "with sufficient autonomy from the other branches of law"[34]. In turn, in Judgment No 01/2007 of 8 June 2007[35], the Permanent Review Court stresses that, unlike the WTO and in the image of the European Union and the CAN, a "community of interests not only economic and commercial but also social, cultural, legal and political"[36] has been created in MERCOSUR, which shows the influence of European[37] and Andean jurisprudence.

Review filed by the Eastern Republic of Uruguay against the Arbitral Judgment of the TAH of 25 October 2005, consideration 26.

[30]Permanent Review Court, Judgment no. 01/2005 of 20 December 2005, *op. cit.*, consideration 9.

[31]Permanent Review Court, Judgment no. 01/2005 of 20 December 2005, *op. cit.*, considerations 14 and 15.

[32]Permanent Review Court, Judgment no. 01/2005 of 20 December 2005, *op. cit.*, consideration 17.

[33]DAILLIER P., BENLOLO-CARABOT M., SUSANI N. and VAURS-CHAUMETTE A.-L. (2007) La jurisprudence des tribunaux des organisations d'intégration latino-américaines (chronique n° 3 – Le droit matériel). *Annuaire français de droit international*, volume 53, 2007, p. 774.

[34]Permanent Review Court, Judgment no. 01/2005 of 20 December 2005, *op. cit.*, consideration 9.

[35]Permanent Review Court, Judgment no. 01/2007 of 8 June 2007: Controversy between Uruguay and Argentina about "Prohibición de importación de neumáticos Remoldeados procedentes del Uruguay" – a request for a ruling on excess application of compensatory measures -.

[36] Permanent Review Court, Judgment no. 01/2007 of 8 June 2007, *op. cit.*, considerations 7.1 and 7.2.

[37] ALONSO GARCÍA R. (2008). Un Paseo por la Jurisprudencia Supranacional Europea y su Reflejo en los Sistemas Suramericanos de Integración. Advocatus, *Cuadernos de Derecho Público* no.1, Córdoba, p. 75

In short, fully aware of the limitations of the institutional framework in which it must act, the Permanent Review Court has tried to elaborate a right of specific integration to MERCOSUR, firmly anchored in the guiding principles of international law but in turn, inspired by Community law and the case-law of the CJEU and the CJCA, although it is regrettable that there is little legislative ambition in the field of environmental protection.

III. Dialogue between judges: an instrument to promote convergence between the CAN and MERCOSUR

The construction of UNASUR was conceived, from its beginnings, from the institutional convergence of CAN and MERCOSUR. This idea of achieving South American integration through the convergence of the two existing South American processes seems to us the most appropriate and even sensible strategy, and, in a way, also reminds us of the so-called "Schuman and Monnet method" due to its pragmatism, a method which has brought so much success to the construction of Europe. But we also believe that this approach represents a novelty without an equivalent in all the regional integrations experienced until then and therefore poses a singularly different challenge. Consequently, we understand that the idea of convergence must be the axis around which South American integration must be designed, and therefore it is clear that both the CAN and MERCOSUR must contribute their strengths and, in turn, deepen their respective integration processes to achieve the aforementioned convergence and enrich the gradual construction of the institutional architecture of UNASUR. The dialogue between judges, therefore, could represent a strategic tool to promote such convergence.

and ss. Also see MEJÍA HERRERA O. (2013). La influencia de la jurisprudencia comunitaria europea en los principales tribunales de los sistemas de integración latinoamericanos: un estudio exploratorio. In ROY J. (Comp.), *Después de Santiago: Integración Regional y Relaciones Unión Europea-América Latina*, The Jean Monnet Chair, University of Miami, Miami-Florida European Union Center, pp. 52-62.

The phenomenon of globalisation has brought about a profound change and internationalisation of the law and has contributed to an intensification of communication between judges beyond national political boundaries. This globalisation of the law has led to the organisation of informal exchange forums between judges outside the institutional mechanisms. The intensification of these meetings and exchanges between judges opens up a new horizon in the international legal sphere and is contributing to the progressive development of a new form of power, of a soft judicial power or judicial diplomacy whose influence continues to increase[38]. The legitimacy, the driving force and the effectiveness of these forums are due to institutional arrangements such as the construction of Europe or the international jurisdictions and organisations which inspire them, also to the imperative objective necessity of regulation and to establish normative criteria in this new globalised scenario and to the authority of the argumentation[39]. The topics of debate and reflection covered by these forums are very broad and diverse: trials of crimes against humanity before international criminal tribunals, the fight against drug trafficking, discussions on international commercial arbitration, on environmental protection etc. It is true that these meetings do not create a homogeneous right, nor a binding right, but their influence and effectiveness are different: they participate in the growing process of dissemination of ideas also called cross-fertilisation[40] (mutual or cross-fertilisation), they contribute to defining common standards and can "stimulate the legal imagination, a little to the image of what was expected in other times of the teaching of Roman law"[41]. And if there is a continent whose judicial

[38] ALLARD J. and GARAPON A. (2005). *Les juges dans la mondialisation. La nouvelle révolution du droit*. Editions du Seuil et la République des Idées, p. 53.
[39] ALLARD J. and GARAPON A. *Les juges dans la mondialisation, op. cit.*, p. 11 and ss.
[40] SLAUGHTER A.-M. (1994). A Typology of Transjudicial Communication. In *University of Richmond Law Review*, Vol. 29:099, pp. 99-137. For the author, one of the purposes of *Transjudicial Communication* "is the simple dissemination of ideas from one national legal system to another, from one regional legal system to another, or from the international legal system or a particular regional legal system to national legal systems. The purpose or effect of such cross-fertilization may be to provide inspiration for the solution of a particular legal problem, such as the appropriate balance between individual freedom of expression and the needs of the community" (p. 117).
[41] ALLARD J. and GARAPON A. *Les juges dans la mondialisation*, *op. cit.*, p. 70.

agenda is characterised by a constant increase in forums, meetings or congresses among judges, this is Latin America. The issues addressed are specific to the problems inherent in the continent, such as the fight against corruption and money laundering, the constitutionalisation of social and fundamental rights and regional integration.

Possibly, the most fruitful dialogues between Latin American and European judges are taking place between the Inter-American Court of Human Rights (hereinafter referred to as the IACHR) and the ECHR[42], as evidenced by the issue of amnesty laws, a paradigmatic example of cross-fertilisation between judges[43]. The special and privileged relationship between the Inter-American Court and the European Court of Human Rights is based on the existence of a parallel between the two regional systems for the protection of human rights based on "an equivalent or at least similar understanding of rights in Europe and Latin America, and of the same legal culture based on the values of constitutionalism"[44]. Thus, "the shared nature of jurisprudential decisions on rights, their wording in dialogical form, considerably strengthens the *auctoritas* of supranational judgments and makes more likely a greater success of the judge and its compliance and implementation by the respondent states that normally will not want to be isolated from the rest"[45]. In short, the mutual

[42] On this topic, a reference work is recommended, GARCÍA ROCA J., FERNÁNDEZ P. A., SANTOLAYA P. and CANOSA, R. (Editors). (2012). *El Diálogo entre los sistemas europeo y americano de Derechos Humanos*. Thomson Reuters, Civitas.

[43] See ARENAS MEZA M. (2018). El diálogo judicial euro-latinoamericano en el tema de leyes de amnistía: un ejemplo de *cross-fertilization* entre tribunales de Derechos Humanos. *Araucaria. Revista Iberoamericana de Filosofía, Política, Humanidades y Relaciones Internacionales*, year 20, no. 40, pp. 577-604.

[44] GARCIA ROCA J. (2013). El dialogo entre el Tribunal de Derechos Humanos, los Tribunales Constitucionales y otros órganos jurisdiccionales en el espacio convencional europeo. In FERRER MAC GREGOR E. and HERRERA GARCÍA A. (Coords.). (2013). *Diálogo jurisprudencial en derechos humanos entre tribunales constitucionales y cortes internacionales. In memoriam Jorge Carpizo, generador incansable de diálogos*. Tirant lo Blanch, p. 220.

[45] GARCIA ROCA J. El dialogo entre el Tribunal de Derechos Humanos, los Tribunales Constitucionales y otros órganos jurisdiccionales en el espacio convencional europeo, *op. cit.*, pp. 220-221.

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influence of this transatlantic judicial dialogue has progressively shaped a new European and inter-American *ius commune*[46].

With regard to South American legal integration, the so-called "Encuentros entre los Magistrados de las Cortes Supremas de los Países de la CAN y del MERCOSUR, del TJCA y del TPR" deserve special attention. Promoted by the CJCA, these meetings between judges began in 2005 with the clearly outlined purpose to undertake the "rapprochement between the legal system of the CAN and that of the MERCOSUR", by creating "a theoretical and practical basis for an adequate analysis in relation to the interaction of the two integration systems"[47]. Since the first meeting of judges, the objective was to "consult the judgment of its participants on the desirability of activating spaces for joint legal reflection, aimed at facilitating the early participation of the CAN and MERCOSUR judges in the common task of contributing to the development of an integrated South American space"[48]. During these meetings, the rapprochement between the two processes through the deepening of the horizontal cooperation mechanisms between the CJCA and the Permanent Review Court was reflected on with the national judges of the countries of the subcontinent, but also and above all through the emergency of "Islands of Law" in the relevant legal matters of continental legal integration. In fact, the Andean legal experience in the construction of an island of the rule of law in the CAN, although it is only limited in a defined legal space, and the theoretical analyses thereof, it can stimulate the emergence of other islands of the rule of law not only within the CAN but also within MERCOSUR and UNASUR, in equally specific but different legal areas, and thus contribute to the stabilisation and strengthening of the rule of law in the South American region, although confined only to certain legal matters. Luckily, the possible

[46] On the emergence of a European and inter-American *ius commune*, see GARCÍA ROCA J. and CARMONA CUENCA E. (Editors). (2017). *¿Hacia una globalización de los derechos? El impacto de las sentencias del Tribunal Europeo y de la Corte Interamericana*, Aranzadi, Madrid.
[47] PERDOMO PERDOMO L. (2010). "Introducción", *II Encuentro de magistrados de la Comunidad Andina y del MERCOSUR,* Tribunal de Justicia de la Comunidad Andina, Cartagena de Indias, pp. 7-12, p. 7.
[48] *Primer Encuentro de Magistrados de las Cortes Supremas de los Países de la CAN y del MERCOSUR, del Tribunal de Justicia de la Comunidad Andina y del Tribunal Permanente de Revisión del MERCOSUR*, Lima and Arequipa, 12, 13 and 14 October 2005, consideration II.

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emergence of these islands, together with the island promoted by the CJCA, raises the hope that regional courts can contribute to the progressive construction of a South American rule of law "in sections, institution by institution and each issue at a time"[49]. Thus, in addition to the subject of intellectual property, other topics considered fundamental to the integration of the subregion and capable of harmonisation for both regional groups were repeatedly emphasised: customs harmonisation, multimodal transport and environmental protection. The legal problems presented, the doctrinal reflections discussed and the solutions or recommendations proposed in these dialogues, contribute to cross-fertilisation in the field of South American integration, and this judicial diplomacy can become a source of inspiration for the political actors of the region in order to improve both Andean and MERCOSUR law and to reform the institutions of both processes.

In conclusion, beyond the contribution of both regional courts in their respective integration processes and within the competence frameworks established by the Treaties whose normative developments depend, to a large extent, on the good work and political will of regional actors, the CJCA and the Permanent Review Court can also exercise a soft judicial power and positively influence the legal integration of the region through the organisation and multiplication of regional and international forums for exchanges and dialogues between judges. We consider, therefore, that the dialogue between the CJCA and the Permanent Review Court could allow the progressive elaboration of "Islands of Law" in the legal matters that are essential for the integration of the continent and it is, therefore, a significant advance in a legal harmonisation at continental level and even be the seed of a South American right of integration.

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[49] HELFER L. R., ALTER K. J. and GUERZOVITCH F. Casos aislados de jurisdicción internacional eficaz: la construcción de un Estado de Derecho de propiedad intelectual en la Comunidad Andina, *op. cit.*, p. 59.