TESIS DOCTORAL

"LA PROYECCIÓN EXTERIOR DE LA NUEVA CONSTITUCIÓN DEL ESTADO PLURINACIONAL DE BOLIVIA"

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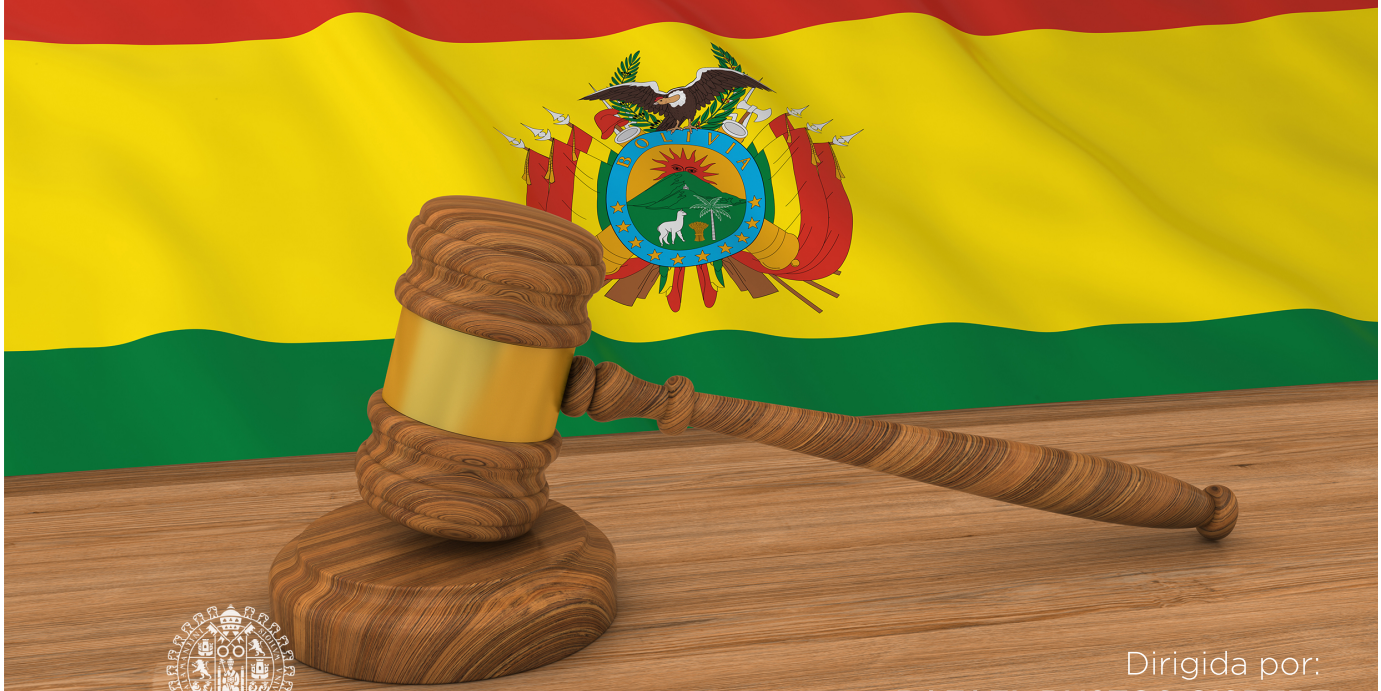

VNiVERSiDAD D SALAMANCA
CAMPUS DE EXCELENCIA INTERNACIONAL

Dirigida por:
RAFAEL BUSTOS GISBERT
MARIO HERNÁNDEZ RAMOS
VANESSA ANDREA SUELT COCK

Salamanca, 2018

Pontificia Universidad
JAVERIANA
Colombia

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ANEXOS

1. EXTENDED ABSTRACT

Bolivian constitutional history has been characterized by neglect of the issue of the regulation of the constitution's external dimension. Internal political problems determined the development of law to the same extent as the construction of a discriminatory and exclusionary state, which left the large majority of the population—indigenous, peasants and women— in a situation of inferiority and lack of protection. This situation was the main feature on which the Bolivian constitutional system was built.

The effectiveness and practical validity of human rights in Bolivian history were also conditioned by the poor constitutional framework for the reception and application of international instruments. Although international obligations were contracted through the ratification of important human rights treaties, they were not effectively implemented, even during democratic periods. There was very slow progress in relation to this application throughout Bolivian constitutional history, given the absence of institutions that could generate a significant improvement in the fight against the conditions of discrimination and exclusion of a large part of the population.

Under the constitutional configuration, international treaties related to commerce were implemented in violation of the rights of the population, since economic obligations agreed to with international organizations had priority in their application, even when this implied the introduction of measures that economically choked the larger population. This became the trigger to organize a constituent assembly to reform the constitution, with the main objective of including specific foundations for the protection of rights in accordance with international standards.

In this way, during the constituent assembly, various issues for the regulation of the constitution's external dimension were introduced in the debate. Among the main concerns were the reaffirmation of the people's sovereignty, through the introduction of participatory mechanisms and the inclusion of specific mandates to govern the performance of the government branches. The highest priority was placed on the defense of human rights, for which it was essential to ensure the proper monitoring and enforcement of international human rights law.

The 2009 constitution of the Plurinational State of Bolivia contains new elements to regulate its external dimension, mainly aimed at legitimizing the process of reception of treaties and their effective implementation at the domestic level. We observe the inclusion of detailed constitutional mandates for the exercise of the external power, which seek to condition the performance of the actors involved in the process for expressing state consent, and also to establish clear standards for applying international law in the domestic sphere.

The mandates created by the Bolivian constitution have the predominant objective of defending the sovereign will of the Bolivian people, towards improving the quality of life of the population and defending their cultural particularities. Specific mechanisms for the control of external action have been constitutionalized for this purpose. These mandates do not, in any case, pose irreconcilable conflicts with international law, since they tailor their objectives to high standards for the protection of rights, so that they complement the meaning and scope of international law.

The constitutional mandates are configured as limits to the executive and legislative branches, seeking to place limits on the freedom or discretion of the actions of these two branches. The relevance of these mandates goes beyond the mere enunciation of norms or limits. They also set up an objective catalog of internal requirements that must be unavoidably considered in the exercise of the state's external power. The most problematic aspect of the constitutional mandates, referring to the negotiation, signing and ratification of treaties, is that their deep cultural and historical roots define their content, thereby requiring a hermeneutic action capable of adapting them to the current context and interpreting them with a perspective towards the future.

Particularly interesting is the inclusion into the constitutional mandates of «the defense of the interests of the Bolivian people». This mandate has been proposed as a limit to international law, as a mechanism seeking to protect domestic law when treaties are applied in the domestic sphere. This parameter stands as a mechanism that makes the turn towards the national system possible, but always from the sphere of a peaceful domestic order as an essential part of the Bolivian constitution. Thus, this parameter potentially looks for the strength to eventually require an application as close as possible to the national system, and could even override an interpretation that has had international consensus.

These mandates are accompanied by the insertion of a plurality of actors who participate decisively and comprehensively in the processes intended for negotiation, signing, ratification and denunciation of treaties. This fact results in the loss of the dominant role of the executive branch, giving the opportunity to the legislative branch and to the population, to play a relevant role in all internal procedures for expressing and withdrawing state consent to be bound by treaties. In this context, both the legislative branch and the population can condition the procedure in each moment related to

the negotiation, signing, ratification and denunciation of the treaties within the domestic sphere.

One of the moments —during the procedure intended to express and withdraw state consent— in which the participation of both the legislative branch and the population is extremely powerful is when they have the possibility to request a referendum as the condition for the authorization to the expression of state consent. The determination of these actors to call the referendum is mandatory for the state. In this procedure, the sovereignty exercised through the popular vote acquires a dominant role, since the decision of the population is binding, and therefore, it is the people who have the final word on the expression of state consent to be bound by treaties.

However, the practice of the referendum to obtain the authorization of state consent to any type of treaty poses multiple problems, since it is not reasonable to submit all subjects to this procedure, not even potentially. The obvious danger is the demagogic manipulation that can surround the exercise of popular democracy in matters as serious as those concerning the external dimension of the state, making this practice to be conceived as exceptional. This situation confronts the State with the need to establish transparent and highly responsible processes in relation to the popular consultations to authorize state consent to be bound by treaties.

The participation of more agents in the domestic procedures for expressing and withdrawing state consent, supported by the inclusion of the referendum to obtain the authorization of treaties, builds a process that can be extended over time, making this procedure much more difficult. This suggests that careful consideration should be given to the possibility of holding a referendum. This, in turn, puts the international system in crisis if treaties require a less complex reception, not only in terms of abbreviated procedures, but also with regards to those treaties that are subject to parliamentary authorization, which is already configured as a procedure implying a high degree of added difficulty.

The constitutionalization of the referendum means that the conventional mechanisms for the expression of state consent to be bound by abbreviated treaties are uprooted, disrupted. As constitutional regulation indicates, any type of treaties may be required to go through an eventual referendum for authorization, and this includes even the abbreviate treaties. In this case, the effect sought by the exercise of the abbreviated procedures is threatened and risks an excessive delay, with possibly harmful results for the state.

Although the mechanisms that increase the time required by domestic procedures for expressing and withdrawing state consent can be problematical, in the Bolivian case the exercise of prior constitutional oversight and review of treaties is a necessary tool to ensure full respect for the Bolivian constitution, especially in light of the constitution's mandates for overseeing the state's external action. Since the defense of the

constitution and its mandates for the exercise of the state's external power was strongly expressed during the constituent process, prior mandatory constitutional oversight and review constitutes one of the tools that best contributes to that purpose, as does also the inclusion and protection of a series of actors at every step of the process of constitutional oversight and review.

The opening of the mandatory procedure of constitutional oversight and review by several actors, makes this activity not optional for the executive branch and, in certain cases, not even subject to a partisan political game by the forces existing in the legislative branch. The possibility of raising doubts by a variety of political actors, within the compulsory procedure for constitutional oversight and review, carries with it the possibility of obtaining a deliberative, thoughtful, reasoned process. This also legitimates the role and rulings of the Plurinational Constitutional Court, since in answering the questions raised by the actors it also opens the way to a real dialogue among the legislative, executive and judicial branches.

It might be argued that the non-application of mandatory constitutional oversight and review would be reasonable with regard to abbreviate treaties, since in this context there are subjects which require expedited procedures. The Bolivian constitution, however, provides for oversight and review of abbreviated treaties in two ways. The first is that the president, as head of state, is entitled to submit to the Plurinational Constitutional Court at any time any instrument for constitutional oversight and review prior to its formal consideration and adoption, including abbreviated treaties. The second way is to find a channel for fixing shortcomings revealed through the process of constitutional oversight and review, with all the implications this may have, not only domestically but also internationally.

Constitutional oversight and review is also considered as mandatory for treaties that require, or are required for, authorization through referendum, before the referendum procedure takes place. The passage of an international instrument through such an important procedure as a national referendum requires, without a doubt, constitutional oversight and review. The significance of this «preventive» constitutional oversight and review, prior to the popular vote, cannot be overstated. Popular authorization cannot be given to an instrument that contradicts the constitutional text, because this would cause a strong disturbance of the whole constitutional system.

Constitutional oversight and review has a "repairing" dimension —although the constitution does not specifically mention it— and this dimension or function derives from the content of the treaty norm itself, leaving always a way open for any type of treaty. Although "preventive" constitutional oversight and review is a great mechanism, especially if we consider the high degree of participation built into it, it is also true that the possibility of unconstitutionality developing after State consent has been given to a treaty is not unthinkable. Thus, the Bolivian constitution presents "restorative" constitutional oversight and review as an accepted tool within the Bolivian con-

stitutional system. Although a fixed period was set for constitutional oversight and review of international instruments consented prior to the new 2009 constitution, the period itself was symbolic, since the peoples' right to defense from a violation caused by an unconstitutional international norm is never precluded.

The complex internal procedures for expressing and withdrawing State consent place international law at different hierarchical levels. This fact allows a normative interaction that facilitates an application of international sources, determined by the current needs of international society. In general terms, the treaties are granted a "subconstitutional" yet "supralegal" position. A system of gradation and hierarchy that places international norms at the same level as the constitution itself is established. The constitution even recognizes the possibility of an eventual application of international law above the constitution itself in cases in which international law establishes better rights than the constitution does.

It has been noted that the Bolivian constitution establishes a specific regulation with regards to certain types of treaties. These are the human rights treaties and those related to the integration and transfer of the exercise of sovereign powers or competences. This regulation also derives from the mandates for the exercise of external power, which establish the framework for the defense of the different Bolivian cultures and the improvement of the quality of life for the inhabitants of the state. It is understood, therefore, that this specific regulation is properly interconnected with the general regulations of the external dimension in relation to international instruments, making differentiated particularities due to their special influence on the domestic sphere.

Regarding human rights treaties, the constitution clearly states as one of its aims to achieve an efficient application of the standards of international human rights law domestically. This regulation starts with the inclusion of a detailed catalogue of rights, with the objective of making clear the state's orientation to protect rights and to establish parameters focused on the protection and guarantee of native cultures and their ancestral practices.

The rights' catalogue includes positive actions that the State is obliged to develop for the protection and guarantee of rights. Although these are covered in wide detail, they also constitute formulations marking the horizon toward which the protection of the state is directed. The detail with which the rights are enunciated cannot be realized in light of the limited resources that the Bolivian state has. Thus, the standards must be complemented with those established in the international protection system, which are the minimum standards that are mandatory for states.

It can be appreciated that, based on the rights' catalogue, Bolivian constitutional regulation creates a system that seeks a double protection of rights. Such a system requires constant jurisdictional dialogue because with the inclusion of international minimum standards and parameters, mechanisms have been introduced to ensure respect

for the specific features of constitutional Bolivian rights. This round-trip mechanism requires a coordinated exercise of protection and guarantee of the constitutional rights between international and domestic law.

Constitutional regulation opens important and exceptional bridges for the interpretation of constitutional rights and standards contained in the human rights instruments at the domestic level. But the constitution also inserts mechanisms of protection that are shown as highly favorable to the recognition and guarantee of the rights contained at the international level, either through their insertion in the internal system or through the integration of their content into the content of the rights recognized by the constitutional norms.

In this way, constitutional articles 13.IV *in fine* and 256.II establish the interpretation of constitutional rights through ratified human rights treaties, opening a reinforced constitutional scenario to let international human rights law flow into the national system. The interpretation made by the Plurinational Constitutional Court has been in accordance with these Articles, and opens the scope through its hermeneutic activity to customary law as well as to the *corpus iuris* of international human rights law, as parameters for interpretation of constitutional rights.

While the articles mentioned above offer an open window to interpret national law through international human rights law, they also establish, as a determining factor for the realization of such interpretation, the guarantee of the application of the greater protection offered, no matter what level. This aspect should be carefully evaluated by the Plurinational Constitutional Court, especially considering the extension of the Bolivian rights catalogue, the constitutional parameters, and the defense of internal cultural elements, which could lead to an excessive protection of national standards. The Plurinational Constitutional Court interpretation could be oriented to seek a condition to restrict the application of the minimum standards established by international human rights law.

The constitution establishes, parallel with its articles that are open to include international human rights law, a privileged hierarchical position for human rights treaties in the domestic sphere, placing them within the purview of constitutional oversight and review. This position has important implications, since the effects of this position transform human rights treaties into parameters of constitutionality for other "subconstitutional" norms. Thus, human rights treaties can modify the Bolivian legal system in an exceptional way, to ensure a better protection and guarantee of human rights.

The position of human rights treaties in the constitutional framework ensures the inclusion of the rights contained by those instruments into the constitutional rights' catalogue, with the same protection mechanisms as the ones afforded to all constitutional rights. The rights stipulated in the ratified treaties have a constitutional hierarchy

and, with it, they acquire the same guarantees that belong to the rights contained in the Bolivian catalogue of rights.

The Plurinational Constitutional Court has gone even further than the constitution itself and extended the scope of constitutional article 410.II, including within the constitutional framework the jurisprudence of the Inter-American Court of Human Rights and those non-formal international instruments that protect rights. This interpretation has greatly enhanced the protection of international rights and standards at the domestic level, giving the necessary force to international human rights law to obtain its effective application by national judges.

The position in the constitutional framework of the rights derived from international instruments makes constitutional oversight and review to merge internally with conventional, regular oversight and review. This happens because all legislation subject to constitutional oversight and review must also pass examination in relation to the international instruments of human rights as parameters of constitutionality. In this way, constitutional oversight and review subsumes conventional oversight and review, with the only difference that the latter can also be performed by international courts.

On the other hand, the constitution, through articles 13.IV *ad initio* and 256.I, provides a preferential application to international human rights instruments, positioning them, in practice, at a "supraconstitutional" level. Therefore, for international human rights instruments, greater protection is established with regards to recognizing better rights, which is the case of article 13.IV *ad initio*. In the case of article 256.I a preferential application, even above the Constitution, is established if the international instrument offers a higher standard of protection, giving a special and powerful force to international human rights above the Bolivian constitution.

The discussion above describes important consequences for domestic legislation, since the force with which international human rights law is introduced can even suppose a constitutional reform in case of a contradiction. On the one hand, unconstitutionality may be triggered for a norm at the "subconstitutional" level; on the other hand, there is legal force on constitutional norms that contradict the standards of international human rights law. The most serious consequence in some cases could even be to provoke the reform of the constitution to resolve such a contradiction, supposing it were irreconcilable even using the other resources of interpretation and application inserted within the constitutional norm.

Despite what is established by the constitution —the interpretation of constitutional rights using international human rights law and its preferential application even above the constitution in case international human rights law offers better protection— the application of such legislation is still dependent on the correct hermeneutical activity provided from the domestic level. In this order, the lack of knowledge about international law on the part of national judges makes clear the need to carry out a set of pub-

lic policies to ensure the interpretation and adequate application of international human rights law domestically.

The regulation offered by the Bolivian constitutional norm on international instruments of integration and transfer of the exercise of powers and competences is also highly relevant. This regulation is directly conditioned by those aspects that refer to the nation's constitutional identity. This identity is not only contained in the constitutional mandates for the exercise of external power, but also in the internal system of protection of rights, and in the constitutional preamble and principles. From these arises an identity highly related to the protection of the Bolivian cultural sphere, the promotion of education and the improvement of the quality of life. These elements are established as conditions for the reception and application of the mechanisms of integration, and the transfer of the exercise of sovereign powers and competences.

The constitutional body introduces, for the first time in Bolivian history, a series of articles to regulate the external dimension of the state in relation to the processes of integration and transfer of the exercise of sovereign powers and competences. The state commitment to be part of integration mechanisms is firmly expressed. This aspect is highly desirable in a modern constitutional text which is also aware of the needs expressed in international practices. Integration, as proposed through the constitutional norm, is not an end in itself but an adequate mechanism to achieve the objectives of protection and guarantee of the rights of the Bolivian population.

The Bolivian constitution also adds a new aspect: the possibility of generating integration mechanisms directed and shaped by indigenous peoples. This, in turn, envisions a special type of integration that posits the possibility of constituting mechanisms designed to restructure the territories of cultures abruptly separated during the Spanish colonial period, creating a new cultural restructuring opportunity for Latin America's indigenous peoples who share a common cultural identity. However, it should be borne in mind that this process is not conceived as creating any possibility of state fragmentation.

Bolivian legislation, consistent with the priority given to integration mechanisms, includes a specific clause that defines a way to transfer the exercise of sovereign powers. This step is the constitutionalization of the procedure for expressing state consent to integration mechanisms, with all the consequences that this entails, including the renunciation of some national sovereignty in order to be part of those integration mechanisms. In this way, the important step of the integration and transfer of the exercise of sovereign powers has to receive the appropriate approval from the constitutional body.

The Bolivian integration clause marks the constitutional basis for the transfer of the exercise of sovereign powers and competences, and establishes, at the same time, the constitution as an absolute limit for such transfer. This transfer is possible only through the procedure marked by the constitution, and only under the terms that it

states. This clause also provides for the limitation of State sovereignty, to the extent that the shared exercise of the state's sovereignty with other foreign powers derives from the collegial paradigm present in a system of integration.

The referendum arises because of the important effects of this type of treaty. Referendum practice —potentially present for any international treaties regardless of the subject or whether they are formal or abbreviated— is a mandatory procedure for international instruments dealing with integration and the transfer of the exercise of powers and competences. This practice arises for the authorization of this type of treaties as well as for their respective domestic denunciation. It is significant that denunciation of a treaty must pass through the same domestic democratic channels that are established for the ratification of treaties.

The referendum is a great challenge for the state. As has been indicated, it carries with it innumerable political implications that accompany the processes of popular vote. However, it should be borne in mind that, even though a referendum carries the risk of being rejected by the population, a successful overcoming of this obstacle poses great rewards by enhancing the democratic legitimacy of treaties. This was, in fact, the prevailing view during the constituent assembly. Nevertheless, it should be emphasized that, unlike the Bolivian case, the practice of this mechanism by most countries in the field of integration processes is inclined to be minimized and used in an exceptional way.

The hierarchical position of community law in the Bolivian constitutional norm is consistent with the degree of difficulty of the domestic procedure for expressing and withdrawing State consent to be bound by treaties of integration and the transfer of the exercise of sovereign powers and competences. Considering their high degree of difficulty, as well as the degree of legitimacy expected to be achieved through the referendum, the positioning of these instruments at the highest possible hierarchical level stands as highly coherent. Therefore, the level of difficulty and the hierarchical position of community law are directly proportional to each other.

The norms of community law are integrated within the framework for constitutional oversight and review, but this position only reaches the norms of primary law, since this is the law that effectively surpasses the whole domestic process for expressing state consent. Although secondary law can obtain equal protection, it does so insofar as it corresponds to the development of powers and competences that were effectively transferred through primary law, but does not receive constitutional status through Bolivian constitutional regulation. Therefore, the effects that arise from the constitutional hierarchy are only applicable to primary law.

The hierarchical position that community law now has in the domestic sphere has very important implications, which condition the entire domestic legal system. The first of these consequences is the force that community law acquires against the "sub-

constitutional" legislation, since in case such legislation contradicts community law, the declaration of unconstitutionality proceeds ahead. Thus, the effect on contradictory legislation is its expulsion from the internal regulatory system, a serious consequence that strongly affects domestic law. This result is a sign of the strong intention of the Bolivian state to comply with and effectively apply community law in the domestic sphere.

The position of community law enunciated by the constitution implies that its effects are strengthened internally. Its single hierarchy can give it primacy over the other "subconstitutional" legislation, since just as the constitutional rules have primacy over such legislation, community law is covered by these qualities by being part of the framework for constitutional oversight and review. Also, under the principle of normative force of the constitution, the framework for constitutional oversight and review acquires the characteristics of being directly applicable. Thus, all the rights that arise from community law are directly enforceable on the national judges to assure their fulfillment, having the same guarantees that are proper to the constitutional rules themselves.

It can be seen from this study that the domestic procedures for expressing and withdrawing state consent to be bound by treaties and their respective application are regulated in detail, legitimizing a variety of actors, including the population itself. Likewise, differentiated procedures are established for those instruments that have the capacity to influence in a deep way the domestic normative system. In this study, we observed the insertion of specific foundations that made possible the collaboration among the objectives set by treaties and the constitution, setting up a scenario of negotiation and renegotiation without end, in which a magnificent place has been carved out for constitutional pluralism.

The hierarchical position established for treaties in the Bolivian constitutional text is advanced and consistent with the current needs that arise with the development of law. The positioning of international human rights law, and the integration and transfer of the exercise of sovereign powers competences within the constitutional framework are in line with the great degree on influence international human rights law exerts on the domestic system and is directed towards the generation of a framework that capable of ensuring an efficient protection and guarantee of the rights and obligations generated from their reception in the domestic legal system.

The regulation contained in the constitutional norm belongs to a modern constitutional body. It consents both to the obligations it undertakes at the international level and the profound changes embodied in the international sphere, all within an understanding of the necessity for states to share sovereignty in order to protect the most important interests of mankind. The Plurinational State of Bolivia, based on its regulation for the reception and application of international law, leaves its all-encompassing role for integrating international law to the rules and the hermeneutic activity of its na-

tional judges, thus providing exceptional receptivity for international law throughout the entire Bolivian constitutional system.

2. INTRODUCTION

The current PhD research work has the objective of studying the external dimensions of the Plurinational State of Bolivia as regulated in its constitution. For this purpose, we analyze first, the procedures for giving and withdrawing state consent to be bound by treaties and, second, the questions related to the application of those treaties in the domestic sphere. The above include, in great significance: general parameters, constitutional control and oversight, normative hierarchy and hermeneutic activity.

It is important to note that this work is not intended to cover the giving and withdrawing of State consent in all its dimensions, because those actions are subsequent acts with international repercussions[1]. It is intended to cover exclusively those acts, made in the domestic sphere, to grant and withdraw state consent to be bound by treaties, with effects in the national legal system. Also, it is necessary to clarify that, in relation to the application of international law in the domestic sphere internal scope, we consider, in addition to the constitutional norms, the Bolivian state's general jurisdictional reach.

Given the scope of this work, prior to the intended analysis, it is useful to point out that international law is subject to its own rules, and those rules do not depend on domestic law, nor even on constitutional norms. The rules inserted in the treaties are interpreted as provided for in the body of meaning attaching to the rules themselves, as well as in international law.[2] However, the rules of domestic law are still relevant, because they regulate both the forms to grant and withdraw state consent, and the application of international law in the domestic sphere.

The study of internal regulation and legal norms is very important insofar as international law is composed of principles and norms, for the purpose of regulating a certain social body. In this sense, it must be admitted that the changes in social structure,

[1] See DÍEZ DE VELASCO, MANUEL: *Instituciones de Derecho Internacional Público*; Decimotercera Edición, Tecnos, Madrid. 2002. Pp. 196-221.

[2] For example, the interpretation rules of the Vienna Convention on the Law of Treaties are inserted in the arts. 31 and 32, the ones of The Hague Convention of 1907 in its Preamble and the ones of the y las del Statute of the International Criminal Court in its art. 21. See also, LINDERFALK, Ulf: *On The Interpretation of Treaties. The Modern International Law as Expressed in the 1969 Vienna Convention on the Law of Treaties*; Springer, Nederland. 2007; and FITZMAURICE, Malgosia; ELIAS, Olufemi y MERKOURIS, Panos (Eds.): *Treaty Interpretation and the Vienna Convention on the Law of Treaties: 30 Years on*; Martinus Nijhoff, Leiden. 2010.

reflected in the juridical systems of the states –if those reflect a relatively uniform reality— are likely to generate changes in the international sphere, which entails a continued and concerted evolution of international law. In this context, it must be considered that international law is a system that is essentially dynamic, evolutionary and sensitive to basic social changes[3], so that domestic norms and practices wind up modulating the international system.

The study of the external dimensions of the Plurinational State of Bolivia has three different justifications. First, there are no relevant studies from a Bolivian perspective that analyze these kinds of questions. Considering the recent promulgation of the new constitution in 2009, it is necessary to analyze the concepts, institutions and procedures for granting and withdrawing state consent to be bound by treaties domestically, as well as their application in the national sphere.

Second, this study finds justification in the relevance of the acts intended to express and withdraw state consent, because the internal procedures are an inescapable and unavoidable legal duty of states[4]. This is not only because of the impact at the domestic level, but also because of the consequences they could have on the juridical and political order at the international level.[5] International law, in general terms, does not have its own legislative bodies, but has complex organisms, which are integrated with those of the states. Through those organisms, international law delegates the power to determine them by their constitutional norms. In this endeavor, the establishment of a series of constitutional requirements — like parliamentary authorization and constitutional review and oversight— reach, with crucial relevance, into the international sphere to include the validity[6] of treaties, since international law contains a referral to the national constitution.

Third, the entry into force of a treaty in international law does not define necessarily its effects in domestic law. The effect in the domestic sphere is usually defined by the constitutional norms and the interpretative activity of national judges. The state

[3] SÁNCHEZ RODRÍGUEZ, Luis Ignacio: *Derecho Internacional y Crisis Internacionales*; Iustel, Madrid. 2005. P. 45.

[4] The articles 18, 26 and 27 of The Vienna Convention on the Law of Treaties of 1969 and The Declaration on Principles of International Law, Annex to General Assembly of the United Nations Resolution 2625 (XXV) of 24 October de 1979. The international jurisprudence manifested pointed that the State has the obligation to introduce in its national law all the necessarily modifications to ensure the execution of the International Treaties. Advisory Opinion of the Permanent Court of International Justice on the Case of the article 2 of the Treaty of Lausanne of 1923, The Hague, Series A, Nº 31, 1925, P. 59. In the same sense, Inter-American Court of Human Rights, Case of The Last Temptation of Christ (Olmedo-Bustos et al) v. Chile. Merits, Reparations and Costs, Judgment of February 5, 2001, Series C Nº 73, para. 87; and Case of the Massacre of Pueblo Bello v. Colombia, Merits, Reparations and Costs, Judgment of January 31, 2006, Series C, Nº 140, para. 142.

[5] See, for example, article 46 of the Vienna Convention on the Law of Treaties of 1969, about the nullity of International Treaties.

[6] The non/validity is declared if the actor who leads the expression of the consent is not competent according the national constitution. KUNZ, Josef L.: "El sentido y alcance de la norma «pacta sunt servanda»"; in Revista de la Escuela Nacional de Jurisprudencia, Tomo VIII, Nº 29, Enero-Marzo, México. 1947. P. 12.

judges are the ones in charge to apply international law in the first instance or at the lowest level.[7] The internal practice is crucial to the progress and effectiveness of international law. The national judge has in his hands, to a large degree, the determination of international law content, participating actively in its modification and completing its gaps. The domestic judges' reasoning influences the creation of international law and the configuration of its relationships at all levels.[8]

Under this understanding, the interpretation of national courts is essential, because they are the ones that decide if a norm of international law is applicable, if it is directly applicable, if it is customary law or if it contains a superior standard of protection. In their interpretation, the domestic judges are free to choose if they will refer or not to the international jurisprudence and, if they do, they are the ones who define the weight attributed to it. Also, if there is not a regulation related to the relationship between international and domestic law, the national courts are the ones that naturally choose the more juridically and politically appropriate option.[9]

International law contains systems of coercion for non-compliance cases. It is a decentralized system which requires cooperation from the States in order to apply its norms. This cooperation is a direct response to the insertion of international law in the national system. For this insertion —through the systems of application of international norms— the domestic reception of international law is very important.[10]

In this context, it must be recognized that the international community is still based on a state-centric system which has not been overcome yet, generating great challenges. State sovereignty[11] and sovereign equality remain important cornerstones of international law, and such sovereign wills are capable of generating rules and obligations which cannot be easily surpassed by other rules and obligations, even though they may

[7] When a state is ratifying a treaty can promulgate an understanding or declaration to state that it is not self-executing, or indicating that its domestic system does not recognize the self-executing character, which entails that the national courts cannot apply it in absence of a specific internal legislation to implement it. FORREST MARTIN, Francisco, SCHNABLY, Stephen J., WILSON, Richard J., SIMON, Jonathan S. y TUSHNET, Mark V.: *International Human Rights and Humanitarian Law. Treaties, cases and analysis*; Cambridge University Press, New York. 2006. Pp. 24-25.

[8] It is remarkable that the potential of domestic courts to apply International Law remain essentially wasted. ALAM, Shah M.: "Enforcement of International Human Rights Law by Domestic Courts in The United States"; International Human Rights Law, Annual Survey of International & Comparative Law, Vol. 10. 2004. P. 27.

[9] WEILL, Sharon: ob. cit., Pp. 16-17.

[10] BECERRA RAMÍREZ, Manuel, CARPIZO, Jorge, CORZO SOSA, Edgar, LÓPEZ AYLLÓN, Sergio: "Tratados Internacionales. Se ubican jerárquicamente por encima de las leyes y en un segundo plano respecto a la constitución federal (amparo en revisión 1475/98)"; Cuestiones Constitucionales, N° 3, Julio-diciembre. México. 2000. P. 172.

[11] Notwithstanding, it must be considered that the state is determined, in all its legal aspects, by international law. Under this perception, only the international legal order is sovereign and not that of the states. The idea of a sovereign state must be understood as the confirmation that a state is only subordinate to the international legal order. KELSEN, Hans: *Contribuciones a la teoría pura del derecho*; Distribuciones Fontamara, México. 2008. P.112.

not be part of the international value system.[12] Notwithstanding all this, although the discretion of states is widely recognized, when international law is to be implemented it is evident that state discretion is progressively subdued to the exercise of control by domestic[13] and international courts.

The efficient implementation of international law has its most important focus on the protection of human rights, because it is in this area where it needs the national judges' actions to ensure the progress and effectiveness of those rights. Any study that seeks to analyze the external dimension of the Bolivian constitution must include the procedures through which international law is applied by way of national legal guarantees. These internal mechanisms promote a higher level of development and are essential to prevent acts of infringement on international law by the political branches. The importance of these aspects lies in the broad freedom that the domestic courts have over an immense range of areas, when they determine the effects of international law in the internal legal system, such as the interpretation of treaties and their hierarchical classification.[14]

The importance of the external dimension is evident in the obligation of international courts to examine the domestic law in order to elucidate the content of legal obligations, and determine the compatibility of the contracted international obligations, especially if they are the result of illegal acts attributable to the legislative branch. For these reasons, the international organisms of interpretation and legal review require the domestic judges' support.

Within this understanding, it is also important to study the major influence exerted by integration systems. The interpretation to be made by the international organisms that exercise certain powers, through a constitutional mandate, is also subject to limits. Those limits are established in the text of the treaty and in international law, but are also established in domestic norms. The national mandate implies the respect of local practices and internal characteristics, defining a margin of national interpretation enjoyed by the states in each specific case, constructing limits from national systems.[15]

The tremendous impact of international law points to the relevance of a study of the external dimension of the Plurinational State of Bolivia. The internationalization of law suggests the necessity to rethink conventional ideas about the constitutional structure of the State and modern constitutionalism.[16] The executive branch has more power

[12] DE WET, Erika y VIDMAR, Jure: *Hierarchy in International Law: The Place of Human Rights*; Oxford University Press, United Kingdom. 2012. P. 41.
[13] IGLESIAS VELASCO, Alfonso J.: "Reflexiones sobre la implementación de los Tratados Internacionales por los tribunales domésticos: especial referencia a España"; en Anuario Español de Derecho Internacional, Vol. 29. 2013. Pp. 166-167.
[14] IGLESIAS VELASCO, Alfonso J: ob. cit., Pp. 167-168.
[15] JIMENA QUESADA, Luis: "Inconstitucionalidad por omisión y responsabilidad internacional"; en Cuadernos Constitucionales de la Cátedra Fadrique Furió Ceriol, Nº 58/59. Valencia. 2007. Pp. 221.
[16] One of the most important aspects of modern constitutionalism is the division of powers, in which each power holds clearly bounded competences over which other powers cannot act. HALJAN, Da-

at the time of «creation» of international law, usurping legislative faculties when they apply norms contained in treaties. This implies that, in practice, the law created by the executive is applied above the norms developed through a regulated procedure belonging to the legislative branch. The result then, is the application of the law of the executive. For this reason, the study of the mechanisms of reception which look for internal legitimation of international law is fundamental.[17]

The focus of this work is based on constitutional pluralism theories[18], under the consideration that constitutionalism must move away from the State paradigm and replace it by a cosmopolite paradigm.[19] We will analyze the constitutional regulation from a historical perspective, to understand the changes that the Bolivian system has undergone in relation to its external dimension, and consider in depth the characteristics of the constituent moment. At the same time, we will integrate into the analysis of constitutional regulation modern theories and a perspective towards the future.

The methodology used in this work is both descriptive and analytical. Due to the lack of serious scholarly analysis available, in relation to the internal procedures in the Bolivian constitution for expressing and withdrawing consent to be bound by Treaties and their application in the domestic sphere, we will apply a descriptive focus. But we will also apply, as appropriate, an analytical method examining the particularities of each of the mechanisms and institutions related to those procedures, using doctrinal and normative principles contained not only in Latin-American systems, but also in those of Europe and the United States.

The current research work is organized in four chapters, taking into consideration that the study of the external dimension of the Plurinational State of Bolivia has vital importance because its regulation contributes to the development of international law and practice. The analysis of constitutional regulation related to the external dimension will be developed from a general to a specific approach. We will make a historical

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vid: *Separating Powers: International Law Before National Courts*; Asser Press by Springer, La Haya. 2013. P. 7.

[17] The creation of a treaty is a political act, not a legislative one. Therefore, it is an act with political consequences. The *treaty making* is a competence of the political branch, in which the only legislative act is, generally, the intentional conversion of political will into rules of law, which devolve to the Courts and the legislative branch. HALJAN, David: *Separating Powers…*; ob. cit., P. 100.

[18] It is possible to understand monism and dualism as sterile concepts, incapable of explaining the new relations between international law and domestic law. VON BOGDANDY, Armin: "Configurar la relación entre el derecho constitucional y el derecho internacional público"; en: VON BOGDANDY, Armin, FERRER MACGREGOR, Eduardo y MORALES ANTONIAZZI, Mariela (Coords.): *La justicia constitucional y su internacionalización: ¿Hacia un Ius Constitutionale Commune en América Latina?*; Tomo II, Universidad Nacional Autónoma de México, Max Planck Institut, Instituto Iberoamericano de Derecho Constitucional, México. 2010. Pp. 559-560. RODRÍGUEZ-ZAPATA, Jorge: *Constitución, tratados internacionales y sistemas de fuentes del derecho*; Real Colegio de España, Bolonia. 1976. Pp. 23-31.

[19] From this point, the international and national practices can be analyzed and evaluated within the same conceptual frame, no matter their different institutional structure. KUMM, Mattias: "The Cosmopolitan Turn in Constitutionalism"; in DUNOFF, Jeffrey L. y TRACHTMAN, Joel P. (Eds.): *Ruling the World? Constitutionalism, International Law and Global Governance*; Cambridge University Press, United Kingdom. 2009. P. 265.

analysis of the Bolivian regulation related to the procedures intended to express and withdraw State consent to be bound by treaties and its application domestically, going to a general analysis of those processes in the current constitution, and moving later to an analysis of the expression of State consent to be bound by two specific types of treaties and their respective application.

The study begins in Chapter I, where we introduce two differentiated but interconnected sections. In the first section, we draw some of the general outlines of Bolivian constitutional history, addressing the particularities of the actors and the general procedures intended to express and withdraw State consent introduced by the constitutional texts throughout Bolivian republican life, and showing the evolution of the mechanisms for constitutional oversight and review, and their relative hierarchical position in each specific historical moment. To facilitate this analysis, we are considering two moments. The first moment covers the legal regulation started with the constitution of 1826 until the constitution of 1961. The second moment corresponds to the constitution of 1967 and its reforms, the last constitution in force before the promulgation of the constitution of 2009.

In the second section of Chapter I, we analyze the constituent process of 2006-2007, paying special attention to the moments when the assembly process was promoted, the call of the constituent assembly, the debates in it, and the legal and political circumstances of the constitution promulgation process. As part of this analysis, we will consider all the characteristics related to the external dimension, as linked with each of the historical moments discussed.

In Chapter II we analyze, in a general way, the internal procedures intended to express consent to be bound by treaties and their application. It is necessary to note again that our analysis entails only the aspects contained in the domestic sphere. This chapter contains four sections which intend to follow, in the most orderly way possible, all the general considerations that affect the external dimension of the Plurinational State of Bolivia. The first section discusses the mandates to the external power in the New Constitution of the Plurinational State of Bolivia (CPE, in its Spanish acronym). Those mandates are analyzed taking into account the meaning and purpose of their inclusion into the constitutional text, their current legal interpretations, and, the degree of influence they exercise over the procedures intended to express and withdraw state consent to be bound by treaties.

The second section of Chapter II probes the procedures intended to express and withdraw state consent to be bound by treaties. We analyze, in detail, the legitimate actors in those procedures, and the particularities of the negotiation, signing, ratification and denunciation of treaties under the constitution. The third section provides a detailed study of the procedures for constitutionality review and oversight of international norms. In particular, we pay special attention to previous and reformed mechanisms

for constitutional review and oversight, analyzing in each case the relevant actors, the way and the time in which they operate, and their impact on the domestic sphere.

The fourth section of Chapter II refers to the hierarchical position of treaties in the Bolivian system of legal sources, and the constitutional regulation regarding interpretation and adequacy in the domestic sphere. Even though we analyze the general hierarchical position given to treaties, we also probe the special position given to certain types of treaties in a schematic way, something which is also done, in greater detail, in Chapters III and IV.

In Chapter III we analyze the external dimension in relation to the procedures intended to express and withdraw State consent to be bound by human rights treaties, and their application in the domestic sphere. This chapter consists of three sections, which discuss the main issues involved in the constitutional regulation of those international instruments. In the first section, we probe the peculiarities of the recognition of rights. We analyze both the structure of the rights' catalogue and the application of international law in a historical perspective from a Bolivian context. Then we analyze the characteristics of the rights' catalogue introduced by the constitution of 2009 and the challenges in relation with international law.

The second section of Chapter III analyzes the interpretation clauses of human rights in the Plurinational State of Bolivia, insofar as they allow international human rights law to play a role in this process. We also provide an analysis about the performance of the Plurinational Constitutional Court in relation to the application of international law in the domestic legal system. The third section, meanwhile, studies the hierarchical position granted to human rights treaties in the domestic legal system, and the constitutional implications of each of the hierarchical levels granted to those international instruments.

Through Chapter IV we analyze the external dimension in relation to the procedures intended to express and withdraw State consent to be bound by Treaties of integration and transfer of the exercise of powers, as well as their application in the domestic sphere. Chapter IV has three sections which attempt to explain, in as much detail as possible, each one of the aspects affecting those procedures. The first section probes the establishment of the essential basis of the State, which determine the internal procedures intended to express state consent to be bound by treaties. From those essential bass, we look at the Bolivian constitutional identity, which became the main element in the establishment of limits to integration law, with broad repercussions that are explored in the following sections.

The second section of Chapter IV analyzes the clauses that allow the transfer of the exercise of powers to the integration systems, as well as the new internal mechanisms that endow legitimacy to these processes. The third section pays special attention to the regulations that define the new hierarchical position of community law at the con-

stitutional level and the implications and effects which this entails. We consider the particularities of primary and secondary community law in each one of those cases.

All the chapters in this work are deeply interconnected in an exercise to explain the normative configuration of reception and application of international law in the domestic legal system. The chapters refer to each other in the description and analysis of the structure of the external dimension of the new Bolivian constitutional text. The issues of reception, application and hierarchy are controversial and the source of much conflict[20]. The Bolivian constitution is emerging as a necessary and justified coexistence pact, due to the heterogeneous and conflictive political, cultural and social subjectivity present in Bolivian society, which the Constitution must recognize.[21]

[20] GÓMEZ FERNÁNDEZ, Itziar: Conflicto y cooperación entre la Constitución española y el derecho internacional; Tirant lo Blanch, Valencia. 2005.
[21] FERRAJOLI, Luigi: *Derechos y garantías. La ley del más débil*; Trotta, Madrid. 2004. P. 126.

3. CONCLUSIONS

Conclusion 1. The constitutional parameters to regulate the external dimension are both a bridge and a limit to pluralism.

The regulation regarding treaties in the new Bolivian constitution has been inserted with the objective of resolving the shortcomings of an insufficient and inadequate historical regulation. Under that objective, a series of parameters have been included, through constitutional articles 10.I and 255, as elements of juridical and political control over the agents that act in the internal procedures to express and withdraw state consent to be bound by treaties.

Despite their generality, the specific characteristics of these parameters are of great importance. Among these, the positioning of sovereignty as the central axis of foreign activity stands out, setting up as its main element its direct connection with the defense of a high degree of popular participation. This idea of sovereignty is the basis for the incorporation of numerous participatory practices related to the external dimension, a fact that conditions all the aspects related to it, showing a true intention to put in the hands of the citizens the last word on international matters.

Through the parameters, social justice is introduced as an element that constitutes one of the most important objectives to be achieved through the actions of the Bolivian State. The content of social justice is not only to be respected by the international sphere, but also to be supported by it. Social justice also supports international actions based on respect for the environment and human rights, which in turn are conditioning factors for the maintenance of international relations infused with respect for both sovereignty and dignity. In this sense, it should be added that the insertion of parameters relating to the environment are accompanied by a deep cultural emphasis that acts in defense of ancestral knowledge and practices.

The constitutional parameters go beyond the merely declaratory. In a practical way, they link the international requirements of the state with their performance in the international dimension, and they bring to the foreground the direction which the public authorities must follow with regards to the procedures destined to express and withdraw state consent to be bound by treaties. The constitutional parameters are an unavoidable element for the weighting of public action in the judicial branch and for political control in the parliamentary sphere.

The constitutional parameters that govern the external dimension insert sovereignty, cultural burden and social justice as irrevocable elements. These are marked as global objectives, with the intention of having them serve as the basis for the configuration of policies with a global perspective. This global perspective is understood through the vocation of the Bolivian constitutional text, based on the protection of human rights and the vindication of original cultures, and whose setting is constructed on respect for sovereignty, with the latter conceived under a clearly participative optic as its main characteristic.

The constitutional parameters are directly linked to state action for the fulfillment of principles, values, rights and constitutional duties in the state's international activity. They insert, as one of the fundamental components of these elements, the multicultural perspective that, in turn, integrates a guiding line of external action. In this sense, the parameters or postulates can be understood as a reaffirmation of a constitution with a pluralistic vocation, whose respect for human rights permits the development of the universal aptitude of constitutional norms, easily framing them within a global context.

It should be noted, however, that this pluralist vocation does not exclude the existence of the danger of an excessive defense of constitutional parameters by the domestic courts, in a way that would be oriented towards the rejection of international standards in an attempt to reflect the values of the national Constitution. After all, it is not strange, in a system with a specific court designed to protect the constitutional norm, to wind up with interpretations that impose national parameters on international ones. Such an interpretation would go against the great openness and pluralist vocation of the parameters and, at the same time, the pluralistic vocation of the Bolivian constitutional norm. It also would represent a rejection of the attempt to build a network of national and international standards on which decision-making authority would be a shared exercise.

Precisely at this point, one must address the insertion into the Constitution of a subjective parameter, the 'national interest', which, despite its high degree of indeterminacy, has an uncontested minimum content based on the maintenance of the State's military and economic force. This parameter is dangerous, as it opens the way for the evasion of international consensus and the imposition of purely national norms and policies. The association of this parameter with a selfish vision in international relations, hard power and unilateralism is not accidental.

The 'national interest' could serve as a possible brake on a pluralistic approach. After all, under a multicultural perspective the idea of 'national interest' is highly unsatisfactory, inappropriate, and difficult to justify under contemporary conditions. In the Bolivian Constitution, the 'national interest' serves as a basis for the submission to the national jurisdiction of a range of externally related issues that concern economic aspects, calling for the exclusion of international jurisdiction over those matters.

The concept of 'national interest' thus stands as a potential instrument for defensive state rhetoric against regional interests, and as part of a wholesale patent rejection of certain international norms and procedures. However, as a parameter through which public policy makers understand and articulate the objectives of the state in international politics, 'national interest' also can act as a rhetorical tool that seeks to generate legitimacy and political support for the international action of the state in the domestic sphere. In this latter form it could be used for the empowerment and legitimacy of international courts and procedures if the domestic interpreter decides to put pluralism first.

Thus configured, the constitutional parameters are essentially imperative, and the object of political and parliamentary control. Tempering them under a pluralistic approach is to understand them as providers of a protection that acts in a double way, seeking the respect of both national and international values. The greatest challenge that the interpreter faces in relation to the constitutional parameters that govern the external side of the Bolivian state is to consider them from a present and future perspective. Their historical condition of rejection of international action, as a result of past discriminatory and inefficient international policies, is its main characteristic.

Conclusion 2. Loss of celerity and gain of legitimacy through popular participation.

The procedure to express and withdraw state consent to be bound by treaties allows the participation of many actors, which shows an evident desire for transparency and openness, giving way to the possibility of generating a constant interaction among all the actors involved. The most outstanding element in this procedure is the introduction of popular participation mechanisms for the request of a referendum to obtain authorization for the internal procedures for signing and ratifying treaties, the result of which is binding on public authorities.

As for the participation of the population, whose power is also shared by the congress, to request the holding of a referendum that decides on the authorization for signing a treaty, its action is not only complementary to that of the executive branch, but also has an independent dynamic of its own. Certainly, this particular power fits well into the Bolivian context. It gives extraordinary power to the population and the parliamentary minorities, by giving them the capacity to initiate the internal procedures for the signature of a treaty. Thus, the first moment of launching a popular initiative for a treaty will be shaped by the action of these actors, and the popular will and the legislative minorities can end up conditioning the actions of the executive.

Thus, the power of the executive branch is diminished with regard to the external dimension, and must be shared and coordinated with the other powers, as well as with the will of the population. One of the most serious consequences of popular participation in the procedures for signing a treaty, at the time of the referendum for authorization, is that what should be the fundamental characteristic of this process – its celerity

– can be frustrated. The call for a referendum interrupts all deadlines for a treaty's signature, and the entire process is inevitably extended over time. In this way, the procedure causes a loss in celerity for the sake of gaining legitimacy. Such loss of celerity, and its attendant delays in the process of treaty signature, is an undesirable consequence, as well as a potential danger in those situations in which an abbreviated process would be best for achieving approval and signature of a treaty.

The request for a referendum to authorize the expression of the state's consent to be bound by treaties, carried out by five percent of the population or, where appropriate, thirty-five percent of the congress, can also be carried out in those cases in which the formal procedure of parliamentary authorization is required, displacing the latter. This evidently conditions the role of parliament in this matter, given that the popular will expressed in referendum is binding on the legislative branch, which cannot but give effect to the popular will. This deviation from the parliamentary channel can be a fertile soil for extremist and irresponsible popular and parliamentary discourses during the process of a popular referendum.

The power of the population and of parliamentary minorities is enormous during these processes, eroding the parliamentary channel and greatly conditioning the external activity of the state to the popular will. Given this enormous power conferred on the population and parliamentary minorities, the need for in-depth regulation of such procedures is evident, requiring that this type of mechanism be covered by certain parameters that do not impede the rapid action of the state when necessary. The foregoing also involves internal complaint procedures, since in cases where the treaty has been authorized by referendum, the same referendum channel will be required.

Conclusion 3. The legislative branch becomes a key actor.

In the internal procedure aimed at expressing state consent to be bound by treaties, the legislative branch is a true actor, inasmuch as it questions and discusses the content of the treaty. It leaves, therefore, the historical role of limiting itself to authorizing or not such consent, and becomes a key actor in the internal procedure. The power of the executive in the external dimension is shared with the congress, which requires an intense exercise of communication and transparency among the political forces that make up the parliament.

In the new constitutional regulation, not only the parliamentary majorities but also the parliamentary minorities hold considerable power with regard to the authorization of treaties. The parliamentary minority, through a thirty-five percent vote by congress, can force a referendum on a treaty's authorization, either on its signature or its internal ratification, making this activity a true democratic game that involves all political forces in the performance of the state in its external dimension.

It should be noted that, as stated in the previous conclusion, the action of the legislative branch to force a referendum causes a loss of celerity in the internal procedures

to express state consent, a point of special concern in this process. This can be especially complex, since this procedure can also be seen as a mechanism to separate the parliament from certain politically complex decisions, in order to make the responsibility for such decisions fall on the shoulders of the population. The entire exercise can be extremely dangerous and risky.

The power of the members of the legislative branch is enormous in the internal procedure destined to express state consent, playing also a key role in the process of constitutionality control. Unlike in Bolivia's previous constitution, the members of the legislative branch can send their doubts to the Plurinational Constitutional Court regarding the constitutionality of treaties during the process of constitutional preventive control. The necessary conjugation of the action of the public powers opens a new scenario to provide transparency and dialogue to the internal procedure to express state consent.

Conclusion 4. The control of constitutionality opens as a forum for discussion.

With regard to constitutionality control of treaties, the Plurinational Constitutional Court faces a process that, besides being automatic, is eminently participatory, in which the executive and legislative branches have the capacity to intervene through the expression of 'reasonable doubts'. This faculty makes the political organs play an important role in this procedure, at the same time generating channels of discussion that enrich the jurisdictional activity by giving it a fluid dialogue. The process also opens up the possibility of responding with transparency and motivation to political questions on the constitutionality of treaties in an opportune manner.

Another interesting question posed by 'preventive constitutionality control' is that the president of the Plurinational State of Bolivia, as head of the executive, can request it, based on a 'reasonable doubt' at any time during the procedure. This prerogative covers also the procedures involving the abbreviated treaties. Although the 'preventive constitutionality control' of abbreviate treaties is not mandatory, it opens the way to address the president's doubt. This, in turn, produces the opportunity to control the constitutionality of non-definitive treaties. Once the consultation process on this type of instruments has been opened, the political bodies can participate in the constitutional control process by raising 'reasonable doubts'.

The procedure of 'preventive constitutionality control' is framed as a scenario of dialogue among the executive, legislative and judicial branches, in which a coordinated exercise of transparency and information must prevail. The moment of preventive constitutionality control provides an important reinforcement of legitimacy, since the active participation of the political branches throughout this process has the opportunity to serve as a showcase for the legitimization of the international agreements before the expression of state consent.

Although the constitution is more inclined to a 'preventive constitutionality' type of control, it does not exclude 'reparatory control'. Moreover, the constitutionalization of the state's willingness to conduct reparatory controls on treaties that entered into force prior to the promulgation of the 2009 constitution is also highly significant. In this case, although normally the term established by the constitution for the revision and possible denunciation of said treaties would have expired, it is understood that the term is still open for their adoption.

The opening of the procedure of 'restorative constitutionality control' is also applicable to treaties validly concluded under the current constitution. This process cannot be refused. Its main virtue is to allow all those who have been excluded from carrying out 'preventive control' to carry out 'constitutional control'. Its importance arises as soon as the denial of constitutionality control cannot proceed because of a violation over the rights conferred by the constitution itself; it would be a denial of justice not to allow a citizen to initiate an action for unconstitutionality in case of suffering a violation as a result of a ratified treaty.

Conclusion 5. The Bolivian catalogue of rights inevitably requires the minimum standards of international law.

Although an expanded catalogue of rights is found in the new Bolivian constitution, it should be kept in mind that, given the limited resources available to the state, most of the rights and guarantees set forth in the constitution are 'orientative' or 'guiding' purposes to which the government should direct public policy. This means that the Bolivian catalogue of rights needs to be complemented and configured based on compliance with the minimum standards provided by international human rights law and institutions.

Even though the configuration of such human rights responds to the need to provide symbolic arguments for the fight against inequality and discrimination, it is recognized that it is international law that should serve as a guide to the legislator through its standards. International law also establishes the ultimate legal bases that enable claimholders to seek redress in cases of violations. In this sense, no matter how developed rights are in the constitution, the keys to their interpretation, especially in relation to the positive actions which the state is obligated to carry out to enforce rights, must be found in international norms and institutions.

The immediate consequence of all this is the revaluation of the Inter American System of Human Rights, whose main challenge has been precisely to generate the capacity to guide the actions of its member states through common standards and principles, both for the determination of the processes of formulating public policy, as well as for overseeing the effective establishment of minimum standards of mandatory compliance for all member states. The use of international standards to give meaning to constitutional rights is especially necessary in the case of the rights of indigenous peoples, in which international human rights law plays a leading role to build limits

and amalgams between the rights of indigenous peoples and the rest of the body of constitutional rights. For this purpose, it is fundamental that jurisdictional dialogues must be raised at multiple levels and configured through relations of continuity and reciprocal effect.

Conclusion 6. The substantiation of the best hermeneutical canon must be expressed as judicially binding.

The Bolivian constitution seems to understand the obligation to go beyond the national protection barrier, to allow the interpretation of rights based on international normative frameworks protecting human rights. Interpretation from international sources is shown to be especially important because of the extensive catalogue of rights contained in the constitution, which is susceptible to possible collisions, requiring the definition of clear compliance standards.

The Bolivian constitution, based on articles 13.IV *in fine* and 256.II, opens the way to the interpretation of constitutional rights through what is established in the ratified human rights treaties. However, the Plurinational Constitutional Court has gone beyond these provisions and has included as an interpretative canon also what has been developed by the international human rights bodies, thus recognizing that the *corpus iuris* of international law of human rights must be understood in an integral manner. In this way, not only the rights proclaimed by international instruments, but also the decisions and interpretations made by international courts, are of special relevance in the process of expanding the internationalization of human rights.

However, article 256.II also serves as a limit, determining that the interpretative opening to the international law of human rights is not unrestricted or unconditional. This formulation creates an important bridge for the interpretation of rights in a pluralistic way, since it facilitates that hermeneutical canon that ensures the best protection of human rights, regardless of where the standard used comes from. In this way, on the one hand, the interpretation of constitutional rights is mandated in terms of international human rights law and, on the other hand, the interpretation of international human rights law in terms of constitutional rights is also available, allowing for the application of that norm which gives better protection to the rights in question.

Articles 13.IV *in fine* and 256.II are configured as clauses to which the Plurinational Constitutional Court must make mandatory resort for the interpretation of constitutional rights. At this point it is important to emphasize emphatically that the Plurinational Constitutional Court must invariably resort to such articles. They are not merely optional to use; they obligate the Plurinational Constitutional Court, as well as all domestic judges, to interpret the content of constitutional rights in accordance with the norms that integrate human rights treaties and the rights guaranteed in the constitution. Because of the fundamental importance of this activity, its expression as judicially binding must be irrefutable.

Under this understanding, judges cannot ignore the interpretation of law through international law simply when it seems appropriate or timely. The application and interpretation of international law must be explicitly included in the decisions, substantiating the standard used for the protection of rights. Only from its expression in a legal opinion is it possible to duly motivate the use of one or another standard. Therefore, although the expression in a legal opinion of such assessment is not a *sine qua non* requirement, it is highly desirable so as to achieve a better understanding and application of the interpretive canons, insuring that the important constitutionalization of these clauses has a real effect. Thus, the non-expression in legal opinions of articles 13.IV and 256 would mean an *interpretatio in peius*.

Conclusion 7. The Constitution is directed towards a pluralistic system of rights.

The constitution establishes a 'constitutionality block' that is constructed by article 410.II, and integrates the human rights treaties duly ratified. The aforementioned article is very broad, since it does not limit itself to stating a traditionally closed catalogue of international instruments. This clause, being open, is capable of including all the human rights instruments ratified by the state.

However, the Plurinational Constitutional Court has included both the judgements of the Inter American Court of Human Rights and its methods of interpretation, as well as some non-formal human rights instruments. This has made it possible to incorporate new rights from international sources into the domestic catalogue of human rights. These new rights are incorporated with constitutional value and, therefore, are creditors of the same guarantee mechanisms as those recognized as constitutional rights. This brings with it the important effect of the declaration of unconstitutionality of the infra-constitutional norms that are in contradiction with the international instruments that make up the constitutionality block.

A very important characteristic of this framework is that it propitiates the fusion, in the domestic system, of the 'conventionality control' with the 'constitutionality control'. This is projected as an effective tool for the realization of rights, as well as an ideal instrument for the construction of the Inter American *ius commune*. In this sense, the 'constitutionality control' subsumes the 'conventionality control' in the domestic system, the only difference being that the 'conventionality control' can also be exercised in international courts. This effect constitutes an unquestionable requirement for constant cooperation and loyal dialogue between national and international judges. Articles 13.IV and 256.I complete the Bolivian constitutional regulation on human rights, since they do not limit rights from international sources to a question of hierarchy, but establish that rights from international sources may apply over the constitution itself, when they configure better rights than those set forth in the constitutional norm.

The indicated relation, apart from supposing, in terms of hierarchy if you like, a 'supraconstitutionality' in the application of rights, implies the highest possible level of sophistication in the Bolivian constitutional system. The system facilitates the ap-

plication of the norms that offer better protection of rights regardless of the constitutional source from which they come, whether national or international. This effect is in accordance with the guaranteeing will of the Bolivian constitutional text. It forms a pluralistic scenario for the protection of rights in which the last answer is not found in only one constitutional place, nor based only in one constitutional rule, but it recognizes different constitutional spaces or 'places' to find the answer under various constitutional standards for a better and more consistent protection of rights.

The Bolivian constitutional system allows us to think also of different solutions, according to every specific case, without fearing that the international norm will be applied over the constitutional norm itself. In cases in which international law is applied in preference to the constitutional norm, the latter remains inapplicable only in that specific case. Such case-specific application does not necessarily affect the reform of the constitutional text, but brings about instead a transformation derived from the conjugation of the constitutional places at stake.

These dynamics of constitutional interpretation reflect the existence of an effective plurality in both international and constitutional norms, since it is assumed that the latter are no longer intended to solve all the problems raised, but seek to do so through a coordinated exercise of constitutional and jurisdictional dialogue, in which both the domestic and international systems claim the highest decision authority. However, there is no ultimate authority in the Bolivian constitutional system. On the contrary, the Bolivian constitution recognizes the existence of a network of ultimate authorities and, in turn, a network of ultimate standards.

Conclusion 8. Constitutional identity serves as a limit to integration law.

Bolivia's constitutional identity is based on the defense of cultural diversity and, therefore, on respect for the original forms of administration. The importance of this identity is centered in that its content cannot be subjugated by an integration treaty. In this way, the marked cultural burden with which constitutional principles have been expressed conditions all the actions of the state in its external dimension, acting as conditioning factors in the process designed for the expression of state consent to be bound by international treaties. Constitutional principles are an important limit to integration law, as they are an essential part of the Bolivian constitutional identity.

Of particular importance is the indigenous principle of 'living well', as an axiological element that emphasizes a vision based on the recovery of cultural identity, ancestral knowledge, structuring a policy of preserving sovereignty at an international level, and reconstructing national dignity. These aspects constitutionally formulate a new economic model based on the recovery of the ownership of natural resources, and the substitution of the individual accumulation of wealth by the integral development of nature.

Through the 'living well' principle, the state sets as inalienable objectives both the reevaluation of fundamental rights and the implementation of sustainable strategies of solidarity and redistribution of income. Thus, a demand is made on insuring that integration treaties do not violate the state, its traditions or its sovereignty. This principle directly influences the treaties of integration and transfer of the exercise of competences, since the latter treaties cannot be dissociated from the economic objectives directly linked to the protection and promotion of the constitutional identity of the state, whose effects on integration systems are quite visible.

Despite the fact that cultural diversity is the element from which the moral strength of an integration system is extracted, the Bolivian constitutional norms of sovereignty, self-determination and constitutional identity run the risk of obscuring and pushing aside the pluralist approach. Under the shadow of sovereignty and self-determination, political and moral arguments could prevail, questioning the primacy of values linked to constitutional identity in the field of integration. The defense of constitutional identity could end up, as has been seen in the European level, marking exceptions to the uniform application of integration law, to the point that a national norm could become capable of repealing a community rule.

Conclusion 9. The integration of indigenous peoples is constitutionally introduced.

The constitutional regulation regarding the integration mechanisms has as its main point the explicit recognition of its priority impulse, clearly stating the integration will of the Plurinational State of Bolivia. The most relevant aspect of this regulation is the introduction of the possibility of generating integration mechanisms among indigenous peoples, giving way to the real opportunity to articulate integration mechanism that allow the integral reconstruction of indigenous peoples —separated during the colonization process—, transcending state borders.

This should not be understood as the de-structuring of the state's borders, but rather as the opening of spaces in which it is possible to speak of the cultural integration of the indigenous peoples. This way of understanding the integration of indigenous peoples is a novel aspect, allowing them to generate strategies of action to face globalization and productive modernity. This constitutional provision is proof of the state's willingness to carry out integration processes with a deep cultural burden, consistent with the defense of its identity, and conceiving the exercise of a shared sovereignty, all of it in accordance with the requirements of international law.

Conclusion 10. The Bolivian constitution introduces the integration clause.

In light of the European experience, the constitution has understood that, due to respect for its founding meaning, integration must be sustained and rooted by it. The Bolivian constitution establishes in its article 257.II the will to be part of integration processes through the constitutional route to cede the exercise of its sovereign competenc-

es to integration mechanism, marking as a limit for said cession the necessary popular approval. In this way, it is established that the internal ratification of the integration instruments can only be done through the people's authorization by referendum, configuring in turn a way of defending the constitutional identity.

Through this procedure, a series of obligations are accepted that restrict the autonomy and freedom of action of the state. However, the constitutional norm emphasizes through the integration clause the idea that the constitution is the limit to integration, since it cannot modify it. In case of contradiction, ratification is not possible; it could be done only after a previous reform of the constitution. The constitution opens the way of integration, delimiting the procedure by which the integration treaties must be authorized, marking as limits sovereignty and constitutional identity. On the bases of these, the nature and the extension of the competences assigned in their exercise must be interpreted.

Conclusion 11. The referendum for integration treaties as a mechanism that ensures their legitimacy.

There are very few constitutions that provide for a referendum process for authorizing integration treaties. It should be understood that, from the perspective of Bolivia's historical experience, the inclusion of mechanisms of popular legitimation to enter or form part of an integration organism are seen as unquestionable. The referendum defends the principle of sovereignty of the Bolivian people, whose will is binding at the moment of deciding whether or not to be part of an integration mechanism. This same will stands as the guardian of constitutional identity.

The requirement of this step is also extrapolated to cover the denunciation of treaties, and must necessarily follow the same path as that for the procedure for internal ratification, that is, the referendum. This means that being part of integration organizations is configured as a complex procedure, given the conditions and characteristics of the referendum. Although this represents an ideal mechanism to obtain a clear and precise answer about integration, it also increases the uncertainty about its completion, since it is possible that a negative response will emerge from the population. However, the advantages of overcoming this obstacle are enormous.

This practice requires an important exercise of transparency and information on the part of the public administration. The referendum, particularly in these cases, is a tool that seeks to associate citizenship with a new social contract that arises from the importance of an integration founding treaty. The complexity of this mechanism also supposes a marginalization of the parliamentary channel, entailing the risk of further intervention by pressure groups and interest lobbies. In the Bolivian case, due to Bolivia's long history of exclusion and discrimination, the relevance of the referendum as a channel to legitimize integration mechanisms is very well received.

Conclusion 12. Community law is part of the constitutionality block.

Although the new constitutional norm has been granted a constitutional hierarchy, which corresponds to the highest possible hierarchy, strict controls have been implemented to ensure not only its constitutionality but also its popular legitimation. Through the position of community law in the constitutionality block instituted by article 410.II, the superiority of the community norm is not discussed in the national legislation of the 'infraconstitutional' hierarchy.

This wide range allows the idea of a constitutional dialogue on various scales to be carried out with the other member states. This idea of constitutional dialogue is precisely the substratum of modern constitutionalism, since it implies a forum for permanent negotiation and renegotiation. This hierarchy has the important consequence of declaring the unconstitutionality of the 'contradicting' legislation as having a lower hierarchy than the constitutional one.

In this way, community law takes an important qualitative step by becoming a parameter of constitutionality in the Bolivian legal system. With this regulation, the systems of community law are strengthened in the domestic legal system. It is unequivocally established that the law born of the founding treaties cannot be overcome by a national norm with inferior hierarchy to the constitution; all national judges have the obligation to apply community law.

Thus, the new constitutional law is propelling integration law, giving an important leap not only in relation to the previous Bolivian constitutional texts, but also in relation to the other constitutions of Latin America. However, it should be made clear that, although community law is part of the constitutionality block, this refers to the primary law, but does not include secondary law. The constitution is very clear that community law enters to form part of the constitutionality block, as long as it has gone through the process of internal ratification, which is only applicable to the treaties that constitute primary law and not to the law that emanates from the supra-state institutions that have not passed through this filter.

Given that the derived legislation is the product of the attribution of the exercise of competences supported by the primary law, the rules contrary to this can be declared unconstitutional. But also, the unconstitutionality of secondary law can be considered as soon as a breach of the Bolivian constitutional identity occurs, since it must be borne in mind that both primary and secondary law are limited by the respect for the Bolivian constitutional identity. These effects on secondary law are understood by the relationship of competence that binds community and constitutional law.

Conclusion 13. The constitutional hierarchy of community law causes effects in the internal order.

Although community law is the holder of a particular scheme of relations, in which a series of principles are developed that limit the sovereignty of States, internal regulation also can cause domestic effects on community law. That is the case with the positioning of community law in the constitutionality block.

The constitutional hierarchy of community law confers on the right of integration two important characteristics. One is the primacy that is granted against the norms with an infra-constitutional character. The second is the direct application of the constitution by virtue of its normative force principle. It should be noted that, although both characteristics have internal effects, since they link the legal and political bodies, these are especially relevant for the integration processes. However, these effects are predicated only on primary community law and not on secondary community law, since the latter does not include the constitutionality block.

It must be made clear that the principle of primacy that is extracted from the hierarchical position of community law is essentially different from the European concept, since, contrary to it, it is based on relations of hierarchy and not on the functional nature of the norm. In addition, the primacy established by constitutional mandate does not include constitutional regulations, it being understood that community law has as a limit to the constitutional norm, the distinction of what holds the primacy and supremacy. However, the constitutional interpreter could defend the supremacy of the constitutional norm while granting, at the same time, the primacy to community law when it is required for the construction of a deep integration system.

With regards to direct application, this is derived from the position of community law in the constitutionality block. This fact grants special characteristics to community law, and it generates rights and obligations validly recognized in the domestic courts. When community law is found within the constitutional range, it is a directly applicable norm, in the same way as the constitutional norm itself. In the case in which the community regulations are not sufficiently clear and unconditional, it is the Plurinational Constitutional Court that must correct the gap, in order to grant the protection offered. The development of a fluid and appropriate dialogue between national and international tribunals and legal institutions is highly desirable.

In this sense, the direct application of community law, in the Bolivian case, goes beyond the expected uniformity and sufficient characterization required in a system of integration. Being constitutional law, community law can be claimed by citizens, as is the case with the rest of the constitutional law, since to be included in the constitutionality block is equated with the constitutional norm with all its effects.

Conclusion 14. The constitutionality block as a non-pluralistic solution.

Notwithstanding the great leap of the Bolivian constitution in placing community law at the constitutional hierarchical level, the concept of the constitutionality block, as stated in the Bolivian constitution, shows community law as a constitutional law of second order. This placement seems to go against a pure form of pluralism understood as pure, since the constitutionality block would implicitly establish a maximum authority, in this case, the domestic one. The vocation of 'globality' is at risk with a hierarchy of this type, since it is not clear that the constitution would be open to supra-state institutions to resolve emerging problems of integration models. In this sense, the vocation of normative 'globality' would pretend to be predicated from only one text. The adoption of the idea of constitutional pluralism supposes the questioning of any form of supremacy, with the understanding that in the relations between constitutional and 'suprastatal' law, the proper relationship should no longer be one of hierarchy only, but of collaboration and complementarity.

In this sense, in case of contradiction between community and constitutional law, following the Bolivian hierarchical scheme, domestic law would be applicable, not giving rise to a transformation of the constitutional law that is not effectuated through a constitutional reform. In this sense, what should operate, on the contrary, would be a transformation of the content of the rules, not as a consequence of the hierarchical prevalence of some rules over others, but of their placement at the constitutional level, each one in its field of action.

The decision on the resolution of conflicts derived from integration systems must recognize that the essence of pluralism is precisely the presence of contradictory constitutional jurisprudence between the various constitutional places, claiming the highest authority, yet aware of a shared exercise of sovereignty. In this respect, it would be a mistake to claim that conflicts between community and constitutional law must be resolved through the assumption of a rule of immediate primacy of one of the norms that is in conflict. The Bolivian judge is called to propose intermediate solutions that allow cooperation and dialogue among the various norms.

4. INFORMES INTERNACIONALES

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"LA PROYECCIÓN EXTERIOR DE LA NUEVA CONSTITUCIÓN POLÍTICA DEL ESTADO PLURINACIONAL DE BOLIVIA"

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INFORME RAZONADO/REASONED REPORT

The doctoral research work by Nataly Viviana Vargas Gamboa deals with a specific important area of constitutional law – namely, the interaction between national legal systems and the international legal order - which has been widely explored and yet still needs further investigation due to relevant dynamics of change both at the domestic as well as at the international level. The Bolivian case dealt with in the doctoral thesis is a good "living laboratory" witnessing the statement above.

This area of constitutional law involves a plurality of separated focuses of research: one of them deals with legal theory and the system of sources of law, implying alternative approaches that are traditionally referred to the monist or the dualist school, the former being further divided between the assertion of the primacy, alternatively, of domestic law or of international law; a second investigative approach is connected to the theory of forms and government and analyses the distribution of functions (treaty power and war-making power) between the Executive and the Legislative branches of government; a third thematic field is concerned with the so called vertical distribution of powers, and its emphasis is on the limited functions allowed to member states or to regions as subnational governmental entities with regard to their own admissible actions in the field of international relations – mostly related to trade, export and cultural affairs; a fourth approach deals with issues of justiciability and of judicial control of the constitutional consistency of governmental powers in foreign, military and security policies.

So far the traditional fields of analysis in the area that may

well be regarded as an authentic *classic topic*, when, for instance, we recall as early a reference as John Locke's *Second Treatise on Civil Government*, where «the federative power» was mentioned and dealt with, leaving a trace that has been very influential on constitutional law scholarship for quite a long time. The work of another important (Russian-French) scholar, Boris Mirkine-Guetzevich's *Droit constitutionnel international*, (Paris, Recueil Sirey, 1933) proved very influential also, as his analysis developed after the first world war, when the roots of later and present developments were sewn.

Two further fields have emerged later to the attention of scholars, though, that do require specific scientific investigation, namely, the specific role of international treaties on human rights and of treaties that establish a process of supranational integration. Investigation in these two fields raises newer constitutional questions (and sometimes authentic problems) of formal and substantive constitutional consistency, and not only legal but even democratic primacy and legitimacy.

Another contextual factor of general interest affecting research in this area is offered by relevant innovative original developments in domestic constitutional law of one or more national systems, thus introducing new ideological and axiological paradigms into the texture of the scenario to be explored.

At the end of this short survey of the main substantive components of the research area concerned, it is interesting to notice that the doctoral research work elaborated by Nataly Viviana Vargas Gamboa hits all and each one of the structural elements that, in my opinion, set the boundaries of this material area of constitutional law. And this speaks very much in praise not only of her commitment but also of her cultural sensitivity as applied to constitutional and, generally, issues at large. I think that the very choice of the topic of the

doctoral research is the first step meaningful in the indication of one's personal fitness for scientific research.

Reading this thick doctoral research work proves to be an extremely interesting exercise also because it is centred on the constitutional system of the Plurinational State of Bolivia, whose deeply innovative standing (since the 2009 Constitution) is superficially well known although in fact recent, qualified and detailed literature on it is rather missing.

It is therefore all the more interesting that the doctoral thesis starts analysing the debates of the Constituent Assembly that deliberately means to inaugurate a new season of Bolivia's interaction with the international community, in line with a strong commitment to its own shared superior values. The specific analysis being indeed quite detailed and yet critically selective of the crucial issues out of the very many constitutional texts of Bolivia (16 of them between 1826 and 1961), its interest may be of special value for a foreign reader who is not usually well acquainted with Bolivian political history and the social and cultural fabric of its domestic setting (reference is to the qualification of former Bolivian constitutional rules as "*discriminadoras y excluyentes*", p. 55 and to the evalutation of the new generation of members of the Constituent Assembly that was "*material, espiritual y culturalmente diferente de las anteriores*", p. 67)).

Chapter 1, although quite long and perhaps over-detailed for an international audience, shows a proper balance between parts of the work that are more descriptive - and yet manage to be consistent with a critical and reasoned historical approach - and parts that are the outcome of a methodologically correct legal analysis.

In Chapter 2 legal analysis is prevailing once again, although always properly contextualised: in particular, reference to foreign policy rules and directive principles (as provided for by art. 10.1) is structurally related to ideals (and practice as

well?) of people's participation ("*la vertiente cultural de los diversos colectivos que hacen el Estado*", p.92 and "*la Diplomacia de los Pueblos*, p. 94), thus overcoming past popular dissatisfactions and unease. The reasoned construction of distinctions between "the national interest" and "*los intereses del pueblo boliviano*" is also very interesting and well argued.

Furthermore, what particularly matters, is that such rules and directive principles are enshrined and entrenched in a precise binding procedural framework, thus intertwining policy ends and means (art. 255, p. 97). The use of a referendum for the ratification as well as for denunciation of as treaty and the control of constitutionality by the Plurinational Constitutional Tribunal are relevant indicators of a constitutional engineering that is meant to emphasise guaranty of values over protection of other goods such as efficiency, stability or continuity in policies.

In such a context, some information on current practice – that is lacking - would enhance the appreciation for the Bolivian constitutional setting (considering, in particular, under a comparative perspectives that other national constitutions – other than the Ecuadorian Constitution mentioned in footnote 366 - have formalised policy directives in foreign and security policies with provisions that have remained little less than rhetorical exercises). Nevertheless, this part sheds light on the motivation of the very title of the doctoral thesis ("*la proyección exterior*") that would otherwise be not entirely understood and appreciated. The definition of the Constitution of Bolivia as "*agresiva*" – in fact more aggressive than older texts - from this point of view is most appropriate (p. 156).

In Chapter 3, the hierarchical relationship between sources of international law on human rights – and most notably the American Convention on Human Rights and the case law of the Interamerican Court - and sources of domestic constitutional law is examined at length, showing familiarity

with traditional dogmatic reasoning as well as awareness of hard innovative choices by the Constituent Assembly. Among such choices, one finds the one directed to deny any hierarchy among fundamental rights – not yet sufficiently tested, in my opinion, by the case law of the domestic judicial system; and the one related to giving recognition and protection to the rights of "*naciones y pueblos indigena originario campesinos*" as a distinctive feature of the 2009 Constitution (as separately examined in detail, p. 216) also in consequence of the introduction of areas of legal and judicial pluralism in the system.

The consequences of the open clause with regard to the list of human rights (p. 198) is further examined with the hermeneutic attitude of the Plurinational Constitutional Court to expand the role of international law in the field as a tool of interpretation of the Constitution, as well as in connection with the control of conventionality alongside with the control of constitutionality within a unitary framework of "*Bloque de Constitucionalidad*", as established by the Constitution itself and implemented by law of the Plurinational Constitutional Tribunal. Further indications deal with a special category of "*sovranacionalidad*" of fundamental rights of international origin (having a preferential implementation over that of domestic rights), whose distinguishing features appear *per se* to be more a matter of an oversimplified description than of a systematically argued construction.

In such perspective, in fact, the following Chapter 4 is crucial as it offers a description and an explanation of the phenomenon of treaties aimed at establishing and regulation a process of integration. Integration is regarded almost exclusively as affecting the economy and Bolivia's participation to the integrated market raises the question of compatibility with constitutional higher values and ambition at establishing a fairly communitarian economic system, centred on and well rooted in the principle of "*vivir bien*" of indigenous origin and its plurality of meanings and implications. In fact,

such principle is one of the core components of Bolivia's constitutional identity since the enactment of the 2009 fundamental law.

The Constitution does have an "integration clause" (art. 257.II) – which may be regarded as an equivalent of the so called "European clause" - and expresses an attitude favourable to integration, yet conditioned by the priority given to its own constitutional identity, as described above. The law of integration ("*el derecho comunitario*") confirms its position in the *Bloque de Constitucionalidad* as has been previously examined with regard to international law in the field of human rights and the enforcement of its primacy is a matter for the judicial system to determine.

The Conclusions of the doctoral thesis have been given the excellent form of 13 concluding statements which highlight – each one and all the them jointly - the main arguments described and constructed all along the 4 Chapters that I have briefly commented.

The development of the doctoral thesis presented by Nataly Viviana Vargas Gamboa – as anticipated in the Introduction and confirmed at this final stage - is logically and systematically very well and properly built. The Ph.D. candidate possesses a strong and evident inclination to legal reasoning both through the theoretical categories of public law and the wider approach which belongs to constitutional law. Hopefully, the candidate may wish to practice also the comparative method which offers a great potential for a young serious and promising researcher as she is.

This doctoral thesis indeed fills a vacuum in current literature and this important feature makes a wide circulation of the doctoral thesis absolutely to be recommended.

I inform that the scientific quality of this thesis is worthy of obtaining the International Doctor Mention (mark with across one option)

Favorable yes [X]

No favorable/Not favorable [ ]

FECHA / DATE: December 17, 2017

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Professor (Chaired)

UNIVERSIDAD U ORGANISMO Y PAÍS / UNIVERSITY OR INSTITUTION AND COUNTRY

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TÍTULO DE LA TESIS OBJETO DE INFORME / TITLE OF THE TESIS

"LA PROYECCIÓN EXTERIOR DE LA NUEVA CONSTITUCIÓN POLÍTICA DEL ESTADO PLURINACIONAL DE BOLIVIA"

NOMBRE Y APELLIDOS DEL DOCTORANDO / NAME OF THE CANDIDATE

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SOBRE LA CALIDAD CIENTÍFICA DE LA TESIS DOCTORAL (puede añadir las hojas que crea necesarias adjuntando a este informe) ABOUT THE SCIENTIFIC QUALITY OF PhD (you can use all the pages you might need including this form)

I was impressed with this thesis and learned a good deal. The author has read much international literature and has a sophisticated understanding of how the plurinational constitution of Bolivia can serve to interact with international law and institutions. Instead of seeing plurinational sovereignty and international law in tension, she demonstrates how, especially through the plurinational constitutional court, the Bolivian system has resolved tensions and leveraged international norms to expand the protection of human rights. Her elaboration of the jurisprudence of the constitutional court was sophisticated and impressive. Her knowledge of international law, and especially the Inter-American system for the protection of human rights is very good.

I believe that this thesis reflects the scientific quality necessary to award a degree.

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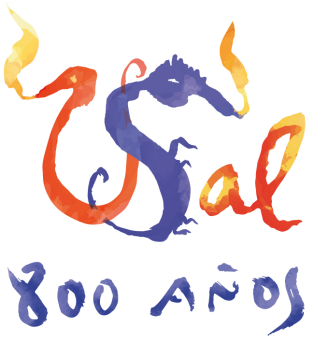

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