

INTERNATIONAL LEGAL COOPERATION BETWEEN BRAZIL AND CHINA AND THE CRIMINAL SUIT DURING DEFAULT JUDGEMENTS REGARDING THE CRIME OF MONEY LAUNDERING: A CRITICAL ANALYSIS OF BOTH BRAZILIAN AND CHINESE LAWS¹

*Fábio Ramazzini Bechará*²

*Breno Silva Oliveira*³

*João Paulo Sales*⁴

*Talis Prado Pinto Júnior*⁵

Abstract

This article aims to understand the dynamics between Chinese and Brazilian legal systems about money laundering prosecution in default judgments and its implementation in international legal cooperation. Therefore, both legal basis are analyzed and common dispositions studied for the complete comprehension in how China and Brazil can act in complementary ways. To conclude, the article demonstrates that a trial in absentia may prevent extradition for serving a sentence, if a new trial is not ensured in the requesting country. On the other hand, if extradition is used for the accused to respond to the process, the purpose of the act is precisely to prevent default. Likewise, for the other cases of assistance, if the default has been operated in compliance with the legislation of the requesting country, there will be no impediment to cooperation.

¹ This paper was translated by Amanda Navajas Hilsenrath, translator, majored in Languages (Portuguese-German) at USP (Brasil).

² Professor of Undergraduate Master's and Doctorate degrees in Political and Economic Law at Mackenzie Presbyterian University – District attorney in São Paulo (Brasil).

³ Law degree at Mackenzie Presbyterian University – Lawyer (Brasil).

⁴ Master's degree student with a major in Political and Economic Law Mestrando at Mackenzie Presbyterian University – Lawyer (Brasil).

⁵ Master's degree student with a major in Political and Economic Law Mestrando at Mackenzie Presbyterian University – Lawyer (Brasil).

Keywords

International legal cooperation. Brazil and China. Money laundering. Default judgment.

Summary

0. Introduction. – 1. The evolution of the global regime of control and prohibition of money laundering, and its internalization both in Brazil and China. – 2. The Universal system of protection of human rights and the guarantee to the adversarial proceeding as a limitation of the criminal process in absentia. – 3. The International legal cooperation between Brazil and China and criminal action in absentia. – 4. Conclusion.

0. INTRODUCTION

The article aims to examine the feasibility of international legal cooperation in criminal matters between Brazil and China, with regard to the crime of money laundering, in the event that criminal action in one of the countries is proceeding by default against the defendant.

The transnationality of criminal activities requires coordinated efforts among many countries with the aim of preventing and repressing illicit actions, such as concealing money's illicit origin. Such effort might be achieved through the harmonization of domestic law with regard to material and procedural law content or by adopting new procedures that may simplify communication and mutual assistance among countries.

Recently, the operation car wash debunked a major corruption scheme in Brazil involving state-owned companies. A significant part of the illicit gains was sent abroad as one of the stages of money laundering, to countries such as the USA, Switzerland, China^{6 7} and others.

⁶ FEDERAL PROSECUTION OFFICE, 2019.

On the other hand, China has historically faced problems related to the fulfillment of requests for international legal cooperation made to other countries. In part because of the distrust, mainly by Western countries, in relation to respect for the guarantees of due process of law⁸. Aside from that, the lack of regulation for situations in which criminals hide, flee abroad, died or transfer their assets to other countries has also shown to be a weakness for China⁹.

With the globalization of the financial markets, however, China have begun to face increasing problems with their investigations and punishment because some criminals have committed crimes overseas through the Internet or by other means that are not easily accessible. More than that, to avoid death or life imprisonment, thousands of corrupt officials and fraudsters have fled abroad, especially to Western countries such as USA and Canada, where they can also launder the stolen funds¹⁰.

In this context, becoming a signatory to international treaties, signing bilateral agreements and, of course, domestic legislative changes have been pointed out as ways to overcome these barriers¹¹.

For example, in 2004, Brazil and China signed an international legal cooperation agreement in criminal matters for the purpose of extradition, as well as, in order to support investigation and prosecution of criminal offenders.

⁷ FEDERAL PROSECUTION OFFICE, 2020.

⁸ LIU, LIU, 2019; BBC, *Canada departs fugitive Lai Changxing back to China*, 2011, available in <https://www.bbc.com/news/world-us-canada-14262269> visited on 02-02-2022.

⁹ See: DELISLE, Jacques. *Xi Jinping's Impact on China's Legal Development: Domestic and International*, THE ASAN FORUM, 10-15-2015, <https://theasanforum.org/xi-jinpings-impact-on-chinas-legal-development-domestic-and-international/>, visited on 15-03-2022; PENG, 2018.

¹⁰ CHENG, 2016.

¹¹ PENG, MA, 2019.

This agreement was ratified by the Decree number. 6282/2007, whose object is the mutual assistance for the following purposes: a) delivery of documents; b) taking people's statements; c) obtaining and providing experts' assessments; d) providing documents, records, and evidence, including bank, financial, corporate, or business records; e) locating or identifying people, assets or evidence; f) conducting judicial inspection or examining places and objects; g) finding people who might give evidence or aid in investigations; h) transferring people in custody to give statements or helping provide evidence; i) execution of requests for tracking, search, immobilization and seizure; j) disposal of crime products or instruments; k) notification of results of criminal proceedings and provision of criminal as well as other records; l) exchanging information regarding legislation; and m) any other form of assistance not prohibited by the laws of the Respondent State.

Otherwise, the extradition agreement, despite being signed in 2004, was only ratified on April 9, 2015, through Decree no. 8.431. This decree regulates criminal processes or serving sentences.

Both countries signed and ratified the United Nations Conventions against Drug Trafficking, Transnational Organized Crime and additional protocols, and Corruption. This means that both countries are part of the Financial Action Group - FATF, which is an intergovernmental organization whose purpose is to develop and promote national and international policies to fight money laundering and the financing of terrorism.

All these initiatives promoted internationally are underpinned by mutual assistance efforts among the signatory countries, as an indispensable mechanism for obtaining a more effective response to different problems they have to deal with, in particular, money laundering.

However, cooperation among different countries requires some adjustment and compatibility between different legal systems, which are distinguished by their respective origin or tradition. It is important for this matter, the regulation at the domestic level, done by each State, in relation

to the object of cooperation, whether in terms of the intended end or the procedure and requirements adopted.

The discussion proposed in this paper is based on the provision in Brazilian law regarding the possibility of criminal prosecution in absentia in the crime of money laundering (Act n. 9.613/98). This provision is applied when the accused is subpoenaed by notice and does not appear or fails to constitute a defender in the records. Also, this article compares it with Chinese legislation (Criminal Procedure Law of the People's Republic of China), which provides, among art. 298 to 301, the possibility of confiscation of assets of criminal origin, even in cases where there is no criminal conviction, by suspects or defendants who fled abroad or died.

Both provisions are criticized, notably because the admission of the process by default contradicts, in thesis, the Treaties in International Human Rights documents regarding the guarantees of having a fair process.

However, this article brings the hypothesis that the process by default in money laundering crimes, whether when Brazil appears as a requesting or requested authority, or China, will only be an impediment to the processing of requests for international legal assistance, while dealing with extradition and there might not be a commitment that the accused will be guaranteed a fair trial. In other situations, as in the case of the mutual assistance agreement between Brazil and China, the criminal process in absentia does not prevent cooperation.

For this reason, this paper is divided into two parts. In the first one, it examines the global agenda on money laundering and human rights, with emphasis on guaranteeing that both parties be heard, and its respective internalization in Brazilian and Chinese law. In the second part, one will analyze the international legal cooperation between Brazil and China in cases that go against the accused, whether for extradition purposes or for other purposes, such as the production of evidence, for example.

The method of analysis is the hypothetical deductive, based on a review of the literature on international legal cooperation and the guarantee of a fair

process, with reference to Brazilian and Chinese legal theory, as well as court precedents.

1. THE EVOLUTION OF THE GLOBAL REGIME OF CONTROL AND PROHIBITION OF MONEY LAUNDERING, AND ITS INTERNALIZATION BOTH IN BRAZIL AND CHINA

Money laundering is the act of hiding or concealing assets, values or money from other criminal offenses, with the purpose of reinserting them within the economy, masking their real nature, as if they were lawful. At first, the penalization for money laundering took place through the criminal acts of reception or favoring, however, from the observation that the money laundering contained peculiarities in it, as well as a sophistication in the concealment of goods, it was established the need to create a more specific criminal offense¹².

The phenomenon of money laundering is age-old, being spotted in 1920 on actions of criminal organizations¹³ in the United States, embodied by the emblematic figure of Alphonse Capone, who concealed the profits obtained from the sales of alcoholic beverages during the Prohibition period using Laundromats as facades¹⁴. In fact, the term money laundering

¹² BADARÓ, BOTTINI, 2019.

¹³ The term "criminal organizations" is preferred to "mafia or mob", considering that the use of this expression may elicit the perception that the problem of crime in the United States was of an ethnic order. As Naylor explained, organized crime was not restricted to an ethnic group, nonetheless, as the author explains, it was more interesting for American authorities, as well as for Hollywood, to obtain support from the public opinion by romanticizing organized crime through the use of the image of Italian mafias and their blood ties, NAYLOR, 1987.

¹⁴ BARROS, 2017.

(money laundering) began to be applied in reference to the use of the aforementioned story.

With the 1929 Great Depression of and, consequently, with the collapse of banks and the credit lines cuts to lawful activities, the situation worsened. Legitimate companies that were previously viable, ran out of any kind of incentive or credit, which compelled them to welcome criminals with cash surplus to be “laundried”. In addition, with the end of the Prohibition period, criminal organizations were also forced to diversify their ventures¹⁵.

The first country to criminalize money laundering was Italy, in 1978. This crime legally is crime legally came to be after the kidnapping and murder of former Prime Minister Aldo Moro by the terrorist group known as Brigadas Roselhas. As an aftermath of the social uproar generated by this incident, as well as by other kidnappings that occurred at the time, Italy included the crime of money laundering, albeit in a restricted way, in Article 648-bis of the Italian Penal Code¹⁶, created by Decree 59, transformed into Law 191/1978¹⁷.

At the end of the 1980s, the international community began to pay more attention to the phenomenon of money laundering, since at that time, with the emergence of economic and financial globalization, as well as the rise

¹⁵ NAYLOR, 1987; DE CARLI, 2006.

¹⁶ According to article 648-bis of the Italian Penal Code: “Outside the cases of participation in crime, whoever replaces or transfers money, goods or other benefits arising from an unprosecuted crime, or carries out other operations with them, in order to prevent the identification of his criminal origin, is punished with imprisonment. from four to twelve years and a € 5,000 to € 25,000 fine. (1) The penalty is increased when the offense is committed in the course of professional activity. The penalty is reduced if the money, goods or other benefits come from a crime for which a prison term of less than five years is established. The last paragraph of Article 648 applies” - translated by the authors.

¹⁷ DE CARLI, 2006.

of tax havens as being facilitating scenarios for the masking or concealment of illicit capital, the power of criminal organizations was perceived, especially those linked to drug trafficking, have transformed them into real companies.

The impersonality of these organizations made void the arrest of their members, since the illegally obtained money was fed back and expanded their own activities, and made it possible for public agents to co-opt through solicitation and corruption¹⁸.

From these findings, it was understood that the disarticulation of these criminal groups could not occur effectively through traditional instruments used to combat common crime, but it was imperative to adopt tracking measures such as “follow the money” and the confiscation of assets, values and capital of illegal origin and that were reused in the financing of the criminal enterprise.

In the 1980s, several international organizations created anti-laundering regulations¹⁹, whose purpose was to coordinate a global criminal policy in order to prevent and suppress these criminal actions, which encouraged international legal cooperation, harmonization of national legal systems and the adoption of preventive measures to inspect financial transactions²⁰.

The United Nations Convention Against Illicit Traffic in Narcotic Drugs (the Vienna Convention²¹), adopted on 12/20/1988, is the first universal international treaty to address the crime of money laundering²². The

¹⁸ BADARÓ, BOTTINI, 2019.

¹⁹ BLANCO, 2001.

²⁰ BADARÓ, BOTTINI, 2019

²¹ The treaty was incorporated into Brazilian law by the decree no. 154, July 26, 1991.

²² Nadelmann pointed out that the United States was the most interested party in creating an international system in order to suppress international drug trafficking, NADELMANN, 1990. The same author said that the Americans played an important

promotion of legal cooperation is expressly encouraged in the sense that States should reach an agreement with each other, and thus, exchange experiences regarding combating the crimes described in the convention.

The United Nations Convention against Transnational Organized Crime (the Palermo Convention)²³ of 11/15/2000, in turn, surpasses the Vienna Convention, as it indicates many more other crimes (in addition to drug trafficking) can generate goods susceptible to money laundering. Another important advance is the possibility of criminal prosecution being triggered even when the previous offense is committed in a foreign state, as long as the crime is considered a crime in both states.

The United Nations Convention against Corruption (the Mérida Convention)²⁴, celebrated on 10/31/2003, elicits. States to foresee and apply mechanisms of rigid administrative controls on the performance of fragile and vulnerable segments of money laundering, as well as it provides measures that encourage international legal cooperation.

Currently, the main group in the international system fighting against money laundering is the FATF (International Financial Action Group²⁵, fruit of the G7 in 1989). This international organization, endowed with soft powers, proposes guidelines (standards) aimed at preventing money laundering and the financing of terrorism. Their guidelines are found in the 40 recommendations formulated by the group itself, which also

role in the negotiations for the drafting of the Vienna Convention and saw with good eyes that, in addition to criminalization at an international level, all signatory countries equally prohibited drug trafficking in their domestic laws.

²³ The treaty was incorporated into Brazilian law by the decree no. 5,015, March 12, 2004.

²⁴ The treaty was incorporated into national law by means of the decree no. 5,687, of January 31, 2006.

²⁵ Also known as Financial Action Task Force.

periodically prepares evaluation reports to assess the compliance of these same recommendations by the Member States²⁶.

Brazil and China adhered to this agenda and promoted its internalization in both countries.

In Brazil, the law no. 9613/98, later amended by the law no. 12683/2013, regulated the anti-money laundering system, and criminalizes the conduct of hiding capital, values or property arising from any criminal offense, be it a crime or a misdemeanor. Brazil has followed the international trend of addressing the issue separately in legislation, which contributes in a way to a more in-depth treatment of the matter. So much so that the Brazilian legislation addresses administrative, criminal and procedural issues related to the prevention, combat and pursuit of the money laundering crime and its launderers²⁷.

It just so happens that the procedural part presents many controversial points within the Money Laundering Law, especially the provision of art. 2, § 2, which is the object of this paper, as this provision determines the continuation of criminal proceedings even when the defendant subpoenaed by notice does not appear or fails to appoint a lawyer in the records. In this case, it will be up to the judge of the criminal proceedings to establish a legal defense to the defendant, disregarding the general rule provided in the art. 366 of the Brazilian Criminal Procedure Code, which ordains for the suspension of the process.

Thus, observing the bill that gave rise to the referred art. 2, § 2 of the money laundering law (Bill number 2688/96), the option was made for a repressive criminal policy, in which the *mens legislatoris* considered the provisions of art. 366 of the CPP, a true prize for those who would have laundered money. The different treatment is justified on the grounds that

²⁶ LIMA, 2019.

²⁷ CALLEGARI, 2017.

the provision is a criminal policy measure in view of the material incompatibility existing between the objectives of this new law and the macro-crime represented by money laundering or concealment of assets, rights and values arising from crimes of specific gravity²⁸, implicitly admitting a presumption of bad faith against the accused, which does not even exist in the sphere of private law^{29,30}.

For this reason, the legal innovation would be a necessary update to the repression of money laundering. However, processing the case without the defendant having effective knowledge of the charges made against him raises questions about the real compatibility between art. 2, § 2 and the canons of due legal process, and notably the principle *audi alteram partem*.

In China, the Money laundering law do not provide any crime. Money laundering is criminalized in three different articles of the Criminal Law of the People's Republic of China, each with different applications. Art. 191 describes as an offense to cover up or conceal the origin or nature of

²⁸ Explanatory Memorandum n° 692/MJ, available in: <http://www.fazenda.gov.br/orgaos/coaf/legislacao-e-normas/legislacao/exposicao-de-motivos-lei-9613.pdf/view>, visited on 20-06-2020.

²⁹ MENDRONI, 2018, explains that: *“Specifically for cases of money laundering, the investigated will surely be someone “of possessions” – to the point of intending to recycle the funds. There will be strong suspicions that he will be able to send the money abroad and travel there and settle down – making justice become dependent on lengthy requests to comply with letters of request, supply of data and requests for extraditions. If you have citizenship of the destination country, you may never return. Finally, he will not be an “innocent” criminal, unaware of his situation. Furthermore, the higher courts have understood and in individual courts it has become mandatory, due to doctrinal requirement, that it be sought through the records of numerous public bodies, TRE, Federal Revenue and others. However, if even so, based on the data that it is mandatory to keep up to date, it is not found, it is because it effectively does not want to be found”*; p. 157.

³⁰ In this sense, NUCCI, 2014, argues that the perpetrators of this kind of offense tend to run away, thus avoiding getting subpoenaed, use “oranges” and “iron foreheads”, in order to do their best to avoid being subpoenaed. Therefore, according to the opinion of this author, a peculiar rule should be instituted.

capital that the agent is clearly aware of having been obtained in crimes related to drug trafficking, or crimes committed by criminal organizations or smugglers. Art. 312 criminalizes the conduct of concealing, transferring, buying, helping to sell or covering up and concealing by other means, assets known to be derived from any crime. On the other hand, art. 349 criminalizes the act of sheltering, transferring or covering up pecuniary gains related to drug trafficking, even though this conduct is covered by the previous articles.

The Criminal Procedure Law of the People's Republic of China provides, among arts. 291 to 297, the possibility of trial in absentia for crimes such as corruption and bribery, or others that are considered serious by the Supreme People's Procuratorate and the ones that involve acts of terrorism or attack to national security, provided that the individuals are abroad and in known location. The defendant shall be summoned through international legal assistance and granted the right to be represented by a lawyer appointed by him or his family, or, in the case of no lawyer, by a lawyer appointed by the court^{31 32}.

The hypothesis provided for in the Chinese Criminal Law does not include money laundering among the offenses that allow the trial in absentia.

Anyway, even for crimes that are allowed to be judged in absentia, defendant must be summoned through request for international legal

³¹ PENG, 2018, explains that the modern Chinese criminal procedure is based on guaranteeing the effective participation and defense of the accused and, therefore, in most cases the defendant is given the right to be present at his trial, so, as a rule, the trial by default is not allowed. The author adds that only in a few exceptional situations, the trial by default might be allowed under the Chinese procedural law.

³² See: XINHUANET, *Chinese court holds trial in absentia of embezzlement fugitive*, 2021, available in http://www.news.cn/english/2021-12/10/c_1310362328.htm, visited on 14-03-2022.

cooperation, that is, the defendant is informed of the charge, which does not bear any resemblance to the fictitious summons of the Brazilian anti-money laundering law.

It is worth mentioning that the aforementioned Chinese law also provides for the possibility of confiscation of illicit assets from suspects or defendants who have fled abroad and that were not found after one year. The procedure, regulated between arts. 298 to 301, applies to serious crimes, if there is hard evidence of the occurrence of the crime. However, with the initiation of the procedure, a public notice will be issued, being possible with the participation of the suspect or accused's relatives, as well as the other interested parties. In case the suspect or accused surrenders or gets arrested, the court will terminate the court proceedings so that person can be prosecuted for the crime committed.

Although this confiscation procedure is in the criminal procedure code, Chinese scholars call this procedure of a special procedure because it has nothing to do with the conviction and punishment of the suspect or defendant. To hold these persons criminally guilty, it is still need to follow the ordinary procedures specified in the Criminal Procedure Law³³.

Only in 2017, by a judicial interpretation was included money laundering among the offence which allowed this special procedure for confiscation³⁴.

³³ PENG, MA, 2019.

³⁴ SUPREME PEOPLE'S COURT AND SUPREME PEOPLE'S PROCURATORATE OF CHINA, Provisions on Several Issues Concerning the Application of Procedures for the Confiscation of Unlawful Gains in Cases Where the Criminal Suspects or Defendants have Absconded or Died, available in <https://www.chinacourt.org/law/detail/2017/01/id/149054.html>, visited on 30-06-2020.

This interpretation was in response to circumstances where convictions cannot be imposed to trigger criminal confiscation processes³⁵.

It is also important to highlight that not even the multilateral treaties aforementioned, which constitute the core of the global anti-laundering regime, have any provision similar to the Brazilian legislation, even though they admit the possibility of extending the statute of limitations for the offenses mentioned therein, including laundering especially for cases where suspects evade or hide from justice. On the other hand, art. 54, item 1, letter "c", of the Merida Convention encourages the signatory States to adopt measures that allow the confiscation of assets even if there is no criminal conviction whatsoever. This is applied for the cases in which the criminals have died, fled, are absent, or for other appropriate situations, for which Chinese legislation, at first, would be in accordance with the international parameter.

Such considerations in relation to the possibility of the process by default in the crime of money laundering, or the procedure of confiscation of assets by default, might demand an effort to verify its compatibility with the universal system of promotion and protection of rights and guarantees, and at the same time, to safeguard the effectiveness of international legal assistance procedures.

2. THE UNIVERSAL SYSTEM OF PROTECTION OF HUMAN RIGHTS AND THE GUARANTEE TO THE ADVERSARIAL

³⁵ FINANCIAL ACTION TASK FORCE, *Anti-money laundering and counter-terrorist financing measures – People's Republic of China, Fourth Round Mutual Evaluation Report*, FATF, Paris, 2019 in <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-china-2019.html>, visited on 10-03-2022.

PROCEEDING AS A LIMITATION OF THE CRIMINAL PROCESS IN ABSENTIA

The legacy of the Second World War served as an impetus for the creation of the so-called global system of human rights, which would serve as a paradigm for an ethical framework to guide the contemporary international order, whose legal cornerstone is the Universal Declaration of Human Rights³⁶.

Likewise, the regional human rights protection systems were also created, alongside with the inter-American system, the European system, the African system and the Asian system. These structural and universal rights were accompanied by the prescription of commitments that would lead to their incorporation into the internal law of States around the globe, so that the peaceful coexistence between nations would be possible, culminating in the elaboration, as well as the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights, the European Convention on Human Rights, the Inter-American Convention on Human Rights (Pact of San José, Costa Rica) and the African Charter on Human Rights³⁷.

Such systems, in addition to safeguarding the right to life, private property, health, education, etc., also sheltered a minimum nucleus of judicial guarantees, especially with the aim of protecting individuals accused of the practice of criminal offences. This list of guarantees has been referred to as due process guarantees.

In the list of guarantees, the right to an adversarial proceeding stands out in this study.

In this sense, the Universal Declaration of Human Rights does not expressly address this guarantee. However, the International Covenant on

³⁶ PIOVESAN, 2018.

³⁷ COMPARATO, 2017.

Civil and Political Rights, as provided for in art. 14, item 3, and the European Convention on Human Rights, in its art. 6, item 3, deals in a similar way with the procedural guarantees inherent to the accused, amongst which the need for the defendants to be thoroughly informed of the nature and reasons of the accusation made against them. This includes also providing an interpreter whenever the defendant is unable to express himself in the target language. In the American context, art. 8 of the Inter-American Convention on Human Rights (Pact of San Jose, Costa Rica), also provides that the accused must be ensured prior and detailed communication of the accusation made against him, as well as that resources be provided for such communication to be effective, such as interpreters or translators.

The adversarial system also encompasses the possibility of influencing the final jurisdictional provision, that is, the verdict. So much so that the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the Inter-American Convention on Human Rights, ensure that any individuals, who are defendants in criminal proceedings, have adequate time and means to prepare their defense, the right to defend themselves in person or through a technical defender and the possibility to enlist and cross exam witnesses³⁸.

Many countries have introduced this essential core of the adversarial system into their domestic law, no longer admitting the trial in absentia, especially without the accused being aware of the content of the accusation, such as Portugal, Germany and among others³⁹.

³⁸ In this sense, art. 14, item 3, of the International Covenant on Civil and Political Rights, art. 6, item 3, of the European Convention on Human Rights, as well as art. 8, item 2, of the Inter-American Convention on Human Rights.

³⁹ GRINOVER, 1996.

The adversarial system means opportunity for participation, which is an essential characteristic of a democratic State⁴⁰ because it legitimizes the decisions taken and represents the most appropriate method for building a fairer solution, as it expands the universe of knowledge and reduces the risk of error judiciary⁴¹.

It is a value from the Enlightenment school which has a strong affirmation in the constitutional and international sphere⁴².

If the adversarial principle induces the active participation of interested parties, such participation will only occur if there is a guarantee of being properly informed in order to be able to have adequate and fair participation within the procedure.

It has a preventive value in the sense that the parties have the right to intervene preventively in everything that may influence the decision of the dispute⁴³. The adversarial principle is the guarantee of the impartiality of the judge and the basis of the legitimacy of judicial decisions⁴⁴.

Finally, the adversarial principle as a method of cognition is used for demonstrating something through its proof, which makes the proof closer to the truth and it may be procedurally more useful, which means that the more the adversarial procedure is formed between the same subjects in whose confrontation it is intended to use it, the more valuable is the process⁴⁵.

In the evidentiary activity, the guarantee of the adversary principle is a universally recognized principle and is reflected in the right of each party

⁴⁰ UBERTIS, 1994.

⁴¹ GOMES FILHO, 2001.

⁴² NOBILI, 1999.

⁴³ FLUJA, 2006.

⁴⁴ GOMES FILHO, 1997.

⁴⁵ APRILE, SILVESTRE, 2002.

to produce evidence in their favor, to manifest itself on all the elements of evidence presented to the judge, as well as implying the guarantee that the elements of evidence must be produced before the accused in a public hearing, in order to enable an adversarial debate⁴⁶.

From the dialectical confrontation, it is possible to exercise a triple control over the evidence: (i) the control of identification of the evidential material, (ii) the control of the formation of evidence and (iii) the prior control to influence the evaluation of the judge's evidence. In the control of the identification of the evidentiary material and the formation of evidence, there is an adversarial procedure for the evidence, insofar as the dialectical confrontation manifests itself at the time of formation of the evidence, thus obtaining the elements of evidence. The prior control that aims to influence the evaluation of the judge's evidence, on the other hand, has an eminently argumentative character and qualifies as a contradictory on the evidence, as it aims to ensure the parties the preparation of relevant and appropriate observations about the evidence that will be valued by the judge⁴⁷.

In this sense, the texts of the conventions expressly recognize the adversarial system in the evidence and on the evidence, and especially, in the testimonial evidence, through the expression “interrogating or having the prosecution witnesses interrogated”. It seems evident that this adversarial procedure is not limited to the witness, but obviously it extends itself to victims and experts⁴⁸, as well as, it is not limited to personal evidence, but it encompasses any means of evidence.

The adversarial principle, therefore, legitimizes state action, safeguards transparency and reliability in the result. This means recognizing the

⁴⁶ MARTIN-CHENUT, SILVA, 2006.

⁴⁷ FLUJA, 2006.

⁴⁸ BARRETO, 2005.

inadmissibility of a criminal proceeding that develops and ends without the accused.

The question that arises, however, is the need to verify to what extent the default process, which contradicts the adversarial principle as a universal normative standard, may or may not prevent international legal assistance between different countries, and in this case, between Brazil and China .

3. THE INTERNATIONAL LEGAL COOPERATION BETWEEN BRAZIL AND CHINA AND CRIMINAL ACTION IN ABSENTIA

The main challenge in processing international legal cooperation in criminal matters is the compatibility of the legal systems of the requesting State and the requested State, in order to safeguard the essential core of each, within each political regime, preserving its fundamental values, rights and guarantees⁴⁹. The essence of the need for international legal cooperation in criminal matters arises from a certain conflict between the will of a certain external State through its criminal law and its real capacity to enforce it in another jurisdiction⁵⁰.

When the criminal action in the country of origin, whether Brazil or China, is carried out in absentia, our hypothesis is that there will only be an impediment to complying with the request for assistance, when the object consists of extradition for the purpose of serving a sentence, and provided there is no commitment on the part of the requesting State to ensure a fair trial.

Extradition was regulated in the Code of Bustamante (1928), as well as provided for in the Inter-American Convention on Extradition (1981). In

⁴⁹ BECHARA, 2010.

⁵⁰ BEDNÁR, 2018.

Brazil, extradition was enshrined in a treaty shortly after Independence, as in the case of Brazil and France in 1826. In 1911, Law 2416 was enacted and, in 1938, Decree-law 394⁵¹.

Extradition allows the authority of the State in whose territory the perpetrator of a crime is located to entrust that person to the authorities of another State for the purpose of prosecution or criminal execution. It consists of the arrest of a person in the Requested State, and the delivery of the same to the Requesting State, due to imprisonment or conviction in the latter⁵².

The legal basis for extradition is the treaty between two or more States, which stipulates the surrender of the claimed person, or the promise of reciprocity⁵³.

The legal nature of extradition can be analyzed under different aspects. First, as a genuine institute of international cooperation between sovereign States; second, as a mechanism that aims to safeguard the effectiveness of the criminal law of the requesting State⁵⁴.

Nonetheless, extradition has become an outdated practice in history, too bureaucratic, too time-consuming, out of step with the dynamics of a globalized world. As early as 1969, the 10th International Congress on Criminal Law in Rome, based on two preparatory colloquia in Freiburg and Syracuse, expressed important concerns about the need to reform the legal discipline of extradition. The proposals were that extradition should be allowed even regardless of the existence of a treaty.

The condition of reciprocity as a rigid rule was abolished; the presupposition of the punishability of the fact in both States was in

⁵¹ MANZANO, 2013; MELLO, 2006.

⁵² MANZANO, 2013.

⁵³ RESEK, 2001.

⁵⁴ MANZANO, 2013.

principle maintained, but the requested State should be able to avoid this condition; the impossibility of prosecuting the fact in both countries (amnesty, statute of limitations) was overturned as a presupposition of extradition within the limits where the action was not yet under the primary punitive power of the requested State; the principle of non-extradition due to the political nature of the crimes no longer covers crimes against humanity and war; extradition could be authorized against the national; States limited themselves to formally examining the assumptions of extradition, without investigating the guilt of the accused or convicted (denial of re-examination of the merits)⁵⁵.

Brazil, for example, has not admitted to extraditing people to countries where the guarantees derived from the due process of law are not respected, since the international relations of the Brazilian state have as one of its principles the preponderance of human rights⁵⁶, pursuant to art. 4, III, of the Brazilian Federal Constitution⁵⁷ (MANZANO, 2013).

Other countries have, as a rule, allowed the extradition of persons tried in absentia, provided that the extraditing person is entitled to a retrial.

⁵⁵ MANZANO, 2013.

⁵⁶ In this sense, it is the practice of the Federal Supreme Court, including rejecting the extradition request in the sub judice case: Ext 1442/RPC, 2nd Panel, Min. Rel. Celso de Mello, j. 12.20.2019; Ext 663/RPC, Full, Rel. Min. Celso de Mello, j. 08.28.1996; Ext 524, Full, Rel. Min. Celso de Mello, j. 10.31.1990. Also reaffirming the position, but accepting the request for extradition in the specific case: Ext 1578, 2nd Panel, Reporting Min. Edson Fachin, j. 06.08.2019; Ext 1434, 2nd Panel, Rel. Min. Celso de Mello, j. 06.12.2016; Ext 1074, Full, Rel. Min. Celso de Mello, j. 03.27.2008; Ext 1039, Full, Rel. Min. Celso de Mello, j. 06.21.2007; Ext 953, Full, Rel. Min. Celso de Mello, j. 09.28.2005; Ext 977, Full, Min. Rel. Celso de Mello, j. 05.25.2005; Ext 897, Full, Rel. Min. Celso de Mello, j. 09.23.2004; Ext 811, Full, Rel. Min. Celso de Mello, j. 04.09.2002.

⁵⁷ MANZANO, 2013.

In Portugal, for example, the Supreme Court of Justice, in a ruling drawn up in case 763/11.YRLSB.S1⁵⁸, understood that the extradition of a person who has been convicted is possible, even if he/she has not even been personally communicated about the accusation made against him/her. It considered the judgment invalid in light of the Portuguese constitutional order. However, considering the fact that Bulgarian criminal procedural law expressly authorizes the possibility of the convicted defendant, under the conditions set out above, to request a retrial, there would be no need to speak of a final conviction, which would, therefore, authorize extradition.

Similarly, the UK Supreme Court, in *Konecny v. Brno-Venkov District Court* (Czech Republic)⁵⁹, held that there was no obstacle to complying with the request for the extradition of an individual tried in absentia, given that the requesting State, the Czech Republic, ensured the possibility of the extradited person to request a new trial. Similarly, Bulgaria, mentioned in the previous judgment, the Czech Republic, despite admitting the trial of defendants in their absence, thus ensuring the right to ask for a new trial.

Endorsing the above conclusion, it is worth mentioning the decision of the European Court of Human Rights in *Serjodovic v. Italy*⁶⁰. In this case, the defendant Ismet Sejdovic had been convicted in absentia in Italy for murder, without having had the opportunity to appear before a judge at

⁵⁸ THE SUPREME COURT OF JUSTICE OF PORTUGAL, 763/11.8YRLSB.S1, 5th Section, rel. Santos Carvalho, j. 11.10.2011, available on, accessed on 30-12-2020.

⁵⁹ THE UNITED KINGDOM SUPREME COURT, *Konecny* (Appellant) v District Court in Brno-Venkov, Czech Republic (Respondent), j. 02.27.2019, available in <https://www.supremecourt.uk/cases/docs/uksc-2017-0200-judgment.pdf>, accessed on, 30-12-2020.

⁶⁰ THE EUROPEAN COURT OF HUMAN RIGHTS, *Serjodovic v. Italy*, Application no. 56581/00. Available at: <http://hudoc.echr.coe.int/eng?i=001-72629>, accessed on 22-02-2021.

his trial, despite having been represented by a lawyer appointed by the Italian authorities. The European Court held that the judgment by default is not in itself incompatible with art. 6 of the European Convention on Human Rights, provided that the accused has waived his right to appear or defend himself or has deliberately fled.

However, for cases where there is no such waiver or flight and the person has been convicted in absentia, there seems to be a clear violation of the aforementioned provision when the individual is not entitled to a retrial, which addresses both issues regarding law and facts. It is worth pointing out that the right to appeal, as long as it is possible to discuss the merits of the accusation and produce new evidence, satisfies this requirement, in the opinion of the Court⁶¹.

In turn, in the United States, the simple fact that the extradited person has been convicted in absentia does not prevent extradition, given that the American courts understand that the existence of a conviction is probable cause of guilt, able to authorize the extradition to take place. However, for cases in which the extradited person was convicted without participating in the trial or the process, either personally or through a lawyer appointed by him/her, the probable cause of guilt must be analyzed in each case in light of the evidence provided by the requesting State. The prosecutor clarifies that in cases in which the extradited person deliberately fled because one knew he/she was about to be charged or in which one actively participated through a lawyer, either before the conviction or later through an appeal, the US Courts conclude that the conviction establishes probable cause to authorize the extradition itself. There is also probable cause capable of supporting the granting of extradition the hypothesis in which the individual partially participated in the procedure or trial and

⁶¹ THE EUROPEAN COURT OF HUMAN RIGHTS, *Serjodovic v. Italy*, Application no. 56581/00, available at <http://hudoc.echr.coe.int/eng?i=001-72629>, accessed on 22-02-2021.

voluntarily absented himself, which implies concluding that he was aware of the content of the accusation and waived the defense^{62 63}.

In Brazil, the Federal Supreme Court, the competent body to judge extradition requests made by foreign States, understands that the conviction in absentia, by itself, is not a suitable basis for rejecting the request for legal aid⁶⁴. The Brazilian Court points out that if the accused are guaranteed any basic guarantees, that is, that the person being extradited has some defense, even if it is not personal, there is no harm to extradite. It should be noted that these aforementioned precedents do not make extradition conditioned to any guarantee that the extradited person has the right to request a new trial or appeal against the conviction.

Aside from that, some precedents even point out that, as this is a matter of formal order, it is not up to the Brazilian jurisdiction to investigate the right or wrongness of foreign courts in applying their own legislation with regard to default⁶⁵.

In older trials, the Federal Supreme Court noticed that there is no obstacle to granting the extradition request of the convict in absentia, considering that the requesting State ensured the request for a new trial or the possibility of appeal or that the extradited person had already used one of these possibilities in the home country⁶⁶. In summary, there is an

⁶² IRAOLA, 2009.

⁶³ The procedure for extradition of aliens is dealt with in Title 18, section 3184, of the Code of Laws of the United States of America.

⁶⁴ STF, Ext 1.612, Full, rel. min. Gilmar Mendes, j. 03.17.2020; Ext. 1405, 1st Panel, rel. min. Luiz Fux, j. 10.20.2015; Ext 917, Full, rel. min. Celso de Mello; j. 11.11.2005; Ext 864, Full, rel. min. Sepúlveda Pertence, j. 06.18.2003.

⁶⁵ STF, Ext 1451, 2ª Turma, rel. min. Celso de Mello, j. 03.21.2017; Ext 565, Pleno, rel. min. Sydney Sanches, j. 10.26.1994.

⁶⁶ STF, Ext 787, Pleno, rel. min. Maurício Corrêa, j. 12.06.2002; Ext 801, Pleno, rel. min. Sydney Sanches, j. 05.16.2001;

important distinction in relation to the object of extradition, as to its viability, when the original case, in the requesting State, proceeds by default.

In the event that the purpose of the extradition is the fulfillment of a prison sentence, which presupposes a final and unappealable conviction, the transfer of the person will only be possible, if the person has been assured the right to the adversary proceeding or if there is a commitment to ensure a fair retrial. In other words, the verification that the accused was subjected to a fair trial in the State of origin, therefore, observing the right to information and ensuring the necessary means and resources for his defense, is crucial to legitimize the extradition request. If the accused was tried in *absentia* and the requesting State guarantees that he will have the right to a new trial, there will also be no obstacle to extradition.

However, whenever the purpose of the extradition is for the person to respond to a criminal proceeding in the requesting State, the eventual default at the origin does not, in our view, prevent the intended transfer, provided that the effective observance of the guarantee of due process is ensured to the accused. It should be noted that, in this case, extradition qualifies as a mechanism that will enable the exercise of adversarial proceedings at the origin, in order to avoid judgment in *absentia*.

In addition to that, two other important means of international legal assistance, the letter rogatory and the ratification of a foreign sentence, impose some restrictions on its compliance in the event that the case proceeds in the absence of the accused at the original court.

In the case of the letter rogatory in Brazil, which aims at communication acts, instructive acts, or execution acts, the Brazilian Superior Court of Justice conditioned its compliance with the non-violation of national sovereignty, human dignity and/or public order⁶⁷.

⁶⁷ art. 216-P of the Internal Regulations of the Superior Court of Justice.

With regard to ratification of a foreign sentence, for example, in the event of a foreign criminal conviction that determines the confiscation of assets of criminal origin located in Brazil, the Superior Court of Justice requires the demonstration of the final ruling, the existence of a valid subpoena or have been legally verified by default⁶⁸. The analysis of the validity of the subpoena or default must be based on the legislation of the foreign State⁶⁹, however, in the absence of proof of the subpoena, the appearance of the party in the process filed against it abroad might suffice it⁷⁰.

Therefore, the Brazilian Superior Court of Justice values the effective knowledge of the interested party about the existence of the process that was processed abroad and which gave rise to the ratified decision. However, the Brazilian Superior Court of Justice has already ruled that there is no obstacle to homologating a foreign sentence for the purpose of confiscating assets of criminal origin when, despite not having been presented proof of the subpoena, as the interested party was, indeed, represented by an attorney⁷¹.

In short, it seems that international legal assistance in criminal matters, when it comes to the ratification of the foreign decision, will have different resolutions depending on where the affected party is in the course of the alien process, whether in Brazil or abroad, with regard to the analysis of the validity of the subpoena or the legality of default judgment.

⁶⁸ Articles 787 to 789 of the Code of Criminal Procedure also provide the requirements for the approval of foreign criminal sentences, with no substantial difference from art. 963 of the Code of Civil Procedure.

⁶⁹ STJ, SEC 3.897, Special Court, Judge Nancy Andriahi, DJe of 7/1/2011; SEC 2.493, Special Court, Rel. Min. Arnaldo Esteves Lima, DJe of 6/25/2009.

⁷⁰ STJ, SEC 4.746/US, Reporting Justice JOÃO OTÁVIO DE NORONHA, SPECIAL COURT, judged on 08/04/2010.

⁷¹ STJ, AgInt in SEC 10.250, rel. min. Luis Felipe Salomão, Special Court, j. May 15, 2019.

Thus, the subpoena will be valid, even if by public notice, if it occurs through a rogatory letter. Considering the provision of article 2, § 2 of Law n. 9,613/98, there will be no obstacle to the ratification of foreign decisions when the accused of money laundering was in Brazil in the course of the process abroad has been cited by public notice by letter rogatory, has been tried by default, even though this hypothesis might have remote chances of happening.

Another example, any request for compliance with the confiscation of assets made by the Chinese state, based on articles 298 to 301 of the Criminal Procedure Code, will not have an obstacle to be met in Brazil, considering that the default was operated according to Chinese legislation after a public notice.

4. CONCLUSION

The possibility of the case in absentia both under Brazilian law – in the crime of money laundering – and under Chinese law – while confiscating the assets of a fugitive accused abroad – does not constitute an obstacle to the formulation and fulfillment of the request for international legal assistance, as long as prior knowledge of the accusation does not prove to be an indispensable presupposition for the effectiveness of the intended cooperation.

What happens, for example, in cases of extradition for the purpose of serving a sentence or even ratification of a foreign judgment, in which the legitimacy of the object derives from the legality of the process that precedes it, must be in observance of the guarantees of a fair process.

If, on the one hand, all the global articulation effort aimed at the implementation of a standard in the prevention and repression of money laundering and related crimes is recognized, on the other hand, all the concern in the promotion and protection of rights and guarantees is equally highlighted, in particular due process guarantees.

The relevance of international cooperation in the operationalization of this agenda is unquestionable, however, guided by respect for strict legality and procedure. The process by default, in the hypothesis under examination, although it does not constitute an obstacle to cooperation between Brazil and China, except for the exceptions pointed out throughout this text, it does not empty the adversarial principle which must be protected as an indispensable control mechanism on the legitimacy of judicial proceedings and its decisions.

REFERENCES

- APRILE, Ercole, SILVESTRE, Pietro, *La formazione della prova penale. Dopo le leggi sulle indagini difensive e sul "giusto processo"*, Milano, 2002.
- BADARÓ, Gustavo Henrique Righi Ivahy, BOTTINI, Pierpaolo Cruz, *Lavagem de dinheiro: aspectos penais e processuais penais; comentários à Lei 6.613/1998, com as alterações da Lei 12.683/2012*, 4^a ed. rev., atual. e ampl., São Paulo, 2019.
- BARRETO, Ireneu Cabral, *A Convenção Europeia dos direitos do homem anotada*, 3. ed., Coimbra, 2005.
- BARROS, Marco Antônio, *Lavagem de Capitais - Crimes, Investigação, Procedimento Penal e Medidas Preventivas*, Edição revista, atualizada e ampliada, São Paulo, 2017.
- BECHARA, Fábio Ramazzini. *Cooperação jurídica internacional em matéria penal: eficácia da prova produzida no exterior*. 2010. Tese (Doutorado em Direito Processual) - Faculdade de Direito, Universidade de São Paulo, São Paulo, 2010, available in: doi:10.11606/T.2.2010.tde-23112010-101628, visited on 20-05-2020.
- BEDNÁR, Daniel, *The Theoretical Basis of International Judicial Cooperation in Criminal Matters*, *Pravny Obzor: Teoreticky Casopis Pre Otazky Statu a Prava*, vol. 101, no. 2, pp. 165-180, 2018.

- BLANCO CORDERO, Isidoro. La lucha contra el blanqueo de capitales procedentes de las actividades delictivas en el marco de la Unión Europea. Eguzkilore: cuaderno del Instituto Vasco de Criminología (15): 7-38 (2001).
- CIAMPI, Annalisa, *L'assunzione di prove all' estero in materia penale*, Verona, 2003.
- CHENG, Hongming, *Financial Crime in China: Developments, Sanctions, and the Systemic Spread of Corruption*, First published, London, 2016.
- COMPARATO, Fabio Konder, *A afirmação histórica dos direitos humanos*, 11^a ed., São Paulo, 2017.
- CALLEGARI, André, *Lavagem de Dinheiro*. 2^a edição, São Paulo, 2017.
- DELISLE, Jacques. Xi Jinping's Impact on China's Legal Development: Domestic and International, THE ASAN FORUM, 15-10-2015, <https://theasanforum.org/xi-jinpings-impact-on-chinas-legal-development-domestic-and-international/>, visited on 15-03-2022
- DE CARLI, Carla Verissimo. Lavagem de dinheiro : ideologia da criminalização e análise do discurso. Orientador: Aury Lopes Junior. 2006. 231 f. Dissertação (Mestrado) – Programa de Pós-Graduação em Ciências Criminais, Pontifícia Universidade Católica do Rio Grande do Sul, Porto Alegre, 2006, available in: <https://tede2.pucrs.br/tede2/handle/tede/4797>, visited on 23-04-2020.
- FEDERAL PROSECUTION OFFICE, Denúncia Paulo Preto, 2019, available in <http://www.mpf.mp.br/pr/sala-de-imprensa/docs/denuncia-paulopreto>, visited on 02-09-2020.
- FEDERAL PROSECUTION OFFICE, Denúncia Pasalimani, 2020, available in <http://www.mpf.mp.br/sp/sala-de-imprensa/docs/denuncia-pasalimani>, visited on 28-09-2020.
- FINANCIAL ACTION TASK FORCE, *Anti-money laundering and counter-terrorist financing measures – People's Republic of China, Fourth Round Mutual Evaluation Report*, 2019, FATF, Paris, available in <http://www.fatf->

gafi.org/publications/mutualevaluations/documents/mer-china-2019.html, visited on 10-03-2022.

- FLUJA, Vicente C. Guzmán, *Anticipación y preconstitución de la prueba en el proceso penal*, Valencia, 2006.
- GOMES FILHO, Antônio Magalhães, *A motivação das decisões penais*, São Paulo, 2001.
- *Direito à prova no processo penal*, São Paulo, 1997.
- GRINOVER, Ada Pellegrini, *Fundamentos Políticos do novo tratamento da revelia*, Boletim IBCCrim, n. 42, São Paulo, 1996.
- IRAOLA, Roberto, *Foreign Extradition in Absentia Conviction*, in *Seton Hall Law Review*, vol. 39, pp. 843-859, 2009.
- LIMA, Renato Brasileiro, *Legislação Criminal Especial Comentada*, 7ª ed. rev., atual. e ampl., Salvador, 2019.
- LIU, Renwen, LIU, Jun, *International Cooperation in Tracking Down and Capturing Fugitive Officials*, In: LIU, Renwen (Ed.), *China's Criminal Legislation on Embezzlement and Bribery*, 1ª Ed., Singapore, 2019.
- MANZANO, Luis Fernando de Moraes, *Medidas de cooperação pessoais*, in FERNANDES, Antonio Scarance, ZILLI, Marcos Alexandre Coelho (Coord.), *Direito Processual Penal Internacional*, São Paulo, 2013.
- MARTIN-CHENUT, Kathia, SILVA, Fábria de Melo e, *La constitutionalisation /conventionalization du droit de la prevue*, in GIUDICELLI-DELAGE, Geneviève (Coord.), *Les Transformations de l'administration de la prevue pénale. Perspectives comparées*, Paris, 2006.
- MELLO, Celso R. D. de Albuquerque, *Extradição. Algumas Observações*, in *Estudos em homenagem ao Professor Jacob Dolinger*, Rio de Janeiro, 2006.
- MENDRONI, Marcelo Batlouni, *Crime de lavagem de dinheiro*, 4. ed. rev., atual. e ampl., São Paulo, 2018.
- NALDELMANN, Ethan A., *Global Prohibition Regimes: The Evolution of Norms in International Society*. *International Organization*, vol. 44, no. 4, 1990, pp. 479–526, available in www.jstor.org/stable/2706851, visited on 07-08-2020.

- NAYLOR, R.T., *Hot Money and the Politics of Debt*, New York: The Linden Press/Simon and Schuster, 1987.
- NOBILI, Massimo, *Associazioni mafiose, criminalità organizzata*, in MOCCIA, Sérgio, *Criminalità Organizzata e Risposta Ordinamentale: tra efficienza e garanzia*, Napoli, 1999.
- NUCCI, Guilherme de Souza, *Leis Penais e Processuais Penais*, 8^a ed., rev., atual. e ampl., v. 2., Rio de Janeiro, 2014.
- PENG, Xinlin, *The reform of criminal procedure of corruption cases in China*, *International Journal Legal Discourse*, Vol 3, Issue 1, 2018.
- PENG, Xinlin, MA, Ke, *Legal Proceeding for Embezzlement and Bribery Cases*, in: LIU, Renwen (Ed.), *China's Criminal Legislation on Embezzlement and Bribery*, 1^a Ed. Singapore, 2019.
- PIOVESAN, Flávia, *Direitos humanos e justiça internacional: um estudo comparativo dos sistemas regionais europeu, interamericano e africano*, 2^a ed. rev. ampl. e atual., São Paulo, 2018.
- RESEK, José Francisco, *Direito Internacional Público*, 4^a edição, São Paulo, 1994.
- UBERTIS, Giulio, *Diritto alla prova nel processo penale e Corte Europea dei Diritti dell'uomo*, *Rivista di Diritto Processuale*, v. 49, n. 2, 1994.
- WEYEMBERGH, Anne, *European Added Value Assessment: The EU Arrest Warrant: Critical assessment of the existing European arrest warrant frame-work decision: Annex I*, Brussels, 2014.