

# INTERNATIONAL FACTORING AND DEVELOPMENT: THE IMPACT OF THE FACTORING MODEL LAW OF 2014

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Summary: Abstract. 1. Introduction. 2. The relations between international trade, social and economic development, in the search for world security and peace. 3. International factoring as an access platform to international trade. 4. The Model Factoring Law created by the IFG in 2014. Conclusion. References.

## Abstract

This paper analyzes the international factoring as access to small and medium entrepreneurs to international trade, its contribution to economic and social development and the impact of the Model Law Factoring, created in 2014 by the *International Factoring Group, IFG*, on the development of the activity.

Keywords: International Factoring. Model Law on Factoring 2014. Social and Economic Development.

## 1 – Introduction

In general, we can state that factoring is a partnership in which a firm, be it a trade or service provider, transfer to a factor (specialized in collection, receivables analyses and management) the receivables originated from business activities, together with the hiring of additional services, and receive the payment on the due date or in advance, with or without right of set-off, upon payment of a fee<sup>2</sup>

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<sup>2</sup> ALARCON, Rosana Bastos. **Factoring Internacional à Luz da Convenção de Ottawa: A atividade no Brasil e a necessidade de regulamentação** (International Factoring in the light of the Ottawa Convention: The activity in Brazil and the need for regulation. Master's Thesis. São Paulo: Faculty of Law, Pontifical Catholic University of São Paulo, 2013. p.45.

This operation can occur within a State. However, since the beginning factoring has shown to be an important platform of access to new markets, hence the expression used by Luiz Lemos Leite<sup>3</sup>: “factoring is, by essence and vocation, an international trade mechanism”.

Currently it has been practiced in five continents and, this way, when the operation involves seller and buyer or assignor and assignee, resident in different countries, we are facing an international factoring, which definition we thus formulate<sup>4</sup>:

“it is a partnership contract, of a continuous quality, by which one party transfers to the other current and future receivables resulting from its business activity, resulting in trans-boundary financial activity, and which, cumulatively, involves at least two of the following operations performed upon payment: pre-payment, assumption of risk, provision of collection services, business management and accounting”.

The disagreement over the origin of factoring, bring us to the conclusion that it can be placed between ancient times and the XVIII century: from the increase of commerce between England and the United States; or still, only from the XIX century<sup>5</sup>.

However, Manuel Medina de Lemus<sup>6</sup> explains that exactly from the moment the United States started to export to Europe, American businessmen, with the aim of addressing the problem of lack of knowledge of the laws which involved the receivables procedure in the importer's country, established a corresponding factor in the importer's country, so providing the emergence of groups of corresponding factors, named closed chains.

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<sup>3</sup> LEITE, Luiz Lemos. **Factoring no Brasil**. 12.ed.São Paulo: Atlas, 2011, p.319.

<sup>4</sup> ALARCON, Rosana Bastos. **Factoring Internacional à Luz da Convenção de Ottawa: A atividade no Brasil e a necessidade de regulamentação**. Master's Thesis. São Paulo: Faculty of Law, Pontifical Catholic University of São Paulo, 2013. p.81.

<sup>5</sup> As seen in ALARCON, Rosana Bastos. . **Factoring Internacional à Luz da Convenção de Ottawa: A atividade no Brasil e a necessidade de regulamentação**. Master's Thesis. São Paulo: Faculty of Law, Pontifical Catholic University of São Paulo, 2013. p.16.

<sup>6</sup> LEMUS, Manuel Medina. **Contratos de Comércio Exterior (Doctrina y Formularios)**. 2.ed. Dekinson, 2000, p.322.

Since their onset, these chains started to establish common rules to regulate the relations between the export factors and the import factors<sup>7</sup>.

Currently, there are two which are the biggest and most important chains, which we call associations: the *Factors Chain International* - FCI<sup>8</sup> and the *International Factoring Group* – IFG.

Moreover, with the fall of the Berlin Wall in 09 Novembre 1989 and the end of the Cold War, international trade, previously polarized in the capitalist and communist blocks, and limited to a restricted dominating and verticalized elite, moved on to, gradually, count on the participation of the emerging countries of Asia, Middle East, Africa and Latin America.

Thomas L. Friedman<sup>9</sup> illustrates this transformation the following way:

“The fall of the Berlin Wall didn’t just help flatten the alternatives to free-market capitalism and unlock enormous pent-up energies for hundreds of millions of people in places like India, Brazil, China, and the former Soviet Empire. It also allowed us to think about the World differently – to see it as more of a seamless whole. Because the Berlin Wall was not only blocking our way; it was blocking our sight – our ability to think about the world as a single market, a single ecosystem, and a single community.”

With this increasing integration, new questions have been unfolding and demanding, not only from the international trade players, but also from the rights operators, the States, from the associations and the international organizations, the involvement in adopting common parameters in relation to commercial, accounting, economical, banking and other procedures, in order to promote the economical and social development of humankind.

At the beginning of 2014, the legal committee of the International Factoring Group – IFG prepared a framework of rules for the Factoring, in its domestic and international modalities, named Model Factoring Law, suggesting that the States adopt it when creating their national laws, reforming and

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<sup>7</sup> These rules are currently presented in the General Rules of Factoring International – GRIF.

<sup>8</sup> The FCI members originated almost 90% volume of global international factoring which took place in 2013, according to published in its official website. Retrieved from : <http://www.fci.nl/news/detail/?id=502>. Access: 30 May.2014

<sup>9</sup> FRIEDMAN, Thomas. L. *The world is flat: a brief history of the XXI Century*; New York, Farrar Straus Giroux, 2005, 1<sup>st</sup> edition, p. 37.

modernizing their legal plans, based on the ideas internationally developed and promoted which are the foundation of their text<sup>10</sup>.

Brief and with the purpose of promoting reflection, the present paper outlines the impact of the Model Factoring Law on the international factoring and analyzes how the activity can contribute to economic and social development.

## **2 – The relation between international trade, economic and social development in the search for world peace and security.**

The promotion of economic development associated to social development has been guiding the United Nations actions since it was founded in 1945, with basis on the conviction of its goal – international peace and lasting security – can only be reached if there is economic development and social well-being everywhere in the world<sup>11</sup>

Also recognized by the UN as one of the pillars of economic development, international trade was included in the programs designed to the promotion of economic development, through the UNCTAD – United Nations Conference on Trade and Development<sup>12</sup>.

Moreover, international trade is on the agenda of other organizations such as the World Trade Organization, North American Free Trade Agreement (NAFTA) and Mercosul.

The economic development reached by the international trade per se has no aptitude to guarantee the peace, unless it is associated to social development,

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<sup>10</sup> See the IFG official website. Retrieved from :< <http://www.ifgroup.com/wp-content/uploads/2014/03/Model-Factoring-Law-CV140221.pdf>>. Access: 30 May.2014.

<sup>11</sup> Article 55 of the UN Letter. See on the official UN Brazil website, the objectives established in the 2000 Millennium Summit and the UN Development Objectives of the Millennium 2000. Retrieved from: <<http://www.onu.org.br/a-onu-em-acao/a-onu-e-o-desenvolvimento/>>. Access: 30 May. 2014.

<sup>12</sup> See the official UNCTAD website. Retrieved from :< <http://unctad.org/en/Pages/AboutUs.aspx>>. Access: 30 May. 2014.

which on its turn, is only achieved when all the segments of the population have access to the necessary goods to their individual and collective needs<sup>13</sup>.

On this aspect, the SMEs<sup>14</sup> participation has been recognized by many States, as an important vector of social and economic development, as it can be observed in the following transcript, of the Beijing Declaration on Strengthening Cooperation among ASEM<sup>15</sup> Members on Small and Medium Enterprises (SMEs), signed in 2007<sup>16</sup>:

“Promote the development of SMEs to build a harmonious world. SMEs play an important role in economic and social development. Ministers recognized that the development of SMEs can bring tangible benefits to the economic growth of ASEM members. All members should make every effort to promote the development of SMEs, and to bring into play their roles in creating employment opportunities, reflecting diverse development, revitalizing regional economy, reducing poverty and enhancing the well-being of the people.”

Corroborating with this assertion Angel Gurría, Secretary-General of the OECD<sup>17</sup>, adds that “small and medium-sized enterprises (SMEs) are important engines of growth, jobs and social cohesion. However, the creation, survival and growth of SMEs is often hampered by access to finance”<sup>18</sup>

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<sup>13</sup> See the approach to economic and social development by FIGUEIREDO, Leonardo Vizeu. International economic Law: legal analysis of the UN project for the development of the millennium and the 2008 financial crisis. Rio de Janeiro: Forense, 2011.

<sup>14</sup> Small and Medium-sized enterprises.

<sup>15</sup> ASEM is an informal process of dialogue and cooperation between 51 European and Asian countries, established in 1996, according to information on its official website. Retrieved from: <<http://www.aseminfoboard.org/about-asem-menu.html>>. Access: 31 May.2014.

<sup>16</sup> Beijing Declaration on Strengthening Cooperation among ASEM Members on Small and Medium Enterprises (SMEs). Published on the official website of the National Development and Reform Commission (NDRC) People's Republic of China. Retrieved from: <<http://www.ndre.gov.cn/fgwSearch/enSearchResult.jsp>>Access: 31 May.2014

<sup>17</sup> OECD – Organization for Economic Co-operation and Development. It is an international organization with an aim to promote policies to improve economic and social well-being of people around the world. Information on its official web-site. Retrieved from: <<http://www.oecd.org/about/>>. Access: 30 May 2014.

<sup>18</sup> OECD (2012), Financing SMEs and Entrepreneurs 2012: Na OECD Scoreboard, OECD Publishing, p.3. Retrieved from: <<http://dx.doi.org/10.1787/9789264166769-en>>. Access: 30 May. 2014.

Although they act just in the domestic market, obtaining the necessary working capital for its running is an obstacle many times insurmountable for the SMEs, because of restricted access to finance and its high cost comparing offer to the large enterprises, according to what was witnessed by the Panel of Evaluation of the Organization for Economic Co-operation and Development –OECD, 2012, about the conditions of credit to small and medium enterprises<sup>19</sup>, involving 18 countries:

“Overall, SMEs faced more severe credit conditions than did large enterprises, in the form of higher interest rates, shortened maturities and increased requests for collateral. Over 2007-10, the SME interest rates trended downward but the interest rate spread between SMEs and large enterprises increased over the entire period, including during the recovery, indicating that large enterprises faced easier credit terms, and suggesting that smaller firms were considered to be higher-risk companies due to their poorer business prospects.”<sup>20</sup>

And the evaluation carried out in 2013<sup>21</sup>, this time involving 25 countries, concluded that such situation will remain unchanged in the future<sup>22</sup>, and demanding from the governments’ protective measures and incentive to this important foundation of social development.

### **3 – International factoring as a platform of access to international trade**

When it comes to operating in the international market, there are many obstacles businessmen have to face: differences in relation to the language, culture, customs and tradition, laws, legal procedures, currency exchange, obtain information credit analysis to the importer, etc.

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<sup>19</sup> **OECD (2012), Financing SMEs and Entrepreneurs 2012: An OECD Scoreboard**, OECD Publishing. Retrieved from: <http://dx.doi.org/10.1787/9789264166769-en>. Access: 30 May. 2014.

<sup>20</sup> **OECD (2012), Financing SMEs and Entrepreneurs 2012: An OECD Scoreboard**, OECD Publishing, p.26. Retrieved from: <<http://dx.doi.org/10.1787/9789264166769-en>>. Access: 30 May. 2014.

<sup>21</sup> **OECD (2013), Financing SMEs and Entrepreneurs 2013: An OECD Scoreboard**, OECD Publishing. Retrieved from: <[http://www.oecd.org/cfe/smes/Scoreboard\\_2013\\_extract\\_chapter2.pdf](http://www.oecd.org/cfe/smes/Scoreboard_2013_extract_chapter2.pdf)>. Access: 30 May. 2014

<sup>22</sup> **OECD (2013), Financing SMEs and Entrepreneurs 2013: An OECD Scoreboard**, OECD Publishing. Retrieved from: <[http://www.oecd.org/cfe/smes/Scoreboard\\_2013\\_extract\\_chapter2.pdf](http://www.oecd.org/cfe/smes/Scoreboard_2013_extract_chapter2.pdf)>. Access: 30 May. 2014

Another difficulty is choosing the less costly and more secure form of payment to the exporter, who wishes to receive the negotiated price for the sale in the agreed time and to the importer, who does not wish to incur any risk of paying and not receiving the merchandise according to the contract.

If we add the political risks and the extras and we have an atmosphere of major uncertainty in relation to the success of the operation, which forces the entrepreneur to search for forms of guarantee through letters of credit and their variables, bank guarantees upon the first demand, among others.

To use these forms of guarantee, there are two other aspects to consider: the first one being that their costs are invariably added to the final cost and this might interfere in their power of competitiveness; the second aspect is that the requirements demanded by the banks are almost always difficult to be met by the SMEs. Such aspects, together with the preliminary obstacles listed, constitute a barrier to the participation of small and medium-sized entrepreneurs in the international trade.

In this scenario, international factoring may serve them as an access platform to international trade, to the extent that it promotes the collection for the exporter, guarantees the payment of the debt and can still, at the discretion of the contracting part, anticipate the receivables, characterizing a means of working capital financing, vital to the SMEs' survival and development<sup>23</sup>.

Besides that, the need – as well as difficulty – to collect credit information from the exporter to evaluate the importer financial capability, is eliminated with the intervention of the export factor, which, acting on the two-factor or one and half factor<sup>24</sup> system, maintains a correspondent in the importer country.

At this pace, international factoring is also an important tool to face problems of low credibility of companies from emerging countries and the delay in their judicial

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<sup>23</sup> It is worth noting that eventual controversy originated from an international factoring contract celebrated in Brazil will be settled by the Brazilian Courts, under the terms of the article 9º of LINDB, or still, by arbitration, with both parts being able to choose the applicable law, according to art. 2º §§ Law no. 9.307/96

<sup>24</sup> The workings of the international factoring systems can be seen in ALARCON, Rosana Bastos. **Factoring Internacional à Luz da Convenção de Ottawa: A atividade no Brasil e a necessidade de regulamentação.** Master's Thesis. São Paulo: Faculty of Law, Pontifical Catholic University of São Paulo, 2013. P.91.

system, according to the following, an excerpt from an article produced by the World Bank economist, Lenora Klapper<sup>25</sup>:

“Factoring can provide important export services to local SMEs. For example, an obstacle for firms in emerging markets to sell into export markets is overseas customers’ reluctance to work on letters of credit. Firms in developed countries often refuse to pay on receipt to firms in emerging markets since they need time to confirm the quality of the goods. They also know that it could be very difficult to receive a refund on returned or damaged goods from firms in countries with slow judicial systems.”

From the point of view of the importer, international factoring allows them to buy on an *open account* system<sup>26</sup>, therefore, paying only after receiving and checking the goods, and, also, to agree longer payment terms, which could also mean that the exporter has an advantage over the competitors.

As the SMEs find ways of having access, their participation in the international trade increases, generating more jobs and income in the domestic market.

In China, in 2010, 68% of export value was generated by the Chinese SMEs, according to Yanan Zhao<sup>27</sup>.

According to the International Trade Administration (ITA), in the United States, SMEs account for 98 percent U.S. exporters, but represent less than one-third of the known export value of U.S. goods’ exports. (In 2010 there were over 293,000 identified U.S. exporters (269,269 of which were small or medium-sized)<sup>28</sup>.

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<sup>25</sup> KLAPPER, Leora. 2006. Export financing of SMEs: the role of factoring. Washington, DC: World Bank. Retrieved from :< <http://documents.worldbank.org/curated/en/2006/09/7287588/export-financing-smes-role-factoring>>. Access on 30 May. 2014.

<sup>26</sup> See details on remessa sem saque (open account) in Amaral, Antonio Carlos Rodrigues do. (Coord.) **Direito do Comércio Internacional: aspectos fundamentais**. 2.ed. São Paulo: Lex, 2006, p.282

<sup>27</sup> ZHAO, Yanan. Research on the Approaches of the participation of China’s SMEs in International Trade under Financial Crisis. *International Journal of Business and Management*. January, 2010. Retrieved from: <<http://www.ccsenet.org/journal/index.php/ijbm/article/view/4734/3973>>.Access on: 30 May.2014.

<sup>28</sup> According to the official ITA website. Retrieved from: <http://www.trade.gov/cs/factsheet.asp>.Access on: 30 May 2014.



However, in Brazil, according to consolidated data from our trade balance on the period of January to December 2013, published by the Ministry of Development, Industry and International Trade, small and medium-sized Brazilian enterprises accounted for only 4.1% of the total value of our exports<sup>29</sup>.

It can be observed that the Brazilian government has paid attention to the need of a bigger participation of Brazilian SMEs in the international trade, promoting public policies of incentive and support to export.

Furthermore, the Ministry of Development, Industry and Foreign Trade makes available step-by-step information about exports<sup>30</sup> as well as a Basic Guide for Export of Services, created by the Department of Commerce and Services of the Ministry of Development, Industry and Foreign Trade, which contains essential information for Brazilian companies' participation in the international trade of services and intangibles<sup>31</sup>.

However, we note that in the measures promoted in our country there is no mention of international factoring as a form of payment, receivables or guarantee in international trade of products or national services, or still, as a mean of obtaining working capital.

It is possible that this is due to, among other reasons, the lack of knowledge concerning the operation and its benefits. But when we compare the participation of the Brazilian SMEs in our export framework to those of countries like the United States and China, it is clear that missing out such opportunity of access to international trade should be avoided.

#### **4 – Model Factoring Law drawn up by IFG in 2014.**

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<sup>29</sup> 95.7% of exports in the period were made by large companies and 0.2% by individuals. See details on the Ministério do Desenvolvimento, Indústria e Comércio Exterior (Ministry of Development, Industry and Foreign Trade). Available on <<http://www.mdic.gov.br/sitio/interna/interna.php?area=5&menu=571>>. Access: 30 May. 2014

<sup>30</sup> See on the Ministério do Desenvolvimento, Indústria e Comércio Exterior (Ministry of Development, Industry and Foreign Trade) official website. Available on <[http://www.mdic.gov.br/sistemas\\_web/aprendex/default/index/conteudo/id/89](http://www.mdic.gov.br/sistemas_web/aprendex/default/index/conteudo/id/89)>. Access: 30 May. 2014.

<sup>31</sup> See on the Ministério do Desenvolvimento, Indústria e Comércio Exterior (Ministry of Development, Industry and Foreign Trade) official website. Available on <[http://www.mdic.gov.br/arquivos/dwnl\\_1401972076.pdf](http://www.mdic.gov.br/arquivos/dwnl_1401972076.pdf)>. Access: 30 May. 2014.

The existence of a harmonious legal environment is a determining factor of legal security, so important for international relations, and the treaties, the model laws and the uniform rules are ways of achieving this.

We are used to seeing model laws edited by intergovernmental organizations and international organizations and uniform rules by private organizations, such as UNIDROIT<sup>32</sup>, UNCITRAL<sup>33</sup> and ICC<sup>34</sup>.

In fact, regarding international factoring and other subjects directly related, there are some works done by UNIDROIT and UNCITRAL.

UNIDROIT did an extremely important work regarding international factoring, which we had the opportunity to analyze in detail in our previous research<sup>35</sup>. This work started in 1974 in the form of a proposal to elaborate uniform norms and it resulted in the Ottawa Convention on International Factoring, adopted during the Ottawa Diplomatic Conference in 1988, with the participation of around 60 States and various international organizations.

This convention, which tackled elementary aspects of the activity, establishing what we can call the backbone of international factoring<sup>36</sup>, has been internationally in force since 1<sup>st</sup>.

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<sup>32</sup> The International Institute for the Unification of Private Law is an independent intergovernmental organization. Its purpose is to study needs and methods for modernizing, harmonizing and co-ordinating commercial law as between States and to formulate uniform law instruments, principles and rules. Information from UNIDROIT official website. Retrieved from: < <http://unidroit.org/about-unidroit/overview> >. Access: 30 May. 2014.

<sup>33</sup> The United Nations Commission on International Trade Law (UNCITRAL) is a legal body of the United Nations system and its business is the modernization and harmonization of rules on international trade. Information from UNCITRAL official website. Retrieved from: < <http://www.uncitral.org> >. Access: 30 May 2014.

<sup>34</sup> ICC – International Chamber of Commerce, as per the official website, is a private organisation based in Paris, created in 1919 by a group of entrepreneurs in the industrial, financial and commercial areas, called “the merchants of peace”, with the aim of creating an organization which represented the enterprises everywhere, to bring economic prosperity to a world that was reeling from the devastation of World War I. Retrieved from: <http://iccwbo.org/about-icc/history/the-merchants-of-peace>. Access: 30 May. 2014

<sup>35</sup> ALARCON, Rosana Bastos. Factoring International à Luz da Convenção de Ottawa: A atividade no Brasil e a necessidade de regulamentação. Master's Degree Thesis. São Paulo: Faculty of Law, Pontifical Catholic University of São Paulo, 2013. P.147, 155ss.

<sup>36</sup> The convention limited itself to addressing the assignment of receivables, and establish the minimal basic principles for international factoring.

Octobre 1995 and counted, till the conclusion of this article, with the ratification/adhesion of 8 (eight) countries: Germany, France, Italy, Belgium, Nigeria, Hungary, Lithuania and Ukraine.

UNCITRAL did the following work directly related to international factoring: United Nations Convention on the Assignment of Receivables in International Trade (New York, 2001), Legislative Guide on Secured Transactions (2007). A Guide on the Implementation of a Security Rights Registry followed (2013), and there has been a discussing on a Model Law on Secured Transactions.

However, it was up to the International Factoring Group - IFG<sup>37</sup>, a global trade association based in Belgium, with regional offices in Asia, Eastern Europe, Middle East, Africa and Latin America, represented in more than 50 countries through its 160 members, created with the aim of helping factoring businesses to act as correspondents in transboundary businesses, and with vast experience in the business, the creation of a model law on international factoring.

As informed on the Model Factoring Law introduction, the creation in 2014, by the Legal Committee of International Factors Group (IFG), was guided by awareness of the importance of the unification of international law and by the recognition of the work promoted over time by UNIDROIT and UNCITRAL, with the aim of making financing of international trade easier and more accessible.

With more comprehensive provisions than the Ottawa Convention, the Model Law Factoring advanced even more in the sense of providing tools to align domestic law to international practice and facilitate the desired commercial exchange among the various States.

Having in mind that the scope of the present work does not allow us to individually analyze each of its articles, we will limit ourselves to point out some of the aspects we judge to be important.

The first one was the adoption of the two assumptions of internationality formulated in the United Nations Convention on the Assignment of Receivables in International Trade (2001), considering: (a) the international receivable, when the assignor and the debtor are located in different States, and (b) the international assignment, when the assignor and the assignee are located in different States.

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<sup>37</sup> More information on the IFG official website. Retrieved from :  
<[http://www.ifgroup.com/index.php?action=gen\\_page&menu\\_left=true&idx=169&curr\\_sec=168](http://www.ifgroup.com/index.php?action=gen_page&menu_left=true&idx=169&curr_sec=168)>.  
Access: 30 May 2014.

As we have already had the opportunity of mentioning in previous research<sup>38</sup> it seems that such understanding denotes a broader, more coherent vision with the practice of international trade, and its importance resides in the fact that its adoption by the Model Factoring Law<sup>39</sup> enlarges the scope of this application in relation to the Ottawa Convention in 1988, applicable only to international factoring contracts subsequent to international contracts to buy and sell, reaching, therefore, other modalities of international factoring.

The second relevant aspect was providing the use of electronic means for the transfer of credits<sup>40</sup>.

Although it has become usual practice in the last decades, especially in regards to the factor in export and factor in import, which carried out the assignment of receivables via EDI<sup>41</sup>, allowing the expected fluidity of operation, despite the territorial distance which separates them, few States recognize the validity of the assignment of receivables performed via EDI<sup>42</sup>.

Such legal provision aligns the right to reality of the international trade in the 21<sup>st</sup> century, which, largely taking advantage of technological innovations, develops new ways of relations which cannot be ignored,

The third highlight was the possibility of carrying out the international factoring operation with receivables originated from other contracts beyond the sell and buy contracts or supply of international services, such as, lease of real property, of a construction contract and a lease or license of intellectual property<sup>43</sup>

The last important aspect was maintaining the General Rules for International Factoring – GRIF to rule the relationship between the import and export factors, applying the Model

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<sup>38</sup> ALARCON, Rosana Bastos. **Factoring à Luz da Convenção de Ottawa: A atividade no Brasil e a regulamentação.** Master's Thesis. São Paulo: Faculty of Law, Pontifical Catholic University of São Paulo, 2013. p.81s.s.

<sup>39</sup> Art.3 Model Factoring Law.

<sup>40</sup> Art. 5.3 Model Factoring Law.

<sup>41</sup> Electronic Data Interchange.

<sup>42</sup> Some American States, France, Germany, Spain, England, Portugal, among others, recognize the validity of acts practiced via EDI, according to information contained in Factoring, Receivables Finance & ABL A study of Legal Environment across Europe. European Union Federation for the Factoring and Commercial Finance Industry. 2011 Edition

<sup>43</sup> Art. 5.14 Model Factoring Law.

Factoring Law in exceptional cases in which they are not affiliated to any international factoring associations: Factors Chain International - FCI<sup>44</sup> and International Factoring Group – IFG.

We believe that the drawing up of the Model Factoring Law by a private international association such as the IFG, besides demonstrating transparency and seriousness with which this organization deals with factoring, as well as the profound technical knowledge it has on the international practice of the institute – and which, to our mind, grants it the necessary credentials to accomplish this important task – , reflects the concern of the factoring operators with the legal security in international businesses, concern stressed by the spreading of international factoring by the emerging markets.

The innovations introduced by the Model Factoring Law have adjusted the regulatory reach to current practices by the institute, without however, diminishing the possibility of being adopted by a considerable number of States.

It will be the national governments' responsibility to attend to the need of aligning the domestic law to international parameters established in order to benefit from the advantages which international factoring can bring to the social and economic development of their States.

## **Conclusion**

The social and economic development, determiners of the desired world security and peace, require the democratization of the international trade, not only with the insertion of emerging markets, but also with the participation of different size players.

The international factoring growth not only generates bigger business volume but also allows the access of the SMEs to the external market, resulting in the increase of jobs offer and income and the incentive to social and economic development.

Considering that international factoring has been practiced in the five continents, the existence of an efficient and secure judicial environment is desirable so that the activity carries on growing and its building is facilitated in a very effective way if the States embrace the Model Factoring Law.

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<sup>44</sup> FCI members originated almost 90% volume of global international factoring carried out in 2013, according to their official website. Retrieved from: < <http://www.fci.nl/news/detail/?id=502>>. Access: 30 May. 2014.

In Brazil, the Model Factoring Law arrives at a time when the Bill 3.615/2000 is going through legislative proceedings about the factoring regulation and offers our jurists and legislators the opportunity to reflect on the benefits of aligning the domestic law to the international practice of the institute.

In this process, we expect to see Positive Law and Lex Mercatoria joining forces to promote the circulation of good practices.

## References

ALARCON, Rosana Bastos. **Factoring Internacional à Luz da Convenção de Ottawa: A atividade no Brasil e a Necessidade de Regulamentação**. Dissertação de Mestrado. São Paulo: Faculdade de Direito da Pontifícia Universidade Católica de São Paulo, 2013.

AMARAL, Antonio Carlos Rodrigues do. (Coord.) **Direito do Comércio Internacional: aspectos fundamentais**. 2.ed. São Paulo: Lex, 2006.

**Factoring, Receivables Finance & ABL A study of Legal Environments across Europe. European Union Federation for the Factoring and Commercial Finance Industry**. 2011 Edition.

**Beijing Declaration on Strengthening Cooperation among ASEM Members on Small and Medium Enterprises (SMEs)**. In *National Development and Reform Commission (NDRC) People's Republic of China*. Retrieved from: <<http://www.ndrc.gov.cn/fgwSearch/enSearchResult.jsp>>. Access : 31 May.2014

FIGUEIREDO, Leonardo Vizeu. **Direito econômico internacional: análise jurídica do projeto das Nações Unidas para desenvolvimento do milênio e da crise financeira de 2008**. Rio de Janeiro: Forense, 2011.

FRIEDMAN, Thomas. L. **O mundo é plano: uma breve história do Século XXI**; tradução (da edi. atualizada e ampliada) Cristiana Serra, Sergio Duarte, Bruno Casotti – Rio de Janeiro: Objetiva, 2007.

KLAPPER, Leora. 2006. **Export financing for SMEs: the role of factoring**. Washington, DC: World Bank. Retrieved from: <<http://documents.worldbank.org/curated/en/2006/09/7287588/export-financing-smes-role-factoring>>. Access 30. May.2014.

Lei Modelo de Factoring. Available on: <<http://www.ifgroup.com/wp-content/uploads/2014/03/Model-Factoring-Law-CV-140221.pdf>>. Access : 30 Mai.2014.

LEITE, Luiz Lemos. **Factoring no Brasil**. 12.ed. São Paulo: Atlas, 2011.

LEMUS, Manuel Medina. **Contratos de Comercio Exterior (Doctrina y Formularios)**. 2.ed. Dekinson, 2000.

**OECD (2012), Financing SMEs and Entrepreneurs 2012: An OECD Scoreboard**, OECD Publishing. Available on: <<http://dx.doi.org/10.1787/9789264166769-en>>. Access 30.May.2014.