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Artificial intelligence in the face of the normative silence of international law: a look at the European Union and MERCOSUR

A inteligência artificial perante o silêncio normativo do direito internacional: um olhar sobre a União Europeia e o MERCOSUL

José Noronha Rodrigues

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Artificial intelligence in the face of the normative silence of international law: a look at the European Union and MERCOSUR*

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Abstract

The normative silence on artificial intelligence and, specifically, its use in the context of international law is an indispensable element in the debates of this discipline in the 21st century, through the responsibility attributed to states. The objective is to analyse the international regulation of artificial intelligence and specifically, its use in international relations within the scope of the European Union and MERCOSUR, exposing the challenges and opportunities, as necessary mechanisms to increase economic integration and legal protection through the inappropriate use of this technology. To this end, we define as the hypothesis of the study: the regulation of artificial intelligence in the international context, taking as references the European Union and MERCOSUR, as examples of the need for transnational legislation in this regard. The methodology used is a transdisciplinary approach based on the methods of the social and legal sciences, in particular: logical, historical-social, cultural and legal. As a result, it concludes on the most diverse implications and challenges of the international and regional regulatory neglect regarding the use of artificial intelligence. The contribution and originality of the study lies in an analysis of the need for a transnational norm that establishes minimum protections against the threats of this technology.

Keywords: artificial intelligence; MERCOSUR; European Union; transnational legislation; international law.

Resumo

O silêncio normativo sobre a inteligência artificial e, especificamente, o seu uso no contexto do direito internacional é um elemento indispensável nos debates desta disciplina no século XXI, através da responsabilidade atribuída aos Estados. O objetivo é analisar a regulação internacional da inteligência artificial e, especificamente, o seu uso nas relações internacionais no âmbito da União Europeia e do MERCOSUL, expondo os desafios e

oportunidades, como mecanismos necessários para aumentar a integração econômica e a proteção jurídica através do uso inadequado desta tecnologia. Para tanto, definimos como hipótese do estudo: a regulamentação da inteligência artificial no contexto internacional, tendo como referências a União Europeia e o MERCOSUL, como exemplos da necessidade de uma legislação transnacional a esse respeito. A metodologia utilizada é uma abordagem transdisciplinar apoiada nos métodos das ciências sociais e jurídicas em particular: lógico, histórico-social, cultural e jurídico. Como resultado, conclui-se sobre as mais diversas implicações e desafios da negligência regulamentar internacional e regional no que respeita à utilização da inteligência artificial. A contribuição e originalidade do estudo reside na análise da necessidade de uma norma transnacional que estabeleça proteções mínimas contra as ameaças desta tecnologia.

Palavras-chave: inteligência artificial; MERCOSUL; União Europeia; legislação transnacional; direito internacional.

1 Introduction

As Burri¹, points out, most studies on artificial intelligence (AI) and international law focus on the use of artificial intelligence in weapons or attacks under AI control, neglecting other elements that bring not only the dark side of AI, but also the countless benefits that technological progress together with appropriate legislation can bring to the proliferation of peace in the context of globalization.

The problem of the absence of legislation on AI is undoubtedly one of the most worrying issues and, consequently, one that is of most interest to a large part of the academic community dedicated to international legal studies. In this sense, from our point of view, internationalists have not played a leading role in the legal vanguard of AI legislation, despite as Carrillo states:

AI is the subject of a wide-ranging debate in which there is a growing concern about its ethical and legal aspects. Frequently, the two are mixed and confused despite being different issues and areas of knowledge. The ethical debate raises two main

problems: the first, conceptual, relates to the idea and content of ethics; the second, functional, concerns its relationship with law. Both establish models of social behaviour, but they are different in scope and nature. The juridical analysis is based on a non-formalistic scientific methodology. This means that it is necessary to consider the nature and characteristics of the AI as a preliminary step to the definition of its legal paradigm. In this regard, there are two main issues: the relationship between artificial and human intelligence and the question of the unitary or diverse nature of the AI. From that theoretical and practical basis, the study of the legal system is carried out by examining its foundations, the governance model and the regulatory bases. According to this analysis, throughout the work and in the conclusions, International Law is identified as the principal legal framework for the regulation of AI.²

But what specifically is artificial intelligence, and why does it attract so little attention from international law scholars? According to McCarthy *et al.*³ “it is the theory and development of computer systems capable of performing tasks that normally require human intelligence, such as visual perception, speech recognition, decision-making and language translation”.

On the other hand, Russel & Norvig⁴, define it as a state of intelligent agent conception, being a system that perceives its environment and performs actions that maximize its results.

In 2023, the European Parliament, when establishing the legislative framework that will regulate AI-based systems, provided a description as extensive as it is generic about artificial intelligence:

software that is developed using one or more of the techniques and approaches [...] and that can, for a given set of human-defined objectives, generate results such as content, predictions, recommendations, or decisions that influence the environments with which they interact⁵

¹ BURRI, T. International law and artificial intelligence. *German Yearbook of International Law* 2017, Berlin, v. 60, p. 91-108, Oct. 2019. DOI: <http://dx.doi.org/10.2139/ssrn.3060191>. Available at: <http://ssrn.com/abstract=3060191>. Access on: 8 Nov. 2023.

² CARRILO, M. R. Artificial intelligence: from ethics to law. *Telecommunications Policy*, v. 44, n. 6, July 2020. Available at: <https://www.sciencedirect.com/science/article/pii/S030859612030029X?via%3Dihub>. Access on: 8 Nov. 2023.

³ MCCARTHY, J. *et al.* A proposal for the Dartmouth Summer Research Project on Artificial Intelligence, August 31, 1955. *AI Magazine*, v. 27, n. 4, p. 12-14, 2006. Available at: <https://doi.org/10.1609/aimag.v27i4.1904>. Access on: 8 Nov. 2023.

⁴ RUSSELL, S. J.; NORVIG, P. *Artificial intelligence: a modern approach*. 3. ed. New Jersey: Pearson Education Limited, 2016. Available at: <https://repository.unimal.ac.id/1022/>. Access on: 8 Nov. 2023.

⁵ MADIEGA, T.; CHAHR, S. Artificial intelligence act. *European Parliament*, 2023. Available at: <https://www.europarl.europa.eu/>

However, we will address the historical background to the legislative framework for AI in section 3 of this article.

Regardless of the expansion of its use in our lives, there is no widely accepted definition among legal scholars. As McCorduck⁶ refers, it is an umbrella under which the most diverse concepts are sheltered, such as computational variety, techniques and processes associated with the capacity of machines to do things that require intelligence, such as: artificial pattern recognition and language processing.

Rezek⁷, on the other hand, defines public international law as autonomous legal systems, where relations between sovereign states are ordered, public international law being - the law of the people, in the sense of the law of nations or peoples where their consent lies. Gutier⁸ also points out that it is called Public International Law when it deals with the legal relations (rights and duties) between States, while Private International Law deals with the application of civil, commercial, or criminal laws of one State on private individuals (natural or legal persons) of another State.

However, it is important to highlight that in recent decades and as a result of technological progress, there is a plurality of actors and consequently a diversification of subjects at the international level, due to the enlargement of national states and the emergence of international and regional organizations, which represents a challenge due to the international legal fragmentation that they bring with them.

The main motivation for this study is the lack of regulation of artificial intelligence in the international context, taking the European Union and MERCOSUR as references, as examples of the need for transnational legislation in this regard.

The methodology employed takes a transdisciplinary approach with logical methods and historical-sociological, cultural and legal elements, which involves the combination of methods from the social sciences in general and from the legal sciences in particular.

The aim is to contribute to a better comprehension and understanding of the complexity and need for a transnational legal norm to regulate the global use of AI, both for legal researchers and for any individual. In this sense, the context of artificial intelligence in the framework of transnational globalization is addressed, followed by the legislative advances in the framework of the European Union and finally the whole theoretical outline in the reality of MERCOSUR.

As a result, it is shown that the lack of global legislation on the subject produces and increases the already existing differentiation between North and South in the context of international relations. Hence, the main contribution of the study is aimed at understanding the challenges and the need for such legislation in the global technological sphere.

2 Transnational globalization and the phenomenon of AI

The 20th century has been largely marked by technological progress and its implications in the life of the individual and, why not, in the international relations of the different economic blocs. Indeed, the new scenario of artificial intelligence (hereafter AI) has revolutionized entire industries, a global process that directly affects international relations and consequently the sovereignty of states.

In the field of international law, this issue has not been widely discussed, as the main concern regarding the use of artificial intelligence is focused on the protection of data, intellectual creations, or the control of sensitive information. Even though its arrival and popularization are not reflected in the existence of international instruments that address the issue, this is evidence of the significance and relevance of the subject in the international sphere.

Basically, international law lacks a legal homogeneity capable of implementing a single global normative

thinktank/en/document/EPRS_BRI(2021)698792. Access on: 9 Nov. 2023.

⁶ MCCORDUCK, P. *Machines who think*. 2. ed. Natick: A K Peters/CRC Press, 2004. Available at: <https://doi.org/10.1201/9780429258985>. Access on: 8 Nov. 2023.

⁷ REZEK, J. F. *Direito internacional público: curso elementar*. São Paulo: Saraiva, 2013. Available at: https://www.academia.edu/27477367/Direito_Internacional_P%C3%BAblico_Francisco_Rezek. Access on: 8 Nov. 2023.

⁸ GUTIER, M. S. *Introdução ao direito internacional público*. Uberaba: [s.n.], 2011. Available at: https://www.inesul.edu.br/professor/arquivos_alunos/doc_1558818854.pdf. Access on: 9 Nov. 2023.

system to generalize the use of intelligent machines⁹. Although many claim that AI will be able to replace humans in a wide range of activities, in the context of international relations this is hardly in the immediate future.¹⁰

Giddens¹¹ defines globalization as bringing about the modification of contemporary ways of life as a consequence of modernity. For its part, Beck refers that

Globality means that from now on nothing which happens on our planet is only a limited local event; all inventions, victories and catastrophes affect the whole world, and we must reorient and reorganize our lives and actions, our organizations and institutions, along a “local-global” axis. Globality, understood in this way, denotes the new situation of the second modernity.¹²

The changes brought about by modernity cause profound crises linked to issues such as climate change, the environment, transnational processes and more recently AI.

Globalization refers to the multiplicity of relationships and interconnections between states and societies, forming the model of the world system. It focuses on the process by which events, decisions and activities in one part of the world can have significant consequences for individuals and communities in distant parts of the globe¹³.

Friedman¹⁴ points out that globalization has its own hallmarks when it comes to technology, namely:

computing, miniaturization, digitalization, satellite communications, fiber optics and the Internet. All of these technologies have helped create the defining perspective of globalization. If the defining perspective of the Cold War world was «division»

the defining perspective of globalization is «integration.»

In this sense, the global transformations of the second half of the 20th century, after the Cold War, reconfigured the global economy, provoking a more effective experience of internationalization, globalization and transnationalization, as highlighted by Ianni¹⁵, who defines the constant and drastic ruptures in the ways of being, acting and conceiving the role of the human being in the global economy.

Within studies on the global map of international research, Kristensen¹⁶ highlights a prominent dominance of North versus South, which necessarily has a significant impact on how we should deal with the advancement of AI in international relations and consequently the role of states. The predominance of research focused on the global North necessarily highlights how it will be much easier for countries and economic groups located in this region of the map to meet the challenges of AI in accordance with their level of development.

If we analyse the map presented by Kristensen’s study¹⁷, we experience that in the global and local process, AI reaches higher levels of social impact in those countries located at the active pole of international relations research. This brings about constant mutations in the relations between states and individuals towards the inclusion of AI in their global activities.

Consequently, the use and advancement of AI is evidence of the weakening of state power and thus of legal systems and their political structures, which calls into question the extent to which the inequality of states in international relations will not be an impediment to the balanced use of AI?

Can we speak of a transnational law for AI? As defined by Vagts¹⁸ three elements define the existence of a

⁹ BURRI, T. International law and artificial intelligence. *German Yearbook of International Law* 2017, Berlin, v. 60, p. 91-108, Oct. 2019. DOI: <http://dx.doi.org/10.2139/ssrn.3060191>. Available at: <https://ssrn.com/abstract=3060191>. Access on: 8 Nov. 2023.

¹⁰ COZMAN, F. G.; PLONSKI, G. A.; NERI, H. (org.). *Inteligência artificial: avanços e tendências*. São Paulo: Instituto de Estudos Avançados, 2021. Available at: <https://doi.org/10.11606/9786587773131>. Access on: 9 Nov. 2023.

¹¹ GIDDENS, A. *Le conseguenze della modernità: fiducia e rischio, sicurezza e pericolo*. Bologna: Il Mulino, 1994.

¹² BECK, U. *What is globalization*. Cambridge, UK: Polity Press, 2009. Available at: https://books.google.pt/books?hl=pt-PT&lr=&id=REBRDwAAQBAJ&oi=fnd&pg=PP2&dq=globalization+&ots=gpiaZU-0zA&sig=PvQpiJAv5XPkb_9jPc72OZ21bbU&redir_esc=y%23v=onepage&q=globalization&f=false. Access on: 9 Nov. 2023. p. 11-12.

¹³ MCGREW, A. Conceptualizing global politics. In: MCGREW, A. G.; LEWIS, P. G. (ed.). *Global politics: globalisation and the nation-state*. Cambridge: Polity Press, 1992. p. 1-28.

¹⁴ FRIEDMAN, T. L. *Compreender a globalização: o Lexus e a Oliveira*. Lisboa: Quetzal Editores, 2020. p. 34

¹⁵ IANNI, O. *Teorias da globalização*. 13. ed. Rio de Janeiro: Civilização Brasileira, 2006, p. 41.

¹⁶ KRISTENSEN, P. M. Southern sensibilities: advancing third wave sociology of international relations in the case of Brazil. *Journal of International Relations and Development*, v. 22, n. 2, p. 468-494, June 2017. Available at: <https://doi.org/10.1057/s41268-017-0107-z>. Access on: 8 Nov. 2023.

¹⁷ KRISTENSEN, P. M. Southern sensibilities: advancing third wave sociology of international relations in the case of Brazil. *Journal of International Relations and Development*, v. 22, n. 2, p. 468-494, June 2017. Available at: <https://doi.org/10.1057/s41268-017-0107-z>. Access on: 8 Nov. 2023.

¹⁸ VAGTS, D. F. *Transnational business problems*. 3. ed. New York: Foundation Press, 2003.

transnational law: the crossing of national borders, the clear division between public and private, and international normative flexibility (soft law), as is the case of AI in the international context.

In 1956, Jessup¹⁹ considered that «transnational law» included all laws regulating actions or events that transcend national borders, but actually AI is no longer just a challenge limited to its use in the geographical space between state borders. The deterritorialization of digital technology shows that international law needs an effective, dynamic update in terms of the use of technology. Another point to highlight is the public-private divide.

Is AI and its tools today just a technology that encompasses the reality of private law and private relations? The role of the State in the international context is unlikely to escape the impacts of AI and its benefits, and there is no doubt that as this technology is socialized it will have a significant impact on international relations, as States will make use of it in a wide range of areas such as international contracts, taxation and, why not, human rights.

At the same time as, international law has soft law norms, this coercive inability can be a complex challenge for the use of AI, at least in the absence of respect for international treaties and their application.

Santos²⁰ already warned that globalization is perverse because it presents itself as a merciless competitiveness that produces various fragmentations such as the expansion of unemployment, the abandonment of education and the disregard for health as an inalienable individual and social good.

In this line of thinking, AI is the high point of this fragmentation and merciless competitiveness, as its applicability within a given state depends on the level of development achieved by that state.

Much of what is written about AI and international relations portrays a rationalist, pragmatic and technocratic reality. As Burri²¹ points out, AI governance will

be produced by an increasingly pluralistic and fragmented international sphere, while at the same time bringing about dynamic changes in public international law, such as in the case of compiling information, compiling, and storing databanks, among others.

Power certainly does not appear optimistic and flexible in this debate, more specifically concerning the relative merits of international commitments and the role of soft law norms about AI, as the use of intelligent machines problematizes long-standing definitions of state, sovereignty, and border.

What will be the effective gains for international law from the use of AI beyond data compaction and information aggregation? According to Burri²²:

Consequently, when the law is extensive, dense, homogeneous, and structured and involves defined sets of variables, it lends itself to the application of machine learning. This is the case in some domains of the law, for instance, in national tax law. The fields to be filled in on tax forms are clearly defined. The disputes that arise in tax law tend to hinge on details and nuances. Disputes are abundant, though, and municipal tax authorities and courts each year hand down thousands of rulings which are rather clear and, moreover, often accessible in public databases. The resulting body of law is large, solid, and uniform - and thus ideal for machine learning. The same holds true for other areas of the law, such as traffic law, asylum law, or the law of mergers and acquisitions, which are all marked by rulings and routines that are as endless as they are frequent.

The topic of power is a subject of discussion, particularly with regards to state decisions regarding international obligations. We can refer to AI as a signatory to international treaties or as a diplomatic exercise in the context of a military conflict, as in the case of Russia and Ukraine. It is difficult to do so, as the doctrine has not yet defined the legal personality that these intelligent machines could have.

Intelligent agents who no longer act in a deterministic way, as their activities lead to a high degree of unpredictability, generating risks for autonomy and therefore that autonomy, brings so-called liability loopholes that current legislation cannot respond to²³.

¹⁹ JESSUP, P. *Transnational law*. New Haven: Yale University Press, 1956.

²⁰ SANTOS, M. *Por uma outra globalização: do pensamento único à consciência universal*. Rio de Janeiro: Editora Record, 2001. Available at: https://www.academia.edu/4572349/SANTOS_Milton_Por_uma_outra_globalizacao. Access on: 8 Nov. 2023.

²¹ BURRI, T. International law and artificial intelligence. *German Yearbook of International Law* 2017, Berlin, v. 60, p. 91-108, Oct. 2019. DOI: <http://dx.doi.org/10.2139/ssrn.3060191>. Available at: <https://ssrn.com/abstract=3060191>. Access on: 8 Nov. 2023.

<https://ssrn.com/abstract=3060191>. Access on: 8 Nov. 2023.

²² BURRI, T. International law and artificial intelligence. *German Yearbook of International Law* 2017, Berlin, v. 60, p. 91-108, Oct. 2019. DOI: <http://dx.doi.org/10.2139/ssrn.3060191>. Available at: <https://ssrn.com/abstract=3060191>. Access on: 8 Nov. 2023.

²³ SCHIRMER, J. E. Artificial intelligence and legal personality: introducing “teilrechtsfähigkeit”: a partial legal status made in Ger-

What are needed, therefore, are also transnational and globally effective tools that, ideally, are based on corresponding transnational and international agreements, at least where they are intended to take legal form. This includes new concepts, agreements, and institutions of transnational governance in which public actors collaborate with the stakeholders concerned, i.e. with associations and companies in the digital economy, but also with NGOs and other entities representing the interests of civil society. In order to have any sustained effect, such transnational agreements require law that is set by state authorities, or in which they at least play a role, and that is coupled with measures for enforcing it.²⁴

As the international order moves in the direction of transnational issues or issues of global importance, social and technological difference is a watershed for the implementation of technologies such as intelligent machines: AI. Implementing a global or regional normative system on AI today, would highlight the inequality in international relations and thus perpetuate the North-South dialogue.

In short, and in agreement with Michaels²⁵ the multiplicity of specializations of legal systems was initially observed from the perspective of national societies. This is an indication of the inability of transnational globalization to adapt the existing legal structure to efficiently accommodate the global use of AI. There is an urgent need for the international agenda to define the future not only of humanity with the use of AI, but also of international relations.

At the same time as we are in a legal fragmentation of states in the face of the advance of AI, the United Nations (UN) together with its specialized agencies has sought to remain active on several fronts, most notably the UNESCO Ad Hoc Expert Group on the Ethics of AI and the UN Secretary General's High-Level Panel on Digital Cooperation. The UN is well positioned to build on initiatives and provide a credible multilateral

pathway towards human-centred ethical uses and the preservation of peace.²⁶

Since 2015, the United Nations, together with its specialized agencies, and as part of the 2030 Agenda, have been working hard to implement instruments that enable the ethical use of this technology in the international context. Although the potential of AI is astounding, and the possibility of an international body specialized in AI (IAIO) is being considered, reaching an international consensus still seems utopian. Specifically, there has been limited progress made regarding this matter beyond the Universal Declaration on the Ethics of Artificial Intelligence, which was signed on 25 November 2021.

3 A necessary analysis in the European Union vis-à-vis AI

It is within the European Union (EU) that the European Commission proposes the first legal framework on AI, which simultaneously addresses the risks of AI and positions Europe to play a leading role globally. Thus, over time, various international legal instruments have been developed. Among the primary objectives of this undertaking, we emphasize the necessity to enhance the technological and industrial capabilities of the European Union, and to implement AI in both the public and private sectors, in order to adequately prepare for technological advancements and to ensure a suitable legal framework.

With the advent of the European Ethical Charter on the use of AI in judicial systems in 2018 (European Commission), the essential pillars of the charter are established in relation to the topic: respect for human rights, non-discrimination, quality and safety, transparency, impartiality and fairness, user control.²⁷

An example that defines the importance of state regulation of technological progress is the German case.

many. In: WISCHMEYER, T.; RADEMACHER, T. (ed). *Regulating artificial intelligence*. Cham: Springer International Publishing, 2019. p. 123-142. Available at: https://doi.org/10.1007/978-3-030-32361-5_6. Access on: 9 Nov. 2023.

²⁴ HOFFMANN-RIEM, W. Artificial intelligence as a challenge for law and regulation. In: WISCHMEYER, T.; RADEMACHER, T. (ed). *Regulating artificial intelligence*. [S.l.]: Springer, 2020. Available at: https://doi.org/10.1007/978-3-030-32361-5_1. Access on: 9 Nov. 2023.

²⁵ MICHAELS, R. Global legal pluralism. *Annual Review of Law and Social Science*, Durham, v. 5, n. 1, p. 243-162, 2009. Available at: https://scholarship.law.duke.edu/faculty_scholarship/2051/. Access on: 9 Nov. 2023.

²⁶ GARCIA, E. V. Multilateralism and artificial intelligence: what role for the United Nations? *SSRN Electronic Journal*, 12 Dec. 2020. Available at: <https://doi.org/10.2139/ssrn.3779866>. Access on: 9 Nov. 2023.

²⁷ COUNCIL OF EUROPE. *European Ethical Charter on the use of Artificial Intelligence in judicial systems and their environment*. adopted at the 31st plenary meeting of the CEPEJ. Strasbourg: CEPEJ, 2018. Available at: <https://rm.coe.int/09000016808f699c>. Access on: 9 Nov. 2023.

As Hoffmann-Riem²⁸ points out, the German Constitutional Court stands out as an example within the European normative reality by guaranteeing the fundamental right to information technology. This example shows the need for good digital governance and the importance of the role of the state in creating laws that encourage and facilitate peaceful coexistence for both sides: both for the development and progress of technology and for the individuals or legal entities that will become facilitating users of its use.

In 2019, a new document entitled Ethical Guidelines for Trustworthy AI emerged, which aims to define a set of guidelines to promote trustworthy AI and that should be observed throughout the entire life cycle of the system. Thus, AI:

- a) must be Legal, complying with all applicable laws and regulations; b) it must be ethical, ensuring the observance of ethical principles and values; c) it must be Robust, both from a technical and a social point of view, since, even with good intentions, AI systems can cause unintended harm.²⁹

Another document that highlights the EU's work on AI is the so-called White Paper on Artificial Intelligence in 2020³⁰, in which policy options were defined on how to achieve the objectives of boosting the use of AI, analysing how risks related to some of the applications of these new technological resources should be addressed. The white paper ratifies many of the measures that were announced by the European Commission in 2018, emphasizing 6 actions to optimize the use of AI such as human centricity, essential supervision, ethical issues and good functioning of intelligent systems.

The European Union has been working on the need to implement a digital single market by setting up a dedicated committee on Artificial Intelligence for Europe within the European Commission:

With the aim of establishing a long-term EU roadmap on artificial intelligence (AI), the European Parliament established AIDA at its plenary session on 18 June 2020. Building on previous reports from the standing committees, AIDA will analyse the impact and challenges of AI deployment, identify common EU-wide objectives and propose recommendations on the best ways forward. AIDA's 12-month mandate envisages adopting a horizontal approach to AI, analysing its future impact on the EU economy, and focusing on skills, employment, education, health, transport, the environment, industry, e-Government and non-EU approaches to AI. To achieve its objectives, committee members will organize hearings and workshops with key stakeholders, including experts, policymakers and the business community. At the end of our mandate, we will present a report with our findings and recommendations.³¹

On the 1st and 2nd of October 2020, European Union leaders discussed the digital transition and, in its conclusions, the European Council invited the Commission to: a) propose ways to increase public and private investments at national and European levels in research, innovation and deployment of artificial intelligence; b) ensure better coordination and the creation of more networks and synergies between European research centres, based on excellence; c) provide a clear and objective definition of high-risk AI systems.³²

On the 21st of April 2021, the European Commission presented a proposal for an Artificial Intelligence Act with the objective of harmonizing the regulations pertaining to artificial intelligence. Furthermore, the proposal encompasses a comprehensive strategy that encompasses a series of coordinated actions by the Commission and its member states. This set of regulations aims to enhance the confidence in artificial intelligence and foster the advancement and modernization of AI technology.³³

²⁸ HOFFMANN-RIEM, W. *Teoria geral do direito digital: transformação digital desafios para o direito*. Rio de Janeiro: Forense, 2020. p. 128.

²⁹ EUROPEAN COMMISSION. Directorate-General for Education, Youth, Sport and Culture. *Ethical guidelines on the use of artificial intelligence (AI) and data in teaching and learning for educators*. Luxembourg: Publications Office of the European Union, 2022. Available at: <https://data.europa.eu/doi/10.2766/153756>. Access on: 8 Nov. 2023.

³⁰ EUROPEAN COMMISSION. *Livro branco sobre a inteligência artificial: uma abordagem europeia virada para a excelência e a confiança*. Brussels, 19 Feb. 2020. Available at: <https://eur-lex.europa.eu/legal-content/PT/TXT/?uri=CELEX%3A52020DC0065>. Access on: 9 Nov. 2023.

³¹ EUROPEAN UNION. Committees. *AIDA Committee Chair*. [20--]. Available at: <https://www.europarl.europa.eu/committees/pt/aida/about>. Access on: 8 Nov. 2023.

³² CONSELHO EUROPEU. Cronologia: inteligência artificial. *Conselho Europeu*, 2024. Available at: <https://www.consilium.europa.eu/pt/policies/artificial-intelligence/timeline-artificial-intelligence/>. Access on: 9 Nov. 2023. EUROPEAN COUNCIL. *EUCO 13/20 European Council conclusions*. Brussels, 2 Oct. 2020. Available at: <https://www.consilium.europa.eu/media/45910/021020-euco-final-conclusions.pdf>. Access on: 11 Dec. 2023.

³³ CONSELHO EUROPEU. Cronologia: inteligência artificial. *Conselho Europeu*, 2024. Available at: <https://www.consilium.europa.eu/pt/policies/artificial-intelligence/timeline-artificial-intelligence/>. Access on: 9 Nov. 2023. COUNCIL OF THE EUROPEAN UNION. *Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial*

On the 29th of April 2021, the Regulation for the Digital Europe Programme³⁴ appeared. In this instrument, in its objective 2, the economic bloc supports and encourages the development and implementation of AI, which shows a contradiction. On the one hand, technological progress and its implementation is a priority, and on the other hand, there is no regulation to guarantee the appropriate use of this technology.

On 6th of December 2022, the Council agreed its position on the Artificial Intelligence Act (general approach). The aim of the proposed new regulation is to ensure that AI systems placed on the EU market and used in the Union are safe and comply with existing Union fundamental rights and values legislation.³⁵

Recently, on 9 December 2023, the European Council and the Parliament agreed on the AI Act. The AI act harmonizes rules on AI systems, ensuring they save and respect fundamental rights and EU values. The main elements of the provisional agreement can be summarized as follows: - rules on high-impact general-purpose AI models that can cause systemic risk in the future, as well as on high-risk AI systems; - a revised system of governance with some enforcement powers at EU level; - extension of the list of prohibitions but with the possibility to use remote biometric identification by law enforcement authorities in public spaces, subject to safeguards; - better protection of rights through the obligation for deployers of high-risk AI systems to conduct a fundamental rights impact assessment prior to putting an AI system into use.³⁶

Intelligence Act) and amending certain Union legislative acts - General approach. Brussels, 25 Nov. 2022. Available at: <https://data.consilium.europa.eu/doc/document/ST-14954-2022-INIT/en/pdf>. Access on: 11 Dec. 2023.

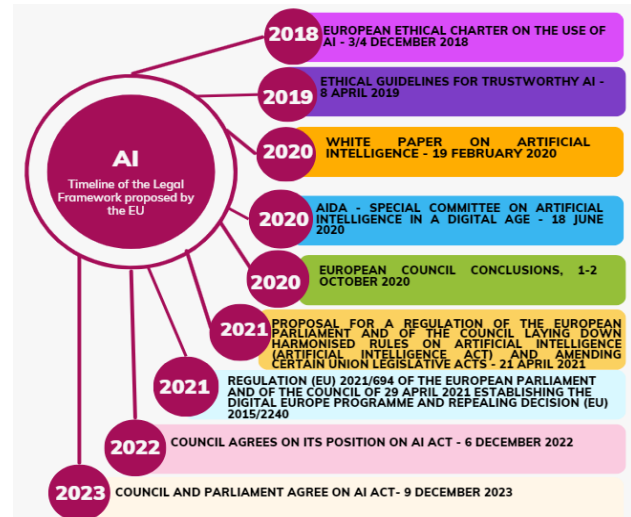
³⁴ EUROPEAN UNION. *Regulation (EU) 2021/694 of the European Parliament and of the Council of 29 April 2021 establishing the Digital Europe Programme and repealing decision (EU) 2015/2240.* Brussels, 29 Apr. 2021. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0694>. Access on: 8 Nov. 2023.

³⁵ CONSELHO EUROPEU. *Cronologia: inteligência artificial. Conselho Europeu*, 2024. Available at: <https://www.consilium.europa.eu/pt/policies/artificial-intelligence/timeline-artificial-intelligence/>. Access on: 9 Nov. 2023. COUNCIL OF THE EUROPEAN UNION. *Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts - General approach.* Brussels, 25 Nov. 2022. Available at: <https://data.consilium.europa.eu/doc/document/ST-14954-2022-INIT/en/pdf>. Access on: 11 Dec. 2023.

³⁶ CONSELHO EUROPEU. *Cronologia: inteligência artificial. Conselho Europeu*, 2024. Available at: <https://www.consilium.europa.eu/pt/policies/artificial-intelligence/timeline-artificial-intelligence/>. Access on: 9 Nov. 2023.

Below, in figure 1, we provide a brief summary of these key documents on the use of AI in the European Union and their chronology.

Figure 1 – Timeline of the main documents/resolutions proposed by the EU for the Legal Framework regulating AI



It is notable that, at the time of concluding this research, the European framework for the utilization of AI is still undergoing analysis and approval. Therefore, it was not analyzed or addressed in the work, as its analysis would have resulted in speculation without any scientific or legal basis, since it is not yet in effect. There is considerable speculation about the arrival of such a standard, as it would be the first of its kind globally.

Both the EU and the UN are facing the same challenges. Intelligent machines have presented an immense challenge to the law, which has yet to understand what the future of their use will be. Basically, both entities concur that a balance must be established that combines technological advancement with fundamental rights such as privacy, freedom of expression, and security, among other facets.

As Ortega³⁷ highlights, the aforementioned Declaration aims to be an international reference framework on

ropa.eu/pt/policies/artificial-intelligence/timeline-artificial-intelligence/. Access on: 9 Nov. 2023. COUNCIL OF THE EUROPEAN UNION. *Artificial intelligence act: Council and Parliament strike a deal on the first rules for AI in the world.* *Council of the European Union*, 9 Dec. 2023. Available at: <https://www.consilium.europa.eu/pt/press/press-releases/2023/12/09/artificial-intelligence-act-council-and-parliament-strike-a-deal-on-the-first-worldwide-rules-for-ai/>. Access on: 11 Dec. de 2023.

³⁷ ORTEGA, A. *Hacia un régimen europeo de control de la inteligencia artificial.* *Real Instituto Elcano*, 6 May 2021. Available at: <https://www.realinstitutoelcano.org/analisis/hacia-un-regimen-europeo-de-control-de-la-inteligencia-artificial/>. Access on: 8 Nov.

those legal aspects that must be present in the protection of human beings in the face of the advance of AI. The production of norms that constitute a reference in global governance on AI is not a simple matter that is easily accepted by states, as it has a direct impact on classic concepts such as sovereignty, territoriality, and self-determination, all of which have already been mentioned here.

On the other hand, we should not forget that the main discussions and advances in AI legislation are currently led by international or regional organizations in developed countries, which is evidence of the global map of international relations and their global role presented in Kristensen's study³⁸ cited above.

This normative reality serves as a manifestation of the global pluralization process, as non-European nations, particularly those with a lower level of development, are under-represented in global AI interests.

Even if in most cases it is not sufficient to develop a specific rule for the infinite possibilities of use offered by the future of AI, the lack of legal regulations in this respect is undoubtedly a dangerous abyss where we will be exposed to the most diverse violations both domestically and internationally. As Wischmeyer³⁹ points out, it is particularly difficult for intelligent systems to ensure transparency, accountability, and adequate auditability.

Ultimately, the future of law regarding the appropriate utilization of AI will hinge on the implementation of legal instruments that are derived from the advancement and mastery of jurists and doctrinators based on multidisciplinary expertise, which is capable of neutralizing the agility and expertise of the IT and robotics industries in the technological domain.

Relying solely on the use of ethical principles, as provided for in the EU Charter, is hardly sufficient. In order to mitigate the risks that AI and global digital governance pose, it is imperative that there be a law

emanating from public or international power, where sanctions can be imposed.

At last, as previously stated, it is imperative to emphasize that the efforts of national jurisdictions will not be sufficient to meet the challenges posed by AI. Therefore, effective global and regional instruments are needed to establish binding legal force beyond ethical parameters and soft law norms.

4 Specifically, MERCOSUR and AI

In the last decade, MERCOSUR member countries have experienced intense changes in the region's political patterns. They have gone through troubled periods of economic difficulties. The twists and turns of the political agenda have provoked a loss in the concretion of the integration process (sometimes in the search for another ideological model, other times in the differences between the partners). This undoubtedly led to local and national guidelines taking on a leading role vis-à-vis the governments of the member states, diluting purely regional discussions.

In this regard, Almeida⁴⁰ notes that: “[...] MERCOSUR's current problems do not result from MERCOSUR's own shortcomings as such, but from the non-compliance with its basic rules by voluntary decision of the governments of the member countries [...]”.

The main criticisms of the MERCOSUR model are based on the application of a democratic consensus model. Both Article 16 of the Treaty of Asunción and Article 37 of the Ouro Preto Protocol make it clear that MERCOSUR's decisions will be taken by consensus and with the presence of all member states.⁴¹

Another significant criticism pertains to comparing MERCOSUR with the progress made by the European Union in matters such as harmonization and standardization of economic and monetary policies, without

2023.

³⁸ KRISTENSEN, P. M. Southern sensibilities: advancing third wave sociology of international relations in the case of Brazil. *Journal of International Relations and Development*, v. 22, n. 2, p. 468-494, June 2017. Available at: <https://doi.org/10.1057/s41268-017-0107-z>. Access on: 8 Nov. 2023.

³⁹ WISCHMEYER, T. Artificial intelligence and transparency: opening the black box. In: WISCHMEYER, T. RADEMACHER, T. (ed). *Regulating Artificial Intelligence*. Cham: Springer International Publishing, 2019. Available at: https://doi.org/10.1007/978-3-030-32361-5_4. Access on: 9 Nov. 2023.

⁴⁰ ALMEIDA, P. R. de. Seria o Mercosul reversível? Especulações teóricas sobre trajetórias alternativas concretas. *Universitas: Relações Internacionais*, Brasília, v. 9, n. 1, p. 39-71, jan./jun. 2011. Available at: <https://doi.org/10.5102/uri.v9i1.1360>. Access on: 9 Nov. 2023.

⁴¹ MERCOSUR. *Tratado de Asunción sobre la estructura institucional del MERCOSUR*. Asunción: [s. n.]. 1996. Available at: https://www.parlamentomercosur.org/innovaportal/file/15511/1/tratado_de_asuncion.pdf%20. Access on: 8 Nov. 2023.

fully comprehending its true nature. MERCOSUR is an imperfect customs union, as it has countless exceptions used by member states.

In all honesty, comprehending MERCOSUR from the perspective of a rapidly expanding European Union enables us to find little fault with its genuine efficacy, as there is still no legal MERCOSUR community model capable of standardizing the law in the region.

Ultimately, we draw attention to the vulnerability of the bloc, namely the shared concern and persistent skepticism within Latin American political systems, which directly affects the viability or insufficiency of the economic bloc.

This leads us to the following question: Is there a MERCOSUR law? The effectiveness of our current bloc will hinge on the adoption of the legal instruments that are essential for its effectiveness.

According to Basso⁴² there are two ways of harmonizing legislation in international law: through uniform laws or through international conventions. In the first case, the states commit themselves by means of an international agreement; in the second case, the text of the convention itself is a uniform law that must be incorporated into the legal systems.

In the context of MERCOSUR and according to Dallari⁴³, in the structure of MERCOSUR, the decisions made by its bodies do not constitute legal norms strictly speaking, but rather political determinations that bind the member states to the promotion of adaptation in their respective internal legal systems.

Certainly, this reality in MERCOSUR demonstrates the complexities of achieving a consensus or comprehension regarding AI. While the European Union has made important and significant progress on this issue, MERCOSUR has barely discussed it as a major future challenge for the region.

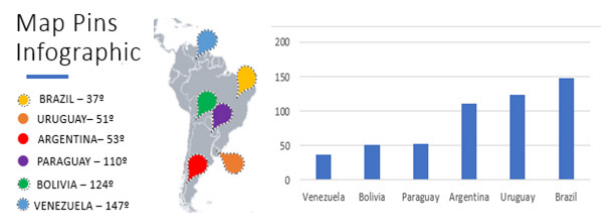
Although they are regional bodies with different objectives and structures, they represent the reality of the global map of international relations, where the main

innovations and discussions take place in the context of the developed North versus the developing South.

Despite the fact that in the last decade, MERCOSUR member countries have worked on the need to implement a digital agenda, progress on issues such as AI is still insufficient. The report titled “Government AI Readiness Index,” compiled by the University of Oxford⁴⁴, depicts the degree of complexity or maturity of public policies on AI in 181 nations.

In the MERCOSUR region, Brazil is ranked 37th, followed by Uruguay (51st), Argentina (53rd), Paraguay (110th), Venezuela (147th), despite being suspended from the bloc, and Bolivia (124th), which is slated to join the bloc in the near future. As depicted in Figure 2, this corroborates the distinct distinctions and disparities observed between the nations of the North and the South.⁴⁵

Figure 2 - Level of complexity or maturity of public policies on AI



Brazil, a reference country within MERCOSUR, is currently engaged in three regulatory initiatives, namely Law n°5051/2019, n°5961/2019 and n°21/2020. It is worth noting that only in 2019 did the Brazilian legislature propose the need to regulate the issue through the draft laws on AI. Another point to be criticized is that none of the instruments presents a definition of what legislation and legal operators should understand as AI or intelligent machines.

Essentially, the first two Brazilian projects copy the European initiative contained in the White Paper mentioned above, as they barely define the guiding principles for the use of AI in the country. Many points to emphasize are the protection and respect for human rights, human dignity, plurality, and diversity; the guarantee of

⁴² BASSO, M. Harmonização do Direito dos Países do Mercosul. *Revista da Faculdade de Direito UFPR*, v. 33, jun. 2000. Available at: <https://doi.org/10.5380/rfdupr.v33i0.1848>. Access on: 9 Nov. 2023.

⁴³ DALLARI, P. B. de A. O Mercosul perante o sistema constitucional brasileiro. In: BASSO, M. *Mercosul - MERCOSUR: estudos em homenagem a Fernando Henrique Cardoso*. São Paulo: Atlas, 2007. v. 1.

⁴⁴ ROGERSON, A. *et al. Government AI Readiness Index*. Oxford: Oxford Insights, 2022. Available at: https://www.unido.org/sites/default/files/files/2023-01/Government_AI_Readiness_2022_FV.pdf. Access on: 9 Nov. 2023.

⁴⁵ ROGERSON, A. *et al. Government AI Readiness Index*. Oxford: Oxford Insights, 2022. Available at: https://www.unido.org/sites/default/files/files/2023-01/Government_AI_Readiness_2022_FV.pdf. Access on: 9 Nov. 2023.

personal data protection; data privacy; transparency and reliability; and audits of non-human systems.

By focusing on the Brazilian reality, it is evident that the existence of data colonialism transcends physical boundaries and manifests itself as a new era of submission and dependence in the history of humanity. Implementing alien legal systems is not the most appropriate solution in the absence of legislation.

It is important to highlight that even though there is no normative instrument on AI in the moulds of the European Union, MERCOSUR nations should not confine their strategies to recognizing and replicating the most effective or worst international practices. Instead, they should begin with a comprehensive comprehension of the requirements and obstacles of the region and the economic bloc they are a member of.

The need for an in-depth analysis of the specific risks of AI within the context of the economic bloc. An example illustrating the above is that MERCOSUR members are importers of AI solutions. Hence, their primary concerns ought to be directed towards ensuring that algorithms utilized in the public sector, for instance, are capable of developing and training personal databases that are appropriate to their population and reality.⁴⁶

In what manner is MERCOSUR adequately prepared for the utilization of AI by importing a technology that was developed by privileged white men? In what manner should AI be developed for the South? The answer is not simple: on the one hand, it would be implemented from the reality of the North, which does not fit the conditions of the MERCOSUR countries, and on the other hand, it could be a mechanism of systemic domination and perpetuation of oppression in unattainable proportions.

As Bender *et al.*⁴⁷ highlight, there exist numerous adverse consequences for nations in the South, as they

are unable to generate adequate technological and data infrastructure and become dependent on larger technological structures regarding the matter. This is also attributed to inadequate or non-existent regulation on the matter.

Consequently, the solutions proposed by the Global North may reinforce stereotypes and prejudices, further marginalizing the most vulnerable communities in developing countries.

5 Conclusion

The use of Artificial Intelligence represents a technological and legal challenge that transcends the physical borders of states and goes beyond the classic concepts of international law, such as sovereignty, territoriality, and self-determination of peoples.

There is an urgent need for international law to react to the imminent advance of artificial intelligence in the international arena. Digital colonialism is advancing at an alarming rate as a novel approach to establishing significant disparities between the developed North and the underdeveloped South, with the aim of accelerating growth and development at the rate that is permitted.

The absence of international instruments that facilitate a global or regional legal reference is regarded as the most significant obstacle of the 21st century in the realm of international law. Artificial intelligence is not merely a harmless technology that promises to revolutionize society with its advantages; it is a dangerous apparatus that can subvert state sovereignty by subtle and subversive means.

The use of the European model as a theoretical or legal reference due to its advanced legislation on the subject is undoubtedly an erroneous assessment of the South American reality, as it is inadequately adapted to the economic, political, social, and legal conditions of the South. Despite being the initial global reference, it is not a suitable model to be emulated in the realities of the MERCOSUR nations.

References

⁴⁶ ARUN, C. AI and the global south: designing for other worlds. In: DUBBER, M. D.; PASQUALE, F.; DAS, S. (ed.). *The Oxford Handbook of Ethics of AI*. Oxford: Oxford University Press, 2019. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3403010. Access on: 9 Nov. 2023.

⁴⁷ BENDER, E. M. *et al.* On the dangers of stochastic parrots: can language models be too big? In: FACCT '21: 2021 ACM CONFERENCE ON FAIRNESS, ACCOUNTABILITY, AND TRANSPARENCY, 2021, Canada. *Proceeding* [...]. New York: Association for Computing Machinery, 2021. Available at: <https://doi.org/10.1145/3442188.3445922>. Access on: 8 Nov. 2023.

- ALMEIDA, P. R. de. Seria o Mercosul reversível? Especulações teóricas sobre trajetórias alternativas concretas. *Universitas: Relações Internacionais*, Brasília, v. 9, n. 1, p. 39-71, jan./jun. 2011. Available at: <https://doi.org/10.5102/uri.v9i1.1360>. Access on: 9 Nov. 2023.
- ARUN, C. AI and the global south: designing for other worlds. In: DUBBER, M. D.; PASQUALE, F.; DAS, S. (ed.). *The Oxford Handbook of Ethics of AI*. Oxford: Oxford University Press, 2019. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3403010. Access on: 9 Nov. 2023.
- BASSO, M. Harmonização do Direito dos Países do Mercosul. *Revista da Faculdade de Direito UFPR*, v. 33, jun. 2000. Available at: <https://doi.org/10.5380/rfdufpr.v33i0.1848>. Access on: 9 Nov. 2023.
- BECK, U. *What is globalization*. Cambridge, UK: Polity Press, 2009. Available at: https://books.google.pt/books?hl=pt-PT&lr=&id=REBRDwAAQBAJ&oi=fnd&pg=PP2&dq=globalization+&ots=gpiaZU-0zA&sig=PvQpijAv5XPkb_9jPc72OZ21bbU&redir_esc=y%23v=onepage&q=globalization&f=false. Access on: 9 Nov. 2023.
- BENDER, E. M. *et al.* On the dangers of stochastic parrots: can language models be too big? In: FACCT '21: 2021 ACM CONFERENCE ON FAIRNESS, ACCOUNTABILITY, AND TRANSPARENCY, 2021, Canada. *Proceeding* [...]. New York: Association for Computing Machinery, 2021. Available at: <https://doi.org/10.1145/3442188.3445922>. Access on: 8 Nov. 2023.
- BURRI, T. International law and artificial intelligence. *German Yearbook of International Law* 2017, Berlin, v. 60, p. 91-108, Oct. 2019. DOI: <http://dx.doi.org/10.2139/ssrn.3060191>. Available at: <https://ssrn.com/abstract=3060191>. Access on: 8 Nov. 2023.
- CARRILO, M. R. Artificial intelligence: from ethics to law. *Telecommunications Policy*, v. 44, n. 6, July 2020. Available at: <https://www.sciencedirect.com/science/article/pii/S030859612030029X?via%3Dihub>. Access on: 8 Nov. 2023.
- CONSELHO EUROPEU. Cronologia: inteligência artificial. *Conselho Europeu*, 2024. Available at: <https://www.consilium.europa.eu/pt/policies/artificial-intelligence/timeline-artificial-intelligence/>. Access on: 9 Nov. 2023.
- COUNCIL OF EUROPE. *European Ethical Charter on the use of Artificial Intelligence in judicial systems and their environment*: adopted at the 31st plenary meeting of the CEPEJ. Strasbourg: CEPEJ, 2018. Available at: <https://rm.coe.int/09000016808f699c>. Access on: 9 Nov. 2023.
- COUNCIL OF THE EUROPEAN UNION. Artificial intelligence act: Council and Parliament strike a deal on the first rules for AI in the world. *Council of the European Union*, 9 Dec. 2023. Available at: <https://www.consilium.europa.eu/pt/press/press-releases/2023/12/09/artificial-intelligence-act-council-and-parliament-strike-a-deal-on-the-first-worldwide-rules-for-ai/>. Access on: 11 Dec. de 2023.
- COUNCIL OF THE EUROPEAN UNION. *Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts - General approach*. Brussels, 25 Nov. 2022. Available at: <https://data.consilium.europa.eu/doc/document/ST-14954-2022-INIT/en/pdf>. Access on: 11 Dec. 2023.
- COZMAN, F. G.; PLONSKI, G. A.; NERI, H. (org.). *Inteligência artificial: avanços e tendências*. São Paulo: Instituto de Estudos Avançados, 2021. Available at: <https://doi.org/10.11606/9786587773131>. Access on: 9 Nov. 2023.
- DALLARI, P. B. de A. O Mercosul perante o sistema constitucional brasileiro. In: BASSO, M. *Mercosul - MERCOSUR: estudos em homenagem a Fernando Henrique Cardoso*. São Paulo: Atlas, 2007. v. 1.
- EUROPEAN COMMISSION. Directorate-General for Education, Youth, Sport and Culture. *Ethical guidelines on the use of artificial intelligence (AI) and data in teaching and learning for educators*. Luxembourg: Publications Office of the European Union, 2022. Available at: <https://data.europa.eu/doi/10.2766/153756>. Access on: 8 Nov. 2023.
- EUROPEAN COMMISSION. *Livro branco sobre a inteligência artificial: uma abordagem europeia virada para a excelência e a confiança*. Brussels, 19 Feb. 2020. Available at: <https://eur-lex.europa.eu/legal-content/PT/TXT/?uri=CELEX%3A52020DC0065>. Access on: 9 Nov. 2023.
- EUROPEAN COMMISSION. *Proposal for a Regulation of the European Parliament and of the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial*

- Intelligence Act) Amending certain Union Legislative Acts*. Brussels, 21 Apr. 2021. Available at: https://eur-lex.europa.eu/resource.html?uri=cellar:e0649735-a372-11eb-9585-01aa75ed71a1.0001.02/DOC_1&format=PDF. Access on: 11 Dec. 2023.
- EUROPEAN COUNCIL. *EUCO 13/20 European Council conclusions*. Brussels, 2 Oct. 2020. Available at: <https://www.consilium.europa.eu/media/45910/021020-euco-final-conclusions.pdf>. Access on: 11 Dec. 2023.
- EUROPEAN UNION. Committees. *AIDA Committee Chair*. [20--]. Available at: <https://www.europarl.europa.eu/committees/pt/aida/about>. Access on: 8 Nov. 2023.
- EUROPEAN UNION. *Regulation (EU) 2021/694 of the European Parliament and of the Council of 29 April 2021 establishing the Digital Europe Programme and repealing decision (EU) 2015/2240*. Brussels, 29 Apr. 2021. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0694>. Access on: 8 Nov. 2023.
- FRIEDMAN, T. L. *Compreender a globalização: o Lexus e a Oliveira*. Lisboa: Quetzal Editores, 2020.
- GARCIA, E. V. Multilateralism and artificial intelligence: what role for the United Nations? *SSRN Electronic Journal*, 12 Dec. 2020. Available at: <https://doi.org/10.2139/ssrn.3779866>. Access on: 9 Nov. 2023.
- GIDDENS, A. *Le conseguenze della modernità: fiducia e rischio, sicurezza e pericolo*. Bologna: Il Mulino, 1994.
- GUTIER, M. S. *Introdução ao direito internacional público*. Uberaba: [s.n.], 2011. Available at: https://www.inesul.edu.br/professor/arquivos_alunos/doc_1558818854.pdf. Access on: 9 Nov. 2023.
- HOFFMANN-RIEM, W. Artificial intelligence as a challenge for law and regulation. In: WISCHMEYER, T.; RADEMACHER, T. (ed.). *Regulating artificial intelligence*. [S.l.]: Springer, 2020. Available at: https://doi.org/10.1007/978-3-030-32361-5_1. Access on: 9 Nov. 2023.
- HOFFMANN-RIEM, W. *Teoria geral do direito digital: transformação digital desafios para o direito*. Rio de Janeiro: Forense, 2020.
- IANNI, O. *Teorias da globalização*. 13. ed. Rio de Janeiro: Civilização Brasileira, 2006.
- JESSUP, P. *Transnational law*. New Haven: Yale University Press, 1956.
- KRISTENSEN, P. M. Southern sensibilities: advancing third wave sociology of international relations in the case of Brazil. *Journal of International Relations and Development*, v. 22, n. 2, p. 468-494, June 2017. Available at: <https://doi.org/10.1057/s41268-017-0107-z>. Access on: 8 Nov. 2023.
- MADIEGA, T.; CHAHR, S. Artificial intelligence act. *European Parliament*, 2023. Available at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2021\)698792](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)698792). Access on: 9 Nov. 2023.
- MCCARTHY, J. *et al.* A proposal for the Dartmouth Summer Research Project on Artificial Intelligence, August 31, 1955. *AI Magazine*, v. 27, n. 4, p. 12-14, 2006. Available at: <https://doi.org/10.1609/aimag.v27i4.1904>. Access on: 8 Nov. 2023.
- MCCORDUCK, P. *Machines who think*. 2. ed. Natick: A K Peters/CRC Press, 2004. Available at: <https://doi.org/10.1201/9780429258985>. Access on: 8 Nov. 2023.
- MCGREW, A. Conceptualizing global politics. In: MCGREW, A. G.; LEWIS, P. G. (ed.). *Global politics: globalisation and the nation-state*. Cambridge: Polity Press, 1992. p. 1-28.
- MERCOSUR. *Tratado de Asunción sobre la estructura institucional del MERCOSUR*. Asunción: [s. n.], 1996. Available at: https://www.parlamentomercosur.org/innovaportal/file/15511/1/tratado_de_asuncion.pdf.%20. Access on: 8 Nov. 2023.
- MICHAELS, R. Global legal pluralism. *Annual Review of Law and Social Science*, Durham, v. 5, n. 1, p. 243-162, 2009. Available at: https://scholarship.law.duke.edu/faculty_scholarship/2051/. Access on: 9 Nov. 2023.
- ORTEGA, A. Hacia un régimen europeo de control de la inteligencia artificial. *Real Instituto Elcano*, 6 May 2021. Available at: <https://www.realinstitutoelcano.org/analisis/hacia-un-regimen-europeo-de-control-de-la-inteligencia-artificial/>. Access on: 8 Nov. 2023.
- REZEK, J. F. *Direito internacional público: curso elementar*. São Paulo: Saraiva, 2013. Available at: https://www.academia.edu/27477367/Direito_Internacional_P%C3%BAblico_Francisco_Rezek. Access on: 8 Nov. 2023.
- ROGERSON, A. *et al.* *Government AI Readiness Index*. Oxford: Oxford Insights, 2022. Available at: <https://>

www.unido.org/sites/default/files/files/2023-01/Government_AI_Readiness_2022_FV.pdf. Access on: 9 Nov. 2023.

RUSSELL, S. J.; NORVIG, P. *Artificial intelligence: a modern approach*. 3. ed. New Jersey: Pearson Education Limited, 2016. Available at: <https://repository.unimal.ac.id/1022/>. Access on: 8 Nov. 2023.

SANTOS, M. *Por uma outra globalização: do pensamento único à consciência universal*. Rio de Janeiro: Editora Record, 2001. Available at: https://www.academia.edu/4572349/SANTOS_Milton_Por_uma_outra_globalizacao. Access on: 8 Nov. 2023.

SCHIRMER, J. E. Artificial intelligence and legal personality: introducing “teilrechtsfähigkeit”: a partial legal status made in Germany. In: WISCHMEYER, T.; RADEMACHER, T. (ed). *Regulating artificial intelligence*. Cham: Springer International Publishing, 2019. p. 123-142. Available at: https://doi.org/10.1007/978-3-030-32361-5_6. Access on: 9 Nov. 2023.

VAGTS, D. F. *Transnational business problems*. 3. ed. New York: Foundation Press, 2003.

WISCHMEYER, T. Artificial intelligence and transparency: opening the black box. In: WISCHMEYER, T. RADEMACHER, T. (ed). *Regulating Artificial Intelligence*. Cham: Springer International Publishing, 2019. Available at: https://doi.org/10.1007/978-3-030-32361-5_4. Access on: 9 Nov. 2023.

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