REVISTA *ARGUMENTUM*

COMPLEX SOCIETIES, HUMAN RIGHTS AND COMMUNICATION BETWEEN LEGAL ORDERS: AN ANALYSIS BASED ON THE DOCTRINE OF NIKLAS LUHMANN

SOCIEDADES COMPLEJAS, DERECHOS HUMANOS Y COMUNICACIÓN ENTRE ÓRDENES LEGALES: UN ANÁLISIS BASADO EN LA DOCTRINA DE NIKLAS LUHMANN

SOCIEDADES COMPLEXAS, DIREITOS HUMANOS E COMUNICAÇÃO ENTRE ORDENS JURÍDICAS: UMA ANÁLISE COM BASE NA DOUTRINA DE NIKLAS LUHMANN

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ABSTRACT

Contemporary global society, marked by its complexity, demands constant contact between different legal systems, considering the permeability of territorial boundaries and the growing interrelationship between social, political, cultural and economic subsystems. In view of the relevance of identifying the reasons inherent to the convergence between the international legal order and the different domestic legal orders, it is sought to delineate, based on Niklas Luhmann's *Theory of Systems* and through the adoption of the deductive method, in which sense the complexification of social and legal relations implies the indispensability of establishing structures for the communication between such orders, for the protection of human rights. It is concluded that there is a need to establish a coordinated and non-hierarchical interaction between legal systems, as a necessary mechanism for the survival of the different systems and for the best protection of human rights today.

KEYWORDS: Niklas Luhmann; complex societies; human rights; confluence between legal orders.

RESUMEN

La sociedad global contemporánea, marcada por su complejidad, aboga por el contacto constante entre los diferentes sistemas legales, incluso en vista de la permeabilidad de los límites territoriales y la creciente interrelación entre los subsistemas sociales, políticos, culturales y económicos. En vista de la relevancia de identificar las razones inherentes a la convergencia entre el orden legal internacional y los diferentes órdenes legales nacionales, se busca delinear, basado en la *Teoría de los Sistemas* de Niklas Luhmann y utilizando el método deductivo, en qué sentido la complejidad de las relaciones sociales y legales implica la necesidad de establecer estructuras de comunicación entre tales órdenes, para la protección de los derechos humanos. Se concluye en el sentido de la necesidad de establecer una interacción coordinada y no jerárquica entre los sistemas legales, como un mecanismo necesario para la supervivencia misma de los diferentes sistemas y para la mejor protección de los derechos humanos en la actualidad.
PALABRAS-CLAVE: Niklas Luhmann; sociedades complejas; derechos humanos; Confluencia entre órdenes legales.

RESUMO

A sociedade global contemporânea, marcada por sua complexidade, preconiza o constante contato entre diferentes ordenamentos jurídicos, até mesmo ante a permeabilidade de fronteiras territoriais e a crescente inter-relação entre subsistemas sociais, políticos, culturais e econômicos. Diante da relevância da identificação dos motivos inerentes à convergência entre a ordem jurídica internacional e as distintas ordens jurídicas domésticas, procura-se, com base na *Teoria dos Sistemas* de Niklas Luhmann e mediante a adoção do método dedutivo, delinear em que sentido a complexificação das relações sociais e jurídicas implica a imprescindibilidade de estabelecimento de estruturas para a comunicação entre tais ordens, para a proteção de direitos humanos. Conclui-se no sentido da necessidade de estabelecimento de uma interação coordenada e não hierárquica entre sistemas jurídicos, como mecanismo necessário à própria sobrevivência dos distintos sistemas e para a melhor proteção de direitos humanos na atualidade.
PALAVRAS-CHAVE: Niklas Luhmann; sociedades complexas; direitos humanos; confluência entre ordens jurídicas.

1 INTRODUCTION

One of the main topics of discussion when it comes to the study of international law concerns the relationship between such field of law and the different domestic constitutional orders. In this regard, a series of doctrinal constructions aim to explain the interrelationship (or lack of convergence) between the internal and international legal systems, standing out among such constructions either the defense of the prevalence of one system over the other (monist doctrines), either the defense of the complete separation between said orders (dualist doctrines).

This study inserts itself amongst referred debates. However, it does not part from the

discussion about the prevalence of one of the identified doctrines above the other, but from the perspective that there is, at the present moment, a process of confluence, convergence and interrelationship between the different existing legal orders, due to the impossibility of separating the different legal, political, social and economic systems in today's society, characterized by its complexity. To elucidate this assumption, Niklas Luhmann's *Theory of Systems* is used as a theoretical framework, which, as will be shown, describes in what sense this interrelation is inherent to contemporary global society, as it is nowadays structured.

The general objective of this paper is to identify, based on Luhmann's ideas, the reasons for the congruence between the different constitutional legal systems and the international legal order, with the purpose of outlining the need for constant interactions between said orders for the protection of human rights. To this end, at first Luhmann's Systems Theory is presented, so as to identify Law as an autopoietic system in which necessarily there is constant communication between the different legal orders, and, in a second moment, it is identified in what sense the complexification social and legal relations implies the need to establish structures for communication between such orders.

With regard to the methodological procedure, the deductive method is adopted, since this paper parts from a general idea to arrive at a more specific construction. Furthermore, it is carried out through a qualitative, exploratory and descriptive investigation, mainly being executed by a bibliographic research.

2 COMPLEX SOCIETIES AND GLOBALIZATION: THE STRUCTURING OF A SYSTEM MARKED BY THE INTERDEPENDENCE BETWEEN DIFFERENT SYSTEMS

The advances verified in the process of confluence and interrelation between the international order and distinct domestic legal orders today are strictly related to the structural transformations brought about by the emergence of modern society in the second half of the last century, considering the evident complexification of society in that period (NEVES, 2009). Since Law exists basically to serve and regulate society (be it national or international), it is eminently related to the changes that social systems suffer, in a way that the modifications and evolutions that society goes through drastically influence the functioning of the legal systems themselves.

In order to understand the current stage of evolution of society, characterized by the necessity of reciprocal interactions in all areas and by the demand for a convergence between different legal orders, the teachings of the renowned German theorist Niklas Luhmann are of

essential importance. In his *Theory of Systems*, the theoretic demonstrates (among other issues) in what sense the different changes in social systems directly contribute to the process of increasing interdependence between jurisdictions belonging to different legal systems. As stressed by Arnaut (2013), the doctrinaire, through his theoretical premises, managed, unlike his contemporaries, to perceive the evidence and founding elements of a changing society, having imagined, long before its occurrence, the phenomenon of globalization, which is considered the main cause for the perception of a need to modify existing social, political and legal structures.

Thus, considering the contributions brought by his theory to the study of how society works and, indirectly, to the study of law and international relations and to the understanding of the process of interrelationship between different jurisdictions (aspect to be demonstrated in the next topic), the main ideas launched by the theorist are presented. It should be noted, however, that in view of the complexity of Luhmann's thought, we only seek to present some of the main aspects of his doctrine, focusing on the relation of his theory with the study of law, which is understood as an autopoietic system that dictates a constant interaction between different legal orders.

Niklas Luhmann is known among legal theorists for having, through the formulation of a theory of autopoietic, operationally closed and functionally differentiated systems, succeeded in demonstrating the complexity of existing systems, laying the foundations for the construction of an idea of globalization and of the impossibility of limiting society by territorial boundaries (ARNAUT, 2013).

The theme of social complexity has been addressed by Luhmann in several papers[1], and it is necessary to highlight some basic premises of his doctrine for it to be possible to understand such complexity, namely: a) for the author, there are four types of systems: non-living, living, psychic and social; b) with regard to social system, of greater importance for this study, the author assumes the world (*Welt*) as the highest reference unit, in a way that global social society, which is unique, corresponds to the ultimate and total system (*omni System*) in his doctrine, which encompasses, however, other systems and environments; c) these other systems (*Systeme*) are formed as they differ from their surroundings, the core of Luhmann's theory corresponding, therefore, to the principle of differentiation (*Differenzierung*); and d) the elements that surround the system constitute, in the author's

[1] Niklas Luhmann has written more than thirty books on a variety of topics, including the works "A Sociological Theory of Law", "The Differentiation of Society", "Risk: A Sociological Theory", "Law as a Social System", "Social Systems ", "Art as a Social System" and "Theory of Society", among others.

view, the environment (*Umwelt*) and it is from the differentiation between system and environment, through a process of selectivity of the first, that it becomes possible to investigate how a unit reacts before the elements that surround it.

For the author, global society corresponds, as mentioned, to a type of social system (*soziale Systeme*), which, in his view, is self-referential and autopoietic and whose specific code (through which its operations are processed) is communication (*Kommunikation*)[2]. As stated by the theorist, society "is the encompassing social system which includes all communications, reproduces all communications and constitutes meaningful horizons for further communications" (LUHMANN, 1982, p. 131). Based on the establishment of communications with the environment, systems self-differentiate, systems, and not men[3], being the subjects of this communication.

The ability of systems to produce and reproduce through communication with the environment is called by the author autopoieses[4], that leads the system to transformations, increasing its complexity (*Komplexität*). Such complexity derives precisely from the existence of an infinity of possibilities in the environment: the system initiates a differentiation process precisely because the environment offers more possibilities than the system can accommodate, process and legitimize, demanding an increase of the system's complexity (LUHMANN, 1998).

Systems evolve, transforming their own structures, the selective relationship performed by them constituting the foundation of this idea of complexity. This is because the existing systems do not have an immutable structure, suffering stimuli from the environment in which they are inserted. Such stimuli lead to the need of readaptation and modification of essential structures of the system, so that it can survive the complexity of the environment in which it operates (LUHMANN, 1998). Thus, to account for the internal complexity, each system seeks to self-differentiate itself, in order to reduce the complexity of the environment, and ends up forming, within it, several other subsystems, becoming concomitantly more and

[2] As Luhmann (1982, p. 131) states, "social systems are self-referential systems based on meaningful communication. They use communications to constitute and interconnect the events (actions) which build up the systems. In this sense, they are 'autopoietic systems'".

[3] The theorist does not ignore the existence of men, but he just does not associate them with social systems, with societies. For the indoctrinator, men correspond to psychic systems (pschische systeme), whose operating code is thought (Gedanken). In this sense, communication does not belong to men, it is not men who communicate, only communication can communicate (LUHMANN, 1998).

[4] The concept of autopoiesis was imported by Luhmann from biology, from a study by Matuarana and Varela. Such authors sought to describe the phenomenon by describing the activity of a living organism, explaining that only this, despite obtaining external materials for the production of cells, has the capacity to produce such cells, that is, only it would be autopoietic. Luhmann sought to readapt this concept to social systems, emphasizing that they are autopoietic when he himself, despite suffering stimuli from the environment, produces his own structure and all the elements that compose it, elements that in the case of social systems would be communications.

more complex.

The global social system (ultimate system in Luhmann's theory), through this process of autopoiesis, self-differentiates itself in several other subsystems, such as law, economics, politics, religion, science, and so on. It is due to this that it is asserted that a State, for example, does not correspond to a political system, but rather to a subsystem in a political system that exists in the global social system, that results from the increase in the internal complexity of the whole political system (LUHMANN, 1998). In the same way, a specific legal order also refers to a subsystem of Law, which must be seen in its entirety. Thus, different legal orders result from the complexification of the Law system and the linking of it to the figure of the State or to some global or regional system.

The most important differentiation in the sociology of modern societies and its globalizing tendency corresponds precisely to this functional differentiation (*funktionale Differenzierung*) of society, that is, to the differentiation of the social system into subsystems due to their functions (functionally differentiated social systems). The comprehension of such differentiation, for Arnaut (2013), is essential to understand the diverse elements that make up society, since through such abstraction it is possible to view the most varied systems, such as economics, art, politics, education, law, science, and so on, as not being limited to the territorial boundaries of a State. Also, it is important for the identification of the interrelationship between the most varied subsystems, which interact with each other through a process of structural coupling.

In this sense, Luhmann (1982) points out that it is because of this functional differentiation that modern society has become increasingly complex and it cannot be reduced to the territorial limitations created by men. In the words of the theorist:

> Modern society has realized a quite different pattern of system differentiation, using specific *functions* as the focus for the differentiation of subsystems. (…) Modern society is differentiated into the political subsystem and its environment, the economic subsystem and its environment, the scientific subsystem and its environment, the educational subsystem and its environment, and so on. Each subsystem accepts for its own communicative processes the primacy of its own function. All the other subsystems belong to its environment and vice versa.
>
> Basing itself on this form of functional differentiation, modern society has become a completely new type of system, building up an unprecedented degree of complexity. The boundaries of its subsystems can no longer be integrated by common territorial frontiers. Only the political subsystem continues to use such frontiers because segmentation into "states" appears to be the best way to optimize its own function. But other subsystems like science or economy spread over the globe. It therefore has become impossible to limit the society as a whole by territorial boundaries (LUHMANN, 1982, p. 132).

Thus, today's society is no longer explained by classical sociology, modern society being eminently characterized by its complexity, precisely because it operates in a globalizing system of constant communications (QUEIROZ, 2003). Such a perception implies that social, cultural, legal and economic structures, relationships and processes are not linked to traditional hierarchical perceptions. What can be observed from the presented theory is that a modern systemic-functional differentiation process operates in modern society, which makes today's society multicentric, that is, composed of different centers that are related to each other, whether in the economic, political, cultural or legal spheres.

In this regard, modern society is born as a world society and, subsequently, in the search to meet the complexity of the environment, it forms different subsystems within it, through a process of functional differentiation (and not hierarchical differentiation), consistent, as seen, in the division of world society not through territorial limits, but through different functionalities, such as economics, science, religion, among others (ARNAUT, 2013).

Such a division of society ends up "producing profound reflexes in the reproduction of the territorial political-legal systems in the form of the State"[5] (NEVES, 2009, p. 28), precisely because the different systems (economic, scientific, media, and others) do not depend on territorial segmentation to reproduce themselves. In view of this fact, complex modern society presents itself as a social formation that separates itself from territorial political organizations, implying, as Neves (2009, p. 26) points out, based on the ideas of Luhmann, that "the confluence of communications and the stabilization of expectations in addition to national or cultural identities and political-legal boundaries become increasingly regular and intense"[6], as will become more evident in the next section of this paper.

In this sense, adopting Luhmann's systems theory, which anticipates the very effects of globalization on society, we can view that modern society, characterized by its complexity, is therefore constituted by the connection between a plurality of areas of communication in relations of competition and complementarity and not by the connection between a plurality of States, not least because these refer only to one political subsystem within the global society (LUHMANN, 1982).

We do not ignore, as Luhmann (1982) himself points out, that the functioning of

[5] In the original: *"[...] produzir reflexos profundos na reprodução dos sistemas políticos-jurídicos territorialmente segmentados em forma de Estado"*.

[6] In the original: *"[...] tornam-se cada vez mais regulares e intensas a confluência de comunicações e a estabilização de expectativas além de identidades nacionais ou culturais e fronteiras político-jurídicas"*.

political and legal systems is somewhat different from others (economy, culture, religion, and so forth). This is because the subsystems existing in each of these systems are, in principle, necessarily conditioned by the figure of the State, despite the existence of points of connection and permeability between them.

That means that besides the notion that global society's different subsystems (economics, culture, and others) are not limited by State boundaries, the political and Law subsystems specifically, in the way that they are configured today, necessarily is linked to the figure of the State (in the case of domestic law), due to concepts such as sovereignty that are still defended in the international arena (besides it being relativized), and to the figure of international or regional organisms (in the case of international law).

As highlighted by Luhmann (1998), due to the fact that the processes of legitimizing politics and law are still linked to local and regional contexts, there still not being any prospect for the formation of a world policy or law that in its totality exists without the figure and structure of the State, the conditioning of law and politics to the state level still persists in today's society. It is in view of this fact that until today there is a separation, although not complete, between domestic and international law, each with its own structures, rules and forms of operability.

However, notwithstanding this fact, the pressures exerted by the other systems of world society (as will be better demonstrated in the next topic) make it essential that in the field of politics and law there be at least a normative and political counterpart to the new social situations, especially in the field of human rights, a counterpart aimed at meeting the growing need to make decisions related to connected facts. Neves (2009, p. 31-32) clarifies such statement, when clearly affirming that

> [...] the growing strength of systems based primarily on cognitive expectations, be it on the structural level (economy, techniques and science) or semantical level (mass media) of world society, made practically essential the emergence of a "new world order" concerning not only processes of collectively binding decision-making, but also mechanisms for stabilizing normative expectations and legal regulation of behavior. This means a transformation towards a normative counterpart to the dynamic expansion of the cognitive moment of world society.[7]

Despite the notion that Law, as a social system (based on Luhmann's premises),

[7] In the original: *"[...] a força crescente dos sistemas baseados primariamente em expectativas cognitivas, seja no plano estrutural (economia, técnica e ciência) ou semântico (meios de comunicação de massa) da sociedade mundial, tornou praticamente imprescindível a emergência de uma "nova ordem mundial" concernente não só a processos de tomada de decisão coletivamente vinculante, mas também a mecanismos de estabilização de expectativas normativas e regulação jurídica de comportamentos. Isso significa uma transformação no sentido de uma contrapartida normativa à expansão dinâmica do momento cognitivo da sociedade mundial".*

corresponds to an operationally closed system, that is, that is capable of producing its own structure and its own constitutive elements, it is necessarily and at the same time a cognitively open system, precisely because it interacts and communicates with the environment that surrounds it, that is, with the other social subsystems. According to Silva (2018), the Law is, thus, a system among the other systems that integrate the totality of social systems, which, to self-produce, cannot be closed to the situations and occurrences of its context (SILVA, 2018).

That is why the Law must always adapt itself and complexify its own structures to answer to the changes that occur in the other systems that involve it and compose its environment. As will be better discussed in the next topic, the evolution of social life in the international community, with the perception of the need of an international regulation of human rights, for instance, leads to the need of the adaptation and complexification of internal domestic legal orders, as a way to answer to such complexification of the international environment.

As Queiroz (2003) points out, the Law refers to a production of social normatization, so that it has a communicative structure that uses social structures and that is institutionalized at the level of society itself. In this sense, the law also changes with the evolution of social complexity. Although the Law is not determined by the environment (since it is operationally closed), it interacts with it, based on a process of signifying external influences and selecting the way in which these influences affect it's functioning.

Thus, as stated, Law, as part of a social system of the global community, also suffers wide influences from its environment and needs to adapt to it. In this sense, Queiroz (2003, p. 90) explains, by highlighting that Law

> [...] cannot escape this indisputable paradox: its self-imposed limits are the possibility of its continuous evolution and self-reference, which can be read here as "survival". This means that social systems, because they are cognitively open and operatively closed, remain because they can mark a limit that guarantees their order within the extreme contingency of the world.[8]

Thus, in view of this complexification and the strengthening of international relations, we move to a new model of society characterized by being each day more complex, plural and multipolar, a fact the presupposes the need of constant interactions between different legal orders, in view of the increased interdependence between them in the current

[8] In the original: *"[...] não escapa desse paradoxo incontestável: seus limites auto-impostos são a possibilidade de sua contínua evolução e de sua auto-referência, que pode aqui ser lida como "sobrevivência". Isso que dizer que os sistemas sociais, por serem cognitivamente abertos e operativamente fechados, se mantêm porque podem marcar um limite que garante sua ordem dentro da extrema contingência do mundo".*

legal scenario, especially in regard to the protection of human rights, as will be better delineated next.

3 THE CONFLUENCE BETWEEN DIFFERENT LEGAL ORDERS DUE TO SOCIAL COMPLEXIFICATION: THE NEED TO ESTABLISH COMMUNICATION BRIDGES BETWEEN LEGAL ORDERS FOR THE PROTECTION OF HUMAN RIGHTS

Luhmann's system theory explains globalization itself and leads us to understand why different subsystems, especially in today's globalized society, are related in a way that is characterized by a constant interdependence, be it between people, technologies, systems, economies, legal relationships, among others.

Concerning globalization, it is important to note that it's most important consequence is, as asserted by Ferrarese (2009) when talking about the positions adopted by U. Beck and S. Sassen[9], the initiation of a process of "deterritorialization" and "denationalization" of different national societies and, in consequence, interdependence between them.

With regard to deterritorialization, this stems from the realization that despite the fact that over the years an idea of society linked to a territory has prevailed, in the current global experience this conception cannot anymore be seen as true, given the emergence of a sense of cosmopolitanism. With regard to denationalization, this is due to the perception that the agendas of States are increasingly responding to global objectives, a perception that implies that States do not have exclusive competence to deal with matters that were beforehand reserved to the competence of national authorities (FERRARESE, 2009).

Such processes, that are mainly correlated with the perception of a need to resolve common issues in a cosmopolitan world, derive from the fact that even though globalization has led to scientific and technological advances, it has also generated unforeseen social situations that end up requiring constant contact between different orders. As highlighted by Trindade (2006), what can be observed from the formation of modern society is that economic disparities have increased; means have been created for the dissemination of nuclear weapons; there has been an increase in migratory flows of people in search of better living conditions in countries other than their own; there has been mass unemployment and an increase in the group of marginalized and socially excluded people; and issues of xenophobia and nationalist

[9] To understand the proscriptions adopted by the mentioned theories, consult: a) BECK, U. La cosmietita società: Prospettive dell'epoca post-nazionale. Il Mulino: Bologna, 2003; b) SASSEN, S. The State and Globalization: Denationalized Participation. Michigan Journal of International Law, 2004.

struggles have arisen, among other aspects. An increased vulnerability of men in the face of the outside world has, thus, been generated.

Globalization and complexification, thus, increase the need of constant contact between orders because it reshapes 'the traditional feeling of belonging as well as borders designed by nation-states and creates new mixed forms and confusions between what is national and what is international or transnational" (FERRARESE, 2009, p. 01). It leads to an increase in interdependence and makes borders permeable, as there are no territorial limits for current demands, so that current problems are not only observed within one territory, but communicate with other territories, crossing borders and reverberating beyond their limits. As a result, there is the consequent formation of global networks to solve common problems, a process that ends up increasing the level of interdependence between States (PETERS, 2006)[10].

In relation to Law and politics, the outcome is that governance, that is, the process of regulating matters of public interest, is now exercised outside the territorial limits of States, in a way that merely domestic law is no longer sufficient for the regulation of all the questions put to it. It is in view of this fact that Peters (2006, p. 58) states that domestic legal orders and, in particular, the constitutions of each State "can no longer regulate the totality of governance in a comprehensive way, and the state constitutions' original claim to form a complete basic order is thereby defeated. […] Overall, state constitutions are no longer 'total constitutions'", thus requiring the combination of different protection systems for the integral protection of the individual.

In addition, this perception of the impossibility of a State regulating in an isolated manner all the matters that are presented to it is also the result of historical issues and of changes in the way of thinking about the relationship between different systems and countries as of the beginning of the second half of the last century. That's because it was in this period, after the Second World War, that the indispensability of the construction of a global system of social solidarity for the protection of individuals and their basic rights was perceived

[10] As the author points out: "The phenomenon of globalization, that is, the appearance of global, de-territorialized problems and the emergence of global networks in the fields of economy, science, politics, and law, has increased global interdependence. Globalization puts the state and state constitutions under strain: global problems compel states to co-operate within international organizations and through bilateral and multilateral treaties. Previously, typically governmental functions, such as guaranteeing human security, freedom, and equality, are in part transferred to 'higher' levels. Moreover, non-state actors (acting within states or even in a transboundary fashion) are increasingly entrusted with the exercise of traditional state functions, even with core tasks such as military and police activity. The result of these multiple phenomena is that governance' (understood as the overall process of regulating and ordering issues of public interest4) is exercised beyond the states' constitutional confines" (PETERS, 2006, p. 580).

(CAMPELLO; CALIXTO, 2017).

Not only the problems that emerged from globalization itself are responsible for a need to complexify existing legal systems, but also the proper evolution of global society's consciousness about the importance and essentiality of an international regulation of basic rights, to avoid situations such as those that occurred during the Second World War. It is in this period that a new branch of international law is developed, the International Human Rights Law (IHRL), it being aimed precisely at ensuring the protection of the individual against abuses of the State, and at the same time transformations are undertaken in the domestic legal systems of a large number of countries, in order to offer a better protection of human rights at the internal level, as defended by the international community.

After World War II, society sought to regulate the rights and duties of States, which occurred, in particular, after the edition of the UN Charter (1945) and the Universal Declaration of Human Rights (1948), by which the international society sought to convey to States some normative commitments for the preservation of peace and the protection of human rights (CAMPELLO; LOPES, 2017). Through these instruments, the individual was elected as the holder of sovereign power and as the protagonist of the international sphere's protection, being elevated to the main stakeholder of international law, a position that was eminently reserved to sovereign States (BOBBIO, 2004).

In this scenario, in which international law also starts to regulate individual, social and solidarity rights, there is a decrease in the regulatory capacity of States and, at the same time, an increase in the tasks that are presented to States in the face of world society's new challenges. In the same way, the insufficiency of the classic conception of international law (as a mere regulatory system of relations between States) is perceived, much more so in view of the emergence in the international scenario of new actors and themes of interest and due to the intensification of the process of humanization of the law.

Due to mentioned transformations, a strict correlation between the jurisdictional object of protection by the constitutional order of some countries and by International Human Rights Law (IHRL), as well as between the main stakeholders of the rights protected by the different spheres, that is, the individuals, is formed, leading to a process in which the mutation of the relationship between such orders is viewed as indispensable. Analyzed together, such facts demonstrate the inability of States to regulate all situations faced by individuals in their territory and identify the impossibility of isolated actions being made by States to solve common problems, especially those related to human rights. As pointed out by Acosta Alvarado (2013, p. 167, free translation):

> [...] globalization obliges us, among others, to devise a way to balance and control the exercise of power beyond state boundaries and beyond the state-centric model; the inability of the State, national law and the traditional conception of international law to confront the new challenges, obliges us to rethink the scope of sovereignty and the relations between national law and international law; the appearance of new actors leads us to create new ways of recognizing their involvement and controlling them; the new topics of interest and their new scenarios lead us to think of a way to maintain the coherence of international law; humanization forces us to recognize a new axis of international ordering and, therefore, a new way to build, focus and make this legal system effective.[11]

Constitutional issues, that before were of interest of only a particular State, become of interest to a community of countries brought together through a treaty or even to the entire international community, since the protection of common features and stakeholders by diverse legal orders ends up creating a multicentric community in which State law, although still relevant, is only one of the levels of protection of the individual (ARAÚJO, 2015).

Due to this, it becomes evident that the international legal system for the protection of human rights and internal legal systems cannot be conceived as separate units, but rather as integrated orders that do not cancel each other, but reinforce each one another, since "the process of 'globalization' and 'universalization' of law, particularly of the international human rights law, created, over the traditional network of States, a 'political system integrated at various levels', which obeys its own legal regulation" (QUEIROZ, 2009 , p. 133). The political and legal limits inherent to the State figure are relativized, so that these States, thus, have greater capacity to control this globalization and complexification processes, which they could hardly face in isolation (BALAGUER CALLEJÓN, 2014).

As such, contemporary law goes through a new transition process, which accompanies globalization and the evolution of the protection of human rights itself, a process that is influenced by the expansion of the complexity of domestic and international law and leads to a change in the normative logic of the classical view of international law (VARELLA, 2014). In this scenario, in view of the individual's concurrent protection by the State and by international human rights law and the necessity of combining effort by States

[11] In the original: "[...] *la globalización nos obliga, entre otros, a concebir una forma de equilibrar y controlar el ejercicio del poder más allá de las fronteras estatales y más allá del modelo estato-céntrico; la incapacidad del Estado, del derecho nacional y la tradicional concepción de derecho internacional para afrontar los nuevos retos, nos obliga a re-pensar el alcance de la soberanía y las relaciones entre el derecho nacional y el derecho internacional; la aparición de nuevos actores nos conduce a la creación de nuevas formas de reconocimiento, de involucramiento y de control de os mismos; los nuevos temas de interés y sus nuevos escenarios nos llevan a pensar en la forma de mantener la coherencia del derecho internacional; la humanización nos obliga a reconocer un nuevo eje del ordenamiento internacional y, por lo tanto, una nueva manera de construir, enfocar y hacer eficaz este sistema legal"*.

and international bodies to ensure the protection of human rights, constant communication between the different legal subsystems becomes the rule, thus requiring the creation of bonds between them to jointly face common issues.

As evidenced by Luhmann's Systems Theory, in view of all these factors that alter the environment that involves domestic legal systems and pushes them to recognize the necessity of integration with the international legal system, a new process of differentiation must take place to answer the increased complexity of mentioned environment. Domestic law, in order to survive in the face of the multiple problems that in contemporary society are no longer restricted to specific locations or determinable geographic spaces, is pushed to reshape itself, since problems cross borders and have global or regional dimensions (SILVA, 2018). The increase of society's complexity and the consequent narrowing of the relationship between different systems make it impossible to ignore the necessity of the construction of ways to conduct this inter-relation between different legal systems and presupposes legal adaptation (WALKER, 2002).

In this process, however, the great problem of law consists precisely in identifying how it is possible for a system to maintain its internal order and, at the same time, make sense of the influences of its environment (QUEIROZ, 2003). Contemporary and future challenges therefore call for the production of an intellectual framework that allows the division between the two orders to be overcome and that incentives the promotion of more coherent and rational interactions, through a multilevel governance system (COTTIER, 2009).

Such overcoming, though, must not be interpreted as the defense of the establishment of a system of hierarchy between legal orders, but as a way to secure the compatibility between them. As already observed, in the current degree of complexity of the legal subsystems, operationally closed, but cognitively open, the figure of the State cannot merely be ignored as an element of legitimacy of law in different societies, which is why legal adaptation, and not the complete subsumption of one order to the other, is seen as the only viable way to answer the complexification of social systems.

As MacCormick (1999) points out, the existence of a diversity of normative orders, each with its Constitution or superior rule, in which there is no supremacy of one order over the other, implies the impossibility of having an ultimate instance for the solution of legal disputes. Thus, diversity must act in a coordinated way, so that the context of potential conflict between different orders must be resolved in a non-hierarchical manner.

Communication between the different legal systems is required, which occurs through a process of structural coupling in which the systems themselves create tools for

communication, due to the fact that, as Luhmann (1982) asserts, they are characterized by being operationally closed (QUEIROZ, 2003), which presupposes the need of each subsystem creating its one tools for the interaction with other systems. The establishment of structures for the communication between the different legal systems is an ultimate necessity, considering that such structures enable reciprocal learning between the involved orders and lead to an increased protection of human rights (considering the joint efforts of States and international bodies in such protection).

Important contributions to show how communication should be established are those presented by Canotilho (2000), in his *Theory of Interconstitutionality* and by Marcelo Neves (2009), who, in his *Theory of Transconstitutionalism*, analyzes the limits and possibilities of the existence of partial transversal rationalities ("transition bridges") both between the legal system and other social systems (transversal Constitutions) and between the different legal orders of world society. The author, thus, proposes an articulation model, that is, a model of cross-cutting interplay that can enable, through such communication bridges, constructive dialogues between the different legal orders.

Mentioned communication bridges, in the theoretician's view, enables a more constructive, or less destructive, relationship between the different legal orders, through a multidimensional articulation of different norms of different orders to face problems that are common to all global society, while at the same time prevents the establishment of a hierarchy among the various existing legal orders (NEVES, 2009).

Furthermore, still concerning how such communications should be established, the ideas developed by Perenice and Neil Walker, who defend the need to consolidate a "multilevel constitutionalism", as well as the ideas of André Ramos Tavares, in his theory of "cross-constitutionalism" and Manoel Aragon Reyes in his theory of "transnational constitutionalism" stand out. Despite the fact that they are not identical theories, they all defend the same need, namely, that considering the existence and obvious interaction of a plurality of international, supranational, regional and local legal orders, there is a clear necessity for the establishment of instruments to promote the articulation and the possibility of reciprocal influence between legal systems that basically deal with similar issues.

In this confluence model, it is possible to build an interconnected judicial network, formed by "a set of rules, used at different levels, which are articulated to guarantee human dignity through the organization and limitation of power"[12] (ACOSTA ALVARADO, 2013,

[12] In the original: *"[...] conjunto de normas, ubicadas a diversos niveles, que se articulan para lograr la garantía de la dignidad humana a través de la organización y limitación del poder"*.

p. 287, free translation). With its formation, there is the "overcoming of the provincial treatment of constitutional problems by States, without this leading us to the belief of the ultimate ratio of public international law"[13] (NEVES, 2010, p. 723, free translation).

Likewise, interaction leads to the possibility of mutual learning, through competition in contexts of dissonance and dialogue and cross-experimentation in more consensual contexts (WALKER, 2002). This interrelation between legal orders is a presupposition for the effectiveness of such orders, since, as stated by Petersmann (2009, p. 516):

> International law cannot be effective without its good faith implementation inside domestic legal systems, in the same way that domestic legal systems cannot remain effective in a globally interdependent world without the international legal coordination of their often adverse external effects on other polities and legal systems (…) Constitutional nationalism and power-oriented foreign policies fail to acknowledge that the collective supply of international public goods depends on multilevel judicial protection of international rule of law.

Articulation is necessary for the very survival of constitutionalism, since the axiological commitments assumed by national states call for supranational efforts to resolve them. In this sense argues Duarte, who highlights the current impossibility of mere suppression of legal systems, defending the interconnection between the different orders in today's society. In his words:

> [...] the path of constitutional cosmopolitanism cannot manifest itself only in the reduction of plurality to an artificial and forced homogeneity. It is not, therefore, a question of suppressing the complex State legal systems, but of articulating valid mechanisms of interpretation and interdependence. Faced with the old and outdated image of the Constitution as the culmination of an autarchic and self-sufficient legal system, the Constitution is claimed as an articulating element of complex networks of interdependent norms, capable of preventing the factual demands of the changing transnational normative flows from violating the normative requirements of the constitutional values. A model of Constitution based on interdependence, and not on the autarchy of the legal system, and which recovers public spaces for citizenship through institutional reforms that make the democratic principle effective (DUARTE, 2014, p. 157).[14]

[13] In the original: *"[...] superación del tratamiento provinciano de problemas constitucionales por los Estados, sin que eso nos lleve a la creencia, en la* ultima ratio*, del derecho internacional público"*.

[14] In the original: *"[...] a via do cosmopolitismo constitucional não pode manifestar-se apenas na redução da pluralidade em uma homogeneidade artificial e forçada. Não se trata, portanto, de suprimir os complexos ordenamentos jurídicos estatais, mas sim de articular mecanismos válidos de interpretação e interdependência. Diante da velha e ultrapassada imagem da Constituição como ápice de um ordenamento jurídico autárquico e autossuficiente, reivindica-se a Constituição como elemento articulador de complexas redes de normas interdependentes, capaz de evitar que as exigências fáticas dos mutantes fluxos normativos transnacionais vulnerem as exigências normativas dos valores constitucionais. Um modelo de Constituição baseado na interdependência, e não sobre a autarquia do sistema jurídico, e que recupere os espaços públicos para a cidadania mediante reformas institucionais que façam efetiva a vigência do princípio democrático*".

The construction of this legal human protection network, in which the search for the articulation between different legal orders and the defense of the indispensable interaction between the different levels of protection through synchronized rules and procedures, allows the improvement of the integration process, for the resolution of problems that cross territorial boundaries. It is defended, in line with Perenice (2009, p. 04), that "an interactive process of establishment, organizing, sharing and limiting powers, a process which involves national constitutions and the supranational constitutional framework as two interdependent elements of one legal system" is in need, precisely because the law is conceived as an integrated whole, especially with regard to the protection of human rights.

This confluence process recognizes, in the vertical perspective, that the different systems (internal and international) are formally autonomous components of the same social subsystem (law) and, in the horizontal perspective, that there must be cooperation and mutual acceptance between national systems, for the protection of common values. Through it, according to Luhmann's ideas, a constant articulation and complexification of the legal systems for the protection of the fundamental values sought by the global community is possible, without the suppression of some ideas that are inherent to the very conception of the State, such as, for example, sovereignty (even if it is relativized).

Communication between legal orders, which takes place through dialogues between constitutional courts and cross-fertilization processes, proves to be adequate in a scenario in which the decisions of States have more and more extraterritorial effects, due to global interdependencies (CANOTILHO, 2000). By means of communication bridges, therefore, the maintenance of the identity of national constitutions is allowed and the isolated action of States in solving problems related to human rights is avoided.

CONCLUSION

The consolidation of a new phase of global society, marked by the complexification of relations, whether at the social, cultural, legal or political level, presupposes that society and, in particular, the law are seen in a different way, precisely because such complexification highlights the confluence and the dependence existing between different legal orders for the solution of common problems, which arise in the scenario of interdependence and articulation at all levels.

In this regard, there is an imperative that the plurality of legal orders relate to each other and interact in a coordinated and non-hierarchical way to solve problems related to the violation of human rights that arise on the global stage. Such interaction is an imperative in

contemporary society, since it guarantees the due primacy of the defense of the individual as a subject of law in both the domestic and international legal systems, being the protagonist of the protection conferred by the legal system as a whole, as well as making possible the very survival of the different legal systems, as currently structured.

Once it is understood that because of the social complexity, globalization and the importance given to the protection of human rights there is no longer a way for a State to exist in an isolated and independent way, it is necessary to create tools to guarantee collaboration and coordination between them to regulate common legal situations.

It is in this sense that the need for an inter-relationship and the construction of communication bridges between the different legal systems is defended, for the resolution of possible conflicts through dialogue and not through the supremacy of one order over the other. This is because the confluence and harmony between such systems makes possible greater protection of human rights, allowing the application of the norm that most protects individuals against possible violations of their rights.

In this respect, the existing institutions are preserved, avoiding the supremacy of one order over the other, while ensuring the interaction between the various orders for mutual learning and for the protection of human rights. Interaction is a necessity and is a way of ensuring not the authority of an order over the others, but of following global changes that presuppose the need of the adaptation of the Law in different legal orders, for the survival and effectiveness of such legal systems.

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