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Supranationalism: A Model for Mercosur? Experiences from the European Union and the Debatable Adequacy for Mercosur

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SUPRANATIONALISM: A MODEL FOR MERCOSUR? EXPERIENCES FROM THE EUROPEAN UNION AND THE DEBATABLE ADEQUACY FOR MERCOSUR¹

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Abstract: The question that the paper tries to respond is: Can a supranational model be adopted by Mercosur? The paper starts with definitions about supranationalism, sovereignty and intergovernmentalism, analyzes the most common regional integration theories and the historical backgrounds of the European Union and Mercosur. In the last part the concept of key variables by Best (1997) is applied in order to conceptualize the complexities of regional integration and provides additional knowledge to the theoretical discussion. The conclusion is that the implementation of supranationalism does not seem appropriate because of South America's different historical background, its national institutions and traditional inclination to national sovereign rights. Further, it is argued that the Brazilians strong power position, its functional regionalism for its own purpose and the lack of credible commitment between the member states of Mercosur especially between Brazil and Argentina do not provide fertile ground for supranationalism.

Keywords: Mercosur, sovereignty, intergovernmentalism, European Union, Supranationalism

SUPRANACIONALIDADE: UM MODELO PARA MERCOSUL? EXPERIÊNCIAS DA UNIÃO EUROPEIA E A DEBATIDA ADEQUAÇÃO AO MERCOSUL

Resumo: A questão que o trabalho trata é a seguinte: O Mercosul pode adotar um modelo supranacional? O trabalho começa com definições sobre supranacionalidade, soberania e intergovernamentalismo, analisa as teorias mais comuns na integração regional e o contexto histórico de cada arranjo regional, da União Europeia e do Mercosul. Na última parte, o conceito das principais variáveis de Best (1997) é aplicado para conceitualizar a complexidade da integração regional e fornece conhecimento adicional para a discussão teórica. A conclusão é que a implementação da supranacionalidade não parece apropriada por causa do contexto histórico diferente da América do Sul, das instituições nacionais e as inclinações para direitos nacionais de soberania. Além disso, alega-se que a forte posição do poder do Brasil, o regionalismo funcional aplicado para os próprios benefícios e a falta de um compromisso credível entre os estados membros do Mercosul especialmente entre Brasil e Argentina não fornece solo fértil para a supranacionalidade.

Palavras-chave: Mercosul, Soberania, Intergovernmentalismo, União Europeia, Supranacionalidade

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1. Introduction

Regional integration can assume different shapes in respect of its institutional design depending on its objectives. There is no generic formula how to mold the regional integration project as each region has its own cultural, historical, political and economic framework conditions challenging the integration process. However, leaders of regional integration projects have to show courage to find its proper way how to manage its obstacles and it can be useful to learn from the experiences of other regional integration arrangements.

In respect of the debate whether the regional integration project Mercosur could adopt a supranational framework it has been done a lot of research. Many authors (BEST, 2005; FONTES, 2000; FURLAN, 2010; GODOY, 2008; MOTTA; MARTINS; DA SILVA; CULPI, 2013) have been quite optimists in relation to the adoption of supranational structure in Mercosur. Furlan (2010) argues that the current institutional structure can impair the integration process because country specific divergences cannot be overcome as political determinants influence the decisions and actions of the party states (FONTES, 2000). Kovacs (2011) on the other side reinforces the historical importance of the principle of national sovereignty in Latin America and the rejection of supranational institutions in Mercosur *ab initio* and the difficulty to change this positioning.

There is still a need for a systematic methodological and theoretical analysis including some key variables as it has been elaborated by Best (1997). Best (1997) analyzed public-management capacities for regional integration and defined variables that mold the complexity of the implementation of the integration objectives. A systematic approach helps to understand the complexities in regional integration and facilitates policy-making choices, but it is still in its infancy because the systematic monitoring of regional integration process is a relatively new activity (DE LOMBAERDE; PIETRANGELI; WEERATUNGE, 2008). De Lombaerde and Van Lagenhove (2005) point out that the choice of variables in the systematic approach should be driven principally by theory rather than by the availability of data (as the first criteria). Further, some variables have problematic relationships with regard to causal links between them and their direction as the relation between the scope of coverage of an integration agreement and its stability and the relation between the perspective of time of an agreement and its stability for example (BEST, 1997). Despite the critics of De Lombaerde and Van Lagenhove (2005) Best's key

variables may constitute an important pillar for the discussion of the regional integration process in Mercosur and the resulting debate about the future institutional framework of it, even though Best does not provide a method to connect the complexity variables with a specific institutional construct. This may be rather advantageous due to the fact that none (European) integration theory is entirely feasible for the Mercosur case and consequently the Best's complexity variables may induce new perspectives. The following comparative research pretends to analyze systematically the different integration systems applied in the European Union and the Mercosur, especially revealing the integration targets, strategies and the resulting institutional framework, comparing supranationalism in the European Union with intergovernmentalism in Mercosur. The first part introduces the concepts of supranationalism, sovereignty and intergovernmentalism. The second part describes the different regional integration concepts in the European Union and Mercosur and analyzes the experiences with supranationalism in the European integration process. Among the decelerated and partly deadlocked integration process in the Mercosur arises the question if supranationalism could be an exit for the today's challenges. This will be approached in the third part. Do the distinct cultural, historical and political aspects in the member countries of Mercosur impede the implementation of a supranational framework or can the EU institutional model be applied to another regional integration project, namely the Mercosur? It may hardly depend on the integration objectives of the Mercosur's member leaders and how deep they want the integration process to continue.

2. Integration theories

Theory is the most utilized instrument in regional integration and creates the basis of the development of regional governance structures. However, in most of the cases these theories are conceptualized for European integration and scholars as Schmitter (1991) and Malamud (2003b) doubt if any of these theories is capable to explain the Mercosur case. Nevertheless, they might be helpful in some aspects and be it for highlighting the differences between the European and Latin American integration projects and the governance structures.

The two theories to formulate lessons with regard to Mercosur are the so-called neo-functionalism by Haas (1958, 1964) and the intergovernmentalism by Moravcsik (1998). Neo-functionalism emphasizes the role of non-state actors and social movements,

providing the dynamic for further integration whereas member states remain important actors in the process. The integration is assumed to be a conflictual process where under democracy and pluralistic representation the member states resolve to form regional organizations (MALAMUD; SCHMITTER, 2006). As the citizens will shift their expectations to the region the economic-social integration will “spill-over” into political integration (HAAS, 1958, 1964). In the intergovernmentalism approach economic interdependence is the principal reason for integration (MORAVCSIK, 1998). The strongest pressures for trade liberalization are the export dependence and intra-industry trade, whereas intergovernmentalism does not explain additional steps for further integration. The approach does not deny challenges that may emerge with increased interdependences, but still the key decisions are made on intergovernmental level (MALAMUD, 2003a). Malamud (2003a) argues that neo-functionalism and intergovernmentalism can be seen as contraries. Neo-functionalism emphasizes the interaction between integration and institutions whereas intergovernmentalism between interdependence and integration. In the Mercosur case none of these theories are enough feasible to explain the integration process. The interdependence-integration-institutions chronology could not be observed in Mercosur and interdependence was not a precondition for integration. Au contraire: integration itself brought an increased interdependence (MALAMUD, 2003b). In Argentina intra-regional trade increased from 1.5% in 1986 to 5.1% in 1997, in Brazil from 0.9% (1986) to 2.4% (in 1997), Paraguay from 11.0% (1986) to 24.5% (1997) and in Uruguay from 12.5% in 1986 to 14.7% in 1997 (MALAMUD, 2003b, p.62).

3. Regional governance

3.1. Supranationalism

As the European Union is the example of a supranational (and intergovernmental) organization the discussion about the definition of supranationalism follows some characteristics of the European Union for exemplary purpose.

It is vague to define supranationalism as a complex of supranational institutions “with regional organs operating at a higher level” (BEST, 2005, p. 2). In general, supranationalism has to be seen as an organic complement to the state, a level within a

multi-level framework of governance. The case of the United States of America where there has been established a higher system of government with a division in competences represents an extreme case, a case of political unification. Best (2005) emphasizes that the effectiveness of supranational actions depends on the interdependence between actors in the multi-level system. Institutions cannot be defined only as physical organs. The definition of institution goes beyond this, as institutions represent values, rules and norms dominating a particular order.

The adoption of supranationalism can occur in very different integration methods and does not mean the complete loss of national sovereignty. The concept involves some kind of limitation of sovereign rights depending on the common will of nation states how far they want to go with the supranational framework.

According to Weiler (1981) European supranationalism has two characters: a normative (juridical approach) and decisional (political approach). Normative supranationalism has to do with the hierarchy and the relationships of EU policies and the competing policies of the member states. Laws and policies need to be interlinked in the EU member states what is stated by the normative supranationalism. Decisional supranationalism relates to the institutional and decision-making process in the Union by which the policies are debated, formulated and executed.

Supranationalism in legal terms (normative supranationalism) means an approval of sovereign states to follow norms that are constructed at a higher level of organization (transfer sovereignty). In the European example this means that in existence of a conflict between a national law and Community law, the Community law will be applied (BEST, 2005). But the Union disposes only of those powers that are being conferred by the member states. Therefore, the Union has no “Kompetenz-Kompetenz” capacity to change its own powers. “The member states maintain the central role in decision-making, in interaction with the Commission and Parliament “(BEST, 2005, p. 4). When EU member states accept the so called supremacy of Community law, they accept the direct effect principle what results in the creation of rights and obligations directly for citizens (BEST, 2005).

Best (2005) distinguishes firstly between the transfer of sovereignty rights and the transfer between sovereignty itself. In the first case there has been recognition of it in some national constitutions concerning the role of international organizations. In the Italian constitution from 1948, before the beginning of the European integration process, the

article 11 states that the Italian government agrees to limitations of sovereignty if it is necessary to ensure peace and justice among nations. The limitations of sovereignty rights can therefore occur only on a certain level when the nation state agrees with it. Factually, it is not an abandonment of sovereignty, but it a transfer of the exercise of power. It is therefore very essential to explain what supranationalism actually means as there is a difference between sharing sovereignty between countries and the drop of sovereignty to a higher level above the countries dominions (BEST, 2005).

The second distinction that Best (2005) makes is concerning the competences involved. The Article 2 paragraph 1 of the Treaty on the Functioning of the European Union (TFEU) defines that the Union has exclusive competence in a specific area when it is declared so in the treaties and that the members can legislate and adopt legally binding acts, only if they were empowered by the Union or for the implementation of Union acts.³ The European Union has in terms of competences only few areas in which the Community has exclusive competences, as in the following areas: customs union, the establishing of the competition rules necessary for the functioning of the internal market, monetary policy for the member states whose currency is the euro, the conservation of marine biological resources under the common fisheries policy and common commercial policy.

In relation to shared competences (article 2 paragraph 2 of the TFEU) between the Union and the member states, the Union and the members may legislate and adopt acts. The member states exercise their competence to the extent that the Union has not exercised its competence. Sharing competences between the Union and the member states are applied in: internal market, social policy, economic and social cohesion, agriculture, environment, consumer protection, transport, trans-European networks, energy, area of freedom, security and justice, common safety concerns in public health matters.⁴

The adoption of EU rules is not based on the transfer of decision-making power to a higher level of the Union, but the elected or autonomous authorities interact between the Union institutions and the national governments.

In the political approach (decisional supranationalism), supranationalism may be applied in the decision-making process or the enforcement. The first kind of supranational arrangement can be summarized as pooled sovereignty which occurs when governments make decisions which do not have unanimity or when governments agree to act

³ TFEU (Treaty on the Functioning of the European Union): <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2010:083:FULL&from=DE> [29.11.2014].

⁴ Article 3 and 4 of the «Treaty on the Functioning of the European Union»

collectively or not at all even if there is unanimity. The second kind of supranational arrangement relates to the delegation of powers to autonomous institutions. In the decision-making process, autonomous power means the right to adopt normative decisions on the basis of the treaty, without the need for agreement by member states.

On a theoretical basis Best (1997) rationalized a few key variables that are important to consider when debating about the adoption of supranationalism and its adequacy to the needs in regional integration arrangements (here are only listed these variables that are considered to be interrelated with the theoretical discussion in this paper): a) Number of member states, b) The relative sizes of the participating countries, c) Degree of real interdependence, d) The political framework, e) Perceptions, values and norms.

In the third part about the discussion if a (partly) supranational system could be a future model for Mercosur, there will be a detailed debate about each mentioned factor. A regional system with supranational elements 'may reduce transaction costs of future interactions simply by institutionalizing the integrative dynamic and negotiation procedure' (BEST, 2005, p. 12). Further, a supranational structure can be important for the creation of mutual confidence between members for the commitments that have to be fulfilled. As intergovernmental decision-making processes depend strongly on the relative power of the member states smaller countries interests are sometimes not taken into account. A supranational framework relaxes the asymmetries of power between smaller and larger countries. Alternatively can be argued, based on the liberal line of intergovernmentalism that the creation of communal institutions happens only in the interests of some specific member states of a regional agreement reinforcing the decision-making power of those state members (LOBO-FERNANDES, 2006).

Another aspect in the regional integration is the importance of policy credibility towards governments, third countries, to markets and citizens, for which policy continuity is a necessary condition. Notwithstanding, it depends on the issue area and the degree of uncertainty in these issues as a supranational structure might be impedimental when there is an uncertainty about a topic and there is a need for more flexible structures.

3.2. Sovereignty

The concept of sovereignty arose of the international system in the Treaty of Westphalia in 1648 when sovereignty was related to the supremacy of each state's domestic institutions over its internal affairs. Giannini (2010) points out that the traditional concept of sovereignty eroded as states accept nowadays more limits on their freedom. Looking at the classical definition it reveals a weakness because it construes sovereignty in terms of independence. Historically one can see that there has never been absolute independence of states in international relations as the existence of another state's decisions always influenced the states behavior and strategic decisions (TYURINA, 2014). The Permanent Court of International Justice declared 1923 in the Wimbledon case that:

The Court declines to see, in the conclusion of any treaty by which a state undertakes to perform or refrain from performing a peculiar act, an abandonment of its sovereignty... the right of entering into international engagements is an attribute of state sovereignty (PERMANENT COURT OF INTERNATIONAL JUSTICE, 1923).⁵

The Courts statement points to the two-sided character of sovereignty. Sovereignty as a term associated with supranationalism in the debates about the adoption of supranationalism in the regional integration needs to have some clarification about its definition as in international affairs and international law sovereignty is one of the most used and misused concepts. Sometimes it is used for the role of states in international organizations, sometimes it refers to the internal division of power and the degree of government authority toward the citizens (LEAL-ARCAS, 2006).

One can break down sovereignty in three components as the sovereign, the territory or space and authority. Different empirical constellations lead to different sovereignty regimes (AGNEW, 2005).

Haas (2003) defines sovereignty as following:

Historically, sovereignty has been associated with four main characteristics: First, a sovereign state is one that enjoys supreme political authority and monopoly over the legitimate use of force within its territory. Second it is capable of regulating movements across its borders. Third, it can make its foreign policy choices freely. Finally, it is recognized by other governments as an independent entity entitled to freedom from external intervention. These components of sovereignty were never absolute, but together they offered a predictable foundation of world order. What is significant today is that each of these components - internal authority, border control, policy autonomy, and non-intervention – is being challenged in unprecedented ways.

⁵ Permanent Court of International Justice, Wimbledon case, Series A, no. 1, 25. <http://www.icj-cij.org/pcij/series-a.php?p1=9&p2=1> [29.11.2014]

In relation to a supranational organization it is often assumed that it is accompanied by a loss of sovereignty. Considering the legal fact that a supranational organization bases on an international treaty in which states agree to empower one of its organs for the purpose of the realization of common rules, it is wrong to conclude that supranationalism means a restriction of sovereignty when one considers that supranationalism is a derivative from sovereign wills (TYURINA, 2014).

According to Best (2005) each regional system needs to provide capacity to provide solutions for problems that are likely to occur during the pursue of the regional integration ambitions and the methods of problem-solving must be suitable to social, historical and cultural aspects within the region and between the members involved in the process. How much sovereignty national governments cede and in which kind of areas depends on the regional agreement.

At least but not less important is the analysis of the definition of sovereignty. Authors as Weber and Biersteker (1996) and Biersteker (2002) bring to mind that sovereignty is a social construct which succumb to transformation. In the context of treaties of Westphalia the sovereign was a monarch, while during democratization waves in many countries the sovereign became an elected person in a state. When we develop further we can think of popular sovereignty, of an authority that includes also non-state players as the civil society and non-governmental organizations. The state centric and nationalist approach of sovereignty has to be rethought considering the social construction of the definition of the sovereignty (LEGLER, 2013). Thus, the three aforementioned components of sovereignty, the sovereign, the territory or space and the authority, can be applied to all kind of definition of sovereignty.

3.3. Intergovernmentalism

Due to the intergovernmental institutional character of Mercosur the discussion about intergovernmentalism is accompanied by examples from Mercosur to emphasis certain characteristics of this institutional form. Ventura (1996) explains the main difference between intergovernmental and supranational organisms as follows:

In the first ones, it is about forums destined to collate individual interests and, if it's the case, to harmonize them. They are markedly negotiating scopes, whose decisions, if they exist, will be applied on the initiative of

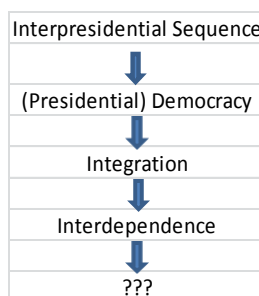
member states. Supranational organisms suppose a negotiation on a different level for the definition of collective interests, through a proper decision-making process, at the service of a functioning independent structure' (VENTURA, 1996, p. 29).

The intergovernmental model adopted in Mercosur roots in the classical concepts of sovereignty of the public international law. In intergovernmental entities individual interests of governments are debated and negotiated among governments whereas in supranational organism the negotiations happen on a different level where the main purpose is the definition of collective interests. Under intergovernmental circumstances states are free to cooperate or not and can define the level or cooperation whereas this is ensured normally through a veto where a state can block any proposal presented by any member state (NUGENT, 2003) and unanimity in every case is required (MALAMUD, 2003b). The intergovernmental form can be understood as an intermediary between the traditional concept of sovereignty⁶ and the supranationality. In Brazilian domestic law for example the norms of Mercosur are part of the same hierarchy as international treaties which need an approval in the National Congress as Mercosur does not have any direct effect law. In general, these norms have to be internalized by all Mercosur member states to produce juridical effects (MOI, 2004). In the European Union no structure is perfectly intergovernmental or supranational depending on the institutions and the situations (NUGENT, 2003). The European Union developed a complex structure of multilevel governance, with supranational and intergovernmental structures, majority rule and unanimity, subsidiarity and the supremacy of community law (SCHMITTER, 1996) and shows an institutionalized and increasingly bureaucratized structure (MALAMUD, 2003b). In the Mercosur case the institutional structure of intergovernmentalism was built with the goal of making the integration and the development of the institutional structure more flexible and gradual which means that organizations were created only when required during the integration process (PEÑA, ROZEMBERG, 2005). Any change towards supranationalism in this preliminary phase could have a negative impact on national macroeconomic stabilization objectives (ALMEIDA, 2002). Even if the intergovernmental structure has been a well-functioning construct at the beginning of the transition, Moi (2004) questions its adequacy at the actual stage of Mercosur's integration process. In general, regional institutions deal with the dilemmas of collective actions as decision-

⁶ that has its origins in the Treaty of Westphalia in 1648 as discussed in the previous chapter

making processes and the resolution of controversies. However, Mercosur has not created any significant institutional structure (supranational or not) with no direct effect law. These characteristics are part of the project in order to differentiate between the political direction and bureaucratic directions. The decision-making organizations are composed of three regional bodies with appointed technicians with little responsibilities or member state's public officials and a secretariat in Montevideo (MALAMUD, 2003b).

Contrary to many scholars postulating the necessity of supranational institutions, Malamud (2003b) however argues that the progress in integration has been possible because of the existence of one national institution, namely presidentialism, being less visible than supranational institutions (MALAMUD, 2003b). As argued by Peña (1996) even when the next stages in regional integration may be accompanied by a decrease of the presidential importance one can conclude that without the presidential actions there would not have been the initial stimulus nor solutions for important crises would have been achieved. Mercosur might have established a “new regional animal” (O'Donnell, 1994). The mechanism may be showed as follow (MALAMUD, 2003b, p. 65):



The institutional characteristics of South American presidentialism as the degree of legislative power given to the presidents (MAINWARING; SHUGART, 1997), when compared to the American presidential system, and the possibility to rule without parliamentary interference highlight the essential role of presidents in the integration project process. The power of the presidents to exert a decisive influence in the decentralized bargaining process constitutes an important feature of Mercosur (MALAMUD, 2003b). Malamud (2003b) explains that the lack of overlapping cleavages in the South American compared to European region favors presidential power. “Instead, the axis Argentina-Brazil catches all the attention while in the European Union this is divided among the opposition between, say Germany and France, the big and the small

countries, the Nordic and the Southern, the supranational and the intergovernmental, and the like” (MALAMUD, 2003b, p. 67). Thus, as Hirst (1995) proposed, intergovernmentalism or as called by Malamud (2003b) “inter-presidentialism” should be maintained in the short and medium run and the future of the integration process might depend on the capacity to negotiate differences instead of identifying common interests.

4. Regional integration concepts: historical, social, cultural, political and economic aspects

4.1. The case of European Union

The European case has already been described partly in the definition part about supranationalism but here we will discuss the European case in more detail.

The main sources of modern European conflict can be found in the historical rivalries between France and Germany. After the Second World War France and the United States started discussions about the management of international conflict, especially dealing with the German question. France was weak after the World War and was anxious that Germany could recover fast and surpass its own performance. There were actually two aims involved in the integration process. On the one hand there was the aim of modernization of the French economy through liberalizing Europe and on the other hand there was the aim of a German peace settlement. The Americans from their side launched the Marshall Plan. In respect of the international politics, the growing Soviet threat pressured Germany for rearmament which has been seen with critical eyes by the French government. France would only accept the new developments in Germany with a broader arrangement of providing guarantees (BEST, 2005).

The Europeans desire of a peaceful European region and the necessity of a better inclusion in the international economic competition can be seen as the main engine for a European regional integration. After the military alliance in 1948 followed the Treaty of Paris from 1951 which established the first European Community including Germany, France, Belgium, Netherlands, Italy and Luxemburg. The beginning of a supranational character of the European integration process could already be conjectured in the institutional framework of the established European Community of Coal and Steel. In search of further integration were established in 1957 two Communities, the European Economic Community and the Euratom, the Community of European Nuclear Energy. The

aim of the establishment of an Economic Monetary Union in 1997 completed the Single European act of 1986 that improved the internal market (GODOY, 2008). Araújo (2002) describes the aim as the creation of an area without internal restrictions; an enhancement of an economic and monetary cohesion that would introduce in the long term the adoption of a single currency; the guarantee of free movement of people, with the adoption of appropriate action to control boundaries; asylum; immigration; prevention and fight against crime.

Summarizing the arguments, the emergence of supranationalism in Europe has its very specific historical roots and there are two key factors that had made it possible. Firstly, the issue about the German rearmament was solved separately, West Germany joined the North Atlantic Treaty Organization (NATO) to which it had to oblige to incorporate all its forces and the Saar Treaty in 1955 ended the lasting rivalries between France and Germany. Second, there has been a combination of external threats and external support that favored the acceptance of a supranational agreement. France saw itself confronted with a decolonization process and the question about its international power and Soviet intervention in Hungary in 1956 favored an environment of deeper integration even if there was not a consensus about it (BEST, 2007).

4.2. The case of Mercosur

In the consequence of its historical, political and social structure, countries of Latin America have always faced some difficulties to growth economically and to establish public policies for the development of better opportunities for its citizens (GODOY, 2008).

In the middle of those obstacles Mercosur arose after some crises due to authoritarian regimes in Brazil and Argentina (MALAMUD, 2003a) and in an international environment of great expansion in international trade (FONTES, 2000). Further, Mercosur can be seen as a result of a paradigm shift in the region as integration would help to stabilize democratic values and structures. At least, Mercosur can be seen as a southern alternative to free trade initiatives on behalf of the United States of America to protect itself from North American absorption (GRATIUS, 2001).

With the Treaty of Assunção in 1991 the regional bloc of Mercosur has been founded and obtained in 1994 with the Protocol of Ouro Preto the status of legal personality of international law. The treaty of Assunção had the objective to create

mechanisms for an institution promoting free trade between Brazil, Argentina, Paraguay and Uruguay. Targets like the free circulation of the four factors of production as goods, services, financial and human capital, the elimination of barriers and the creation of an external tariff, called *tarifa externa comum* (TEC). The Protocol of Ouro Preto transformed the Mercosur from a zone of free trade to a tariff union with a legal status in the international law (GODOY, 2008). Further, its governing bodies were consolidated and improved with institutions like the Council of the Common Market, Group of the Common Market, Commission of Trade in Mercosur, Parliamentary Commission, Socio-Economic Consular Tribunal and an Administrative Secretary of Mercosur (see TREATY OF OURO PRETO, 1994). This was an essential step for the integration project, as the Council obtained a representative function as it can now exercise legal personality of international law of Mercosur and:

Negotiate and sign contracts in the name of Mercosur in third countries, country groups and international organizations. These functions can be delegated to the Group of Common Market by express order, to the stipulated conditions in paragraph VII of the article 14 (ARTICLE 8 PARAGRAPH 4, TREATY OF OURO PRETO, 1994).⁷

A deeper analysis of the treaty reveals that the member states did not pretend to attribute to it any supranational characteristics. This is evident in many parts of the treaty as in the description of the system of decision-making. Article 37 makes clear that the decisions made by the institutions have to happen by consensus and in the presence of all member states.

Correspondent to Malamud (2003b) one can observe a strong role of governing actors of the member states in the integration process, principally because in every step forward in the integration process all executive national powers are very intensively involved (congruent with the presidential system argument in chapter 3.3.).

Since its foundation Mercosur experienced an expansion of its dimension which has been initially limited to trade. Throughout the 90's these changes and new focuses occurred as new leaders as Luiz Inácio Lula da Silva became Brazil's President in 2003, Nestor Kirchner in Argentina in 2003, Tabaré Vasquez in Uruguay in 2005 and Fernando Lugo in Paraguay in 2008. The expansion of the objectives, without rejecting the free trade

⁷ Treaty of Ouro Preto, 1994. <http://www.antaq.gov.br/Portal/pdf/Mercosulprotocoloouropreto.pdf> [29.11.2014]

dimension, with policies in social and productive domains created the so called new Mercosur (BRICEÑO-RUIZ, 2014).

5. Supranationalism for Mercosur?

This chapter is included in order to add additional knowledge and evidence to the theoretical approaches that have been discussed in the previous chapters. Best (1997) points to the importance of identifying governing needs and the governing capacities in order to understand the complexity of the implementation of the integration objectives.

The analysis is limited to five key variables as they interrelate with the previous theoretical discussions and complete the discussion.

Figure 1. Key variables of complexity in regional integration arrangements

| | Key variables | Possible challenges |
|---|---|---|
| 1 | Number of member states | |
| 2 | Relative size of the participating countries | |
| 3 | Degree of real interdependence | Degree of complementary Intra group trade Degree of transnational interaction Importance of political ties Importance of military alliances |
| 4 | Political framework | Existence of common threat Awareness of individual international impotence Existence of historical perceptions of the relationships between the participating countries |
| 5 | Perceptions, values, norms | (Dis)similarity of perceptions of the nature, objectives and importance of the integration process Differences in constitutional systems Differences in political systems Attitude towards institutionalization Perception of a common (regional) identity (Dis)similarities in national value systems (Dis)similarities in social structures |

Source: Best (1997: 60-66), but own adaptation.

As the Brazilian site about Mercosur offers useful data for the analysis the comments are mostly based on these data.

The Treaty of Assunção in 1991 has been signed by Argentina, Brazil, Paraguay and Uruguay.⁸ In 2012 Mercosur experienced the first enlargement when Venezuela has been accepted as a full member state of Mercosur. In addition, Mercosur counts a few associated member states as Chile since 1996, Peru since 2003, Colombia and Ecuador since 2004, Guiana and Suriname since 2013. Bolivia belongs since 1994 to the associated member states and is currently in the process of admittance as a full member state. Actually one can talk about five member states. The number of the members is an important component for the institutional framework, respectively what decision rules are established. The more the members of the integration project the less power each member exerts, thus, leading to a diffusion of power. The Mercosur case is due its only five members in a distinct situation (LANE; MEALAND, 2000). To exemplify the difference: In 1999, Brazil was under external pressure and the authorities decided to devaluate the Brazilian Real which resulted in more competitive Brazilian exports and the perception of a threat across the Mercosur member states. Argentina's answer to the Brazilian action was the restriction on Brazilian imports which was against regional agreement. Against the advices of the Brazilian and Argentinian foreign ministers the president Menem and president Cardoso arranged a summit with an impressive positive outcome as Mercosur was considered dead at that moment (MALAMUD, 2003b).

The Mercosur territory occupies 71.8% (12.789.558 km²) of the territory of South America and is about 3 times larger compared to the European Union. Whereas Brazil has the biggest territory of 8.502.728 km², the second biggest territory has Argentina with 2.791.810 km². Venezuela has a territory of 912.050 km², Paraguay of 406.750 km² and at least Uruguay with 176.220 km².⁹ Brazil is by far the largest member state with a population of almost 203 Million in 2014, Argentina with a population of 43 Million in 2014 and Venezuela almost 29 Million. In 2014 Paraguay had almost 7 Million and Uruguay 3 Million.¹⁰

These facts call attention to the high asymmetries between the countries. The asymmetries are not observed only on the territorial level and in relation to population size across the countries but also on the constitutional level. While Argentina, Paraguay and

⁸ <http://www.mercosul.gov.br/saiba-mais-sobre-o-mercossul> [29.11.2014]

⁹ <http://www.ibge.gov.br/paisesat/main.php> [29.11.2014]

¹⁰ <https://www.cia.gov/library/publications/the-world-factbook/fields/2119.html> [29.11.2014]

Venezuela treat international treaties and the “community law” of Mercosur as a law above the national law, the Brazilian and Uruguayan constitutional systems apply the principle of the supremacy of national law over international treaties. Due to these national constitutional characteristics the integration within Mercosur could not advance in the same way as in the European Union. These obstacles should not impede Mercosur to promote the social dimension as the countries are characterized by differences in economic and social asymmetries within the region (PUCHETA, 2014).

Comparing data about the GDP in US\$ in 2011 Mercosur positioned itself in 2011 as the 5th largest economy in the world. While the United States had a GDP (in US\$ Millions) of 15.094.025, China had 7.298.147, Japan 5.869.471, Germany 3.577.031, Mercosur 3.324.501, France 2.776.324, Brazil 2.492.908, United Kingdom 2.417.570, Italy 2.198.730, Canada 1.736.869, India 1.676.143 (Source: World Economic Outlook Database – IMF).¹¹

Figure 2. Regional trade dependence of Mercosur countries, 2007 and 2011, Intra-exports (in US\$ Millions)¹²

| | Intra-exports (in US\$ Millions) 2007 | Intra-exports (in US\$ Millions) 2011 |
|-----------------|---------------------------------------|---------------------------------------|
| Argentina | 13.629 | 22.577 |
| Brazil | 22.078 | 32.444 |
| Paraguay | 1.386 | 2.908 |
| Uruguay | 1.353 | 2.726 |
| Venezuela | 1.123 | 2.039 |
| Mercosur, total | 39.569 | 62.694 |

Source: Own figure. Data from the Mercosur website.

The data coincide with Malamud’s (2003b) reasoning and data for the timeframe 1980-1996 that the interdependence was not a requirement for integration in the Mercosur case. To the contrary: integration steps were responsible for the increase in economic interdependence corresponding to the “new regional animal”, as described in chapter 3.3.

Conforming to the Brazilian website of Mercosur the regional integration project performs as an agricultural power. Mercosur is the biggest global exporter of liquid sugar,

¹¹ <http://www.imf.org/external/pubs/ft/weo/2011/02/weodata/index.aspx> [29.11.2014]

¹² <http://www.mercosul.gov.br/dados-gerais> [29.11.2014]

the globally largest producer and exporter of soya, the largest producer and second largest global exporter of beef and global 4th largest producer of wine.¹³

In energetic terms, Mercosur represents one of the largest global energy powers with 19.60 % (in 2011) of the total reserves in the world and 3.1% of the total gas reserves in the world. 92.7% of all petroleum reserves of Mercosur come from Venezuela.¹⁴

The 1990's were marked by a change of paradigm, based on the principals of the Economic Commission for Latin America and the Caribbean (CEPAL), where the governments of the member states lost their power in the regional economic integration due to the neoliberal alignment.¹⁵ This paradigm has been promoted by the government of Brazilian president Collor and the government of Fernando Henrique Cardoso and the Mercosur market opened up to multinationals (MOTTA; MARTINS; DA SILVA; CULPI, 2013).

For the understanding of the integration process of the Mercosur it is necessary to include the foreign policy strategies of the Brazilian government (MOTTA; MARTINS; DA SILVA; CULPI, 2013). Under the government of former Brazilian president Lula, Mercosur has been declared as a priority of the government as well as the strengthening of the relations with the South American neighbor countries. Nevertheless, the main barriers in the process of the consolidation of a common market persisted (MEDEIROS; DRI, 2013). In 2006 the discourse changed and the Brazilian government barely mentioned Mercosur (GARCIA, 2006). Instead of focusing of the regional integration process of Mercosur the priorities were set on the enhancement of the relations between Asia and Africa, what remained during the first years of Dilma's presidency. Lula's discourse about the development project and the aim to establish national prosperity connected to regional prosperity did not correspond to the economic data about the Brazilian trade with Mercosur. Brazil's success was based more on the individual participations in forums like the G-20 or the BRICS.¹⁶ This behavior highlights the well-known conflict between discourses in domestic and foreign policy (MEDEIROS; DRI, 2013) and does not permit to detect a continuance in norms and preferences. Silva (1989) argues that the democratization process in Sarney's Brazil lead to a politicization of the foreign ministry.

¹³ <http://www.mercosul.gov.br/dados-gerais> [29.11.2014]

¹⁴ Source: International Energy Outlook EIA/DOE/USA, 2011, Oil&Gas Journal –World Energy Outlook – IEA

¹⁵ CEPAL: Comisión Económica para América Latina y el Caribe

¹⁶ G-20: Summit of the twenty major industrialized and emerging countries. BRICS: Brazil, Russia, India, China and South Africa

The Brazilian example gives evidence to the strong leading executive power of the South American presidentialism, better defined as a “centralized decision-making arrangement” (CHEIBUB; LIMONGI, 2000) or “presidential protagonism” (MALAMUD, 2003b, p. 66). The national institutional framework of the South American region impacts as discussed in the theoretical part the identity and institutional nature of the integration project. The minimal and flexible institutionalization on national level is reflected on the regional level (MALAMUD, 2003b).

Regarding the leadership question there is still an unresolved discussion on Brazil and its commitment to play the role of a leader (BRICEÑO-RUIZ, 2014). Camargo (2006) argues that there is a need of a reduction of the asymmetries between the member states that should be paid by Argentina and Brazil. The conceptualization of Mercosur without Argentina and Brazil is inconceivable especially because the regional arrangement of Mercosur constructs a new alliance between these two countries.

Even if not fully comparable there exist some parallels between the historical Brazilian-Argentinian distrust and the historical rivalries between France and Germany. Since the 19th century both Brazil and Argentina tried to establish relationships with hegemonic United States and United Kingdom. For decades there has been a dominance of militarism within both countries policies that contributed to the environment of distrust. Similarly as the foundation of the European Community served for a peaceful environment between France and Germany, Mercosur fulfills the purpose to vanquish the distrust between Brazil and Argentina. Even the agenda of those two regional arrangements seem to have similarities as its aims include economic, political, social and productive objectives (BRICEÑO-RUIZ, 2014). Nevertheless, as already mentioned in the former chapters, the institutional framework of Mercosur has not been influenced by the Europeans Union’s institutional model. In no way the Mercosur model seems to be an approximation to the supranational model (BRICEÑO-RUIZ, 2014).

Since 2003 Mercosur has changed and broadened the integration focus to social and productive areas. Notwithstanding the changes in institutional terms with for example of the Protocol of Olivos for the solution of controversial issues (creation of a Permanent Tribunal for interpretation of normative questions) and the approval of the Social Action Plan in 2011 Mercosur cannot be described in its present shape as promoting a regional

social policy. (BRICEÑO-RUIZ, 2014).¹⁷ Pucheta (2014) argues that a major reform is necessary in order to be able to deal with social issues, as the construction of regional markets is connected to challenges. Numerous conflicts might arise when people interact and are displaced across different regions. Even when there is not yet free movement of workers in Mercosur an agreement of free residence has been established. This new dimension has its roots both on national and regional level. On regional level has been established an Economic-Social Consultative Forum with the role to influence the social dimension of Mercosur. The forum issues non-binding recommendations for member states upon their request or of its own initiative. The Council of the Common Market gives space to initiatives related to the labor dimension and where ministers give recommendations about the incorporation of some rights, as unemployment benefits and the protection of wages. As Mercosur lacks of reliable statistical data the Labor Market Observatory has been founded to promote production, collection and analysis with regard to employment, labor migration and social security for example. Even if these advancements are on the basis of recommendations, they show a certain amplification of the regional integration dimension. And moreover, one has to be aware that Mercosur is a relatively new regional integration project and for its short time of its existence improvements in the social dimension have to be seen positively from institutional and normative perspective (PUCHETA, 2014).

It may be theoretically reasonable to conclude from these amplified integration objectives and the analyzed institutional challenges that a (partly) supranational framework could be the first step in a deeper integration process of Mercosur and a possible solution for its internal struggles about a common agenda setting.

The problem about this conclusion is that it does not consider the effective applicability of a supranational structure. In practical terms the decision of a (partly) supranational structural needs a persistent commitment and shared values and the effectiveness of a supranational union have to rest upon a strong acceptance and willingness of implementation by national players. Formal supranational structures have to be built upon the contextual reality and upon real aspects (BEST, 2005) as the perceptions, values and norms in Latin American countries.

Intergovernmental and inter-parliamentary action may in fact be more appropriate and more effective for some areas of common concern. And

¹⁷ <http://www.mercosul.gov.br/saiba-mais-sobre-o-mercosul> [29.11.2014]

in all cases, the creation of transnational associations and inter-societal ties is the key to success of regional integration in the long term (BEST, 2005, p. 45).

In the context of institutional framework the integration in Latin America Legler (2013) argues that the defense of national sovereignty had a long tradition in Latin America protecting the countries from foreign invasions and interventions from the Europeans and the United States. It may create the impression that the sovereignty concept is a static concept in the region. Indeed the sovereignty has undergone some modifications as described by Legler (2013). The social construction of sovereignty in Latin America has been linked to traditions to protect domestic human rights and democracy (SIKKINK, 1996). As explained in the chapter about sovereignty it may be questioned if the sovereign is always the state, because who the sovereign is may be linked to values about political participation of the citizens. President Hugo Chávez had made frequent statements that the people in Venezuela were sovereign, even if we see nowadays that it is more a theoretical rhetoric than a practice. In respect of the territory the European supranationalism gave space to new possibilities in terms of sovereign space. Further, Lake (2010) argues that the authority component of sovereignty does not have to be state centric. The authority does not have to be concentrated only on governmental players.

Dabène (2012) verifies a trend of *integration à la carte* where each country endorses its level of commitment to integration arrangements. And Brazil as by far the biggest member state of Mercosur and the least dependent economy on Mercosur (MEDEIROS; DRI, 2013) engages in instrumental regionalism, in arrangements as Mercosur for extra-regional and global ambitions. By acting for its own benefit the positive results of the internal Brazilian reforms increased the power asymmetries among Mercosur countries. In 2009 Mercosur was responsible for only 10.3% of Brazilian trade whereas there was a high trade rate between Germany and the European Union (60.59%)¹⁸¹⁹. Brazil's distance to Mercosur is the result of an instrumental rationality that defines the nation-state as the central factor in international relations (MEDEIROS; DRI, 2013). In 2000 when the discussions regarding the Free Trade Area of the Americas (FTAA) with Mercosur started, they were accompanied by social movements opposing the relations between the United States and Latin America (FREE TRADE AREA OF THE

¹⁸ External and intra-European Union trade Monthly statistics, issue number 10/2009.

¹⁹ Balança Comercial Brasileira: dados consolidados, Secretaria de Comércio Exterior do Ministério do Desenvolvimento, Indústria e Comércio Exterior, 2009.

AMERICAS, 2015). To counterbalance the FTAA the Brazilian government tried to rebuild a good relationship with Argentina. The historical rivalry between Brazil and Argentina was provoked by negative reactions from one country or the other about macroeconomic policies or international politics. In 1999 Argentinean industries suffered by the devaluation of the Brazilian currency and Brazil's financial market has been badly affected by the Argentinean crisis in 2001. In 2004 was planned an approval of institutional changes in Mercosur as the installation of the Parliament but the reforms did not happened due to commercial conflicts between Argentina and Brazil (DABÈNE, 2009).

The constant rivalry inhibit any solution towards a deeper integration process because there is missing a common base and common values to establish further institutional arrangements which demand from both parties (actually from all member states) credible commitment. Diplomats stressed the uselessness of the adaption of the European supranational integration model arguing that Latin America did not confront the problem of entering into war with its neighbors. There is a clear alienation of the adaption of a model that requires ceding some national sovereignty (MEDEIROS; DRI, 2013).

6. Concluding remarks

An institutional framework towards supranationalism, or at least partly, could help to reduce transaction costs between the member states, create a mutual confidence as smaller states would have more equal chances to be taken into account and could enhance policy credibility towards national governments, third parties, markets and citizens. On the normative level can be identified dissimilarities between the state members as Brazil has not a stable proximity to the integration process and as the common thread between Brazil and Argentina concerning the integration process rests on an unsound footing. Without a credible commitment towards common norms, rules, institutions in general, from all members, especially Brazil as a strong power in Mercosur, the idea about supranationalism does not seem to be appropriate.

Kahler and Lake (2009) verify that the supranational framework in Europe seems to be a case of *sui generis* without application to other regions. An absence of supranational authority does not mean that governance cannot occur beyond country governments. Maybe it is on the time to reject the assumption that supranationalism is the only alternative to national forms of governance. There might exist other governance forms that

expand authority through the power of hegemons or there might be some combinations of interstate and transnational players. An effective governance and cooperation beyond the state level might occur also without a supranational structure (KAHLER; LAKE, 2009).

The challenge for Mercosur is composed of the merge between the internal and external agendas of the regional bloc to get the functioning of the integration to work and to define the integration targets embedded in the political dynamics between its members (VAZ, 2001).

7. Limitations and suggestions for future research

The strongest critics can be made in relation to the comparison and application of the European supranational experience on other regional integration projects. On one side this method is useful as the European integration has a very long history and therefore has achieved certain credibility among scholars who do research on comparative regional integration. On the other side, as has been concluded, Mercosur has a different history and institutional framework. Future research should be open to analyze what kind of governance structures (some modifications of intergovernmentalism?) could arise in Latin America, especially in Mercosur, as the defense of sovereignty has a long tradition in Latin America and supranationalism does not seem to be the solution; at least not in today's development stage.

There may be other governance structures based on the sovereignty trends in the region. "Latin American scholars therefore need to move beyond describing trends and patterns in regional politics and sovereignty to theorizing much more why and how they occur, persist, or are transformed"(LEGLER, 2013, p. 344).

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