**Governance Export by Regional Organizations**

**Case Study: Mercosur**

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1. **Introduction**

Mercosur has engaged in governance export in the areas of democracy, human rights, rule of law and good governance towards its member-states, and towards third parties. The regional organization has issued norms and political declarations setting up framework of standards and expectations regarding governance at the domestic level of its member-states and third parties. It has also created measures and instruments to advance the implementation of these norms. The driving forces of these processes are complex: no single variable derived from existing theoretical approaches can account for it alone.

The findings of this paper point to a combination of different variables for the explanation of the development of the Mercosur’s framework of governance export, and for the creation of measures of governance export. The variation of driving forces can also be found in different issue-areas, and if the governance export is conducted towards Mercosur member-states or to third parties. In particular, the findings go against the common view that regional organizations of the South establish a framework only to the extent that there is pressure by external actors such as the Unites States and the European Union. The findings support the argument that even if external actors were an import factor in some cases, it alone could not explain it, nor all issue-areas. As a result, Mercosur arises from this research as a regional organization where endogenous factors, including the interests of its member-states, but also the pressure from national and transregional civil societies have been central in the processes of framework setting and creation of measures in the area of governance export.

The paper proceeds with an overview of Mercosur, and then the analysis of its activities in governance export.

1. **Overview of regional organisation**

**2.1. Origins of the process of integration and brief summary of main trends and current challenges**

Mercosur was created by four original member-states: Argentina, Brazil, Paraguay and Uruguay by means of the Treaty of Asuncion, signed in 26/03/1991 (in force in 29/11/91 after the ratifications of Argentina – 30/10/91, Brazil – 30/10/91, Paraguay – 06/08/1991 and Uruguay – 06/08/91). Historically, Mercosur was preceded by a rapprochement between Argentina and Brazil which began during both countries’ military dictatorships (Argentina 1976-83, Brazil 1964-85), and which was focused in the solution of the use of the River de La Plata for energy production purposes, and the avoidance of a competitive nuclear race. As regards economic cooperation, the bilateral proposal was not based on free trade, rather, of a complementary industrial policy (Camargo 1997). The democratisation process in both countries added another political component to the rapprochement; the mutual support for the consolidation of the young democratic regimes (Ribeiro Hoffmann 2007). The multilateralisation of the strategic partnership, which included Uruguay and, later, Paraguay (Vaz 2002) was favoured by the international context, which saw the development of the so-called second wave of regionalisation in the global politics (Fawcett and Hurrell 1995).

While the Brazil-Argentina bilateral strategic partnership was a proactive and endogenous process, with a broad focus in political, security and energy cooperation, Mercosur was a proposal of regional economic integration based on free trade, created to a large extent as a reaction to exogenous factors such as the impasses of the GATT Uruguay Round, the creation of NAFTA and the European Union, and the intensification of the process of economic globalisation led by the US and the UK. In fact, the Treaty of Asuncion did not make any references to the main items of the Brazilian-Argentinean bilateral agenda, and was rather restricted to commitments in trade liberalisation.

This initial focus on free trade changed over time thou. Mercosur’s development could be classified in three main stages. In the first phase, from 1991 to 1997, Mercosur institutional structure was created and its main emphasis was on trade. Given this limited objective, Mercosur was considered quite successful in this period as intra-block trade increased 302% and reached a total of 23% of total trade among member-states (coming from a level of 17%). A second phase, from 1998 to 2002 was a period of crisis. In economic terms, all member-states suffered from the international financial crisis and had their PIB decreased, the intra-block trade went back to the initial 17%. Brazil decided to devalue its currency in 1999 without previously coordinating that with its partners, causing a major political crisis in Mercosur. Argentina, facing an economic and politico-institutional generalised crisis, reintroduced tariff barriers unilaterally. Mercosur survived however, the dispute settlement mechanism for instance started to be used. In 2000, an effort to address the crisis was made with the creation of a group of high level intellectuals and experts to elaborate a “Relauching Project” for Mercosur. But it was only after 2003, with the so-called ‘left turn’ in Mercosur member-states governments inaugurated with the governments of Presidents Lula da Silva from Brazil, Nestor Kirchner from Argentina and Tabare Vasquez from Uruguay (Castaneda 2006), that Mercosur was put back in the centre of member-states foreign policies, launching a third phase of its development. The new elected not only revived Mercosur, but transformed the organisation from a (liberal) trade block to multisectorial organisation within a new paradigm. In economic terms, Mercosur entered a “post-liberal” phase advancing macroeconomic and industrial cooperation, especially in the infra-structural sector in coordination with the Initiative for the Integration in Regional Infrastructure in South America (IIRSA)[[1]](#footnote-1). This new economic orientation came hand in hand with a concept to advance the integration process in non-economic areas such as culture, education, heath, environment, and mostly important for this work, in the areas good governance, rule of law, democracy and human rights. Mercosur also began to conclude agreements with other developing countries, creating a South-South network (Coutinho, Ribeiro Hoffmann and Kfuri 2007).

As it stands, Mercosur faces many challenges. A first group of challenges refers to its own internal development, such as the credibility of the dispute-settlement mechanism, the implementation and compliance of norms and policies, and the internal asymmetries. The two first will be dealt with below, and the latter refers to the difference in economic and political importance at the regional and global level of Mercosur’s member-states (Lamas 2007). A second group of challenges refers to its role in the strategy of international insertion of its member-states.

Until the mid-2000, Mercosur played a central role in Brazilian and Argentinean foreign policies and their insertion on the international policies (Tullo 2007a, 2007b, 2011). Despite the firm commitment of the governments of Presidents Kirchner and Lula to regional integration, important political actors in both countries had divergences as regarding the accession of Venezuela. Kirchner not only supported integrally the adhesion of the country as soon as possible, but also managed to keep the Argentinean opposition on board; a number of bilateral agreements were concluded between Argentina and Venezuela in that period, such as the purchase of millions of Argentinean external debt bonds. In Brazil, the accession of Venezuela was more controversial. The opposition brought the question of the democratic legitimacy of Chavez government to the public debate, causing an unusual delay in the ratification process. The still pending ratification in Uruguay is also credited to the opposition criticism of Chavez’s regime.

The crisis of the accession of Venezuela can be seen as an indicator of the deepening of Mercosur member-states democracies to the extent that their foreign policies are not anymore decided in closed doors between Presidents and Ministries of Foreign Affairs, but subjected to public debates, in which the opposition parties and civil society play a role. In fact, the ongoing debate has focused only on the democratic credentials of Chavez regime, but on the very the definition of democracy in Latin America. The debate about Venezuela is only the top an iceberg, almost a caricature, of a process that has actually been taking place in most of South American societies; a process of rethinking their political priorities and identities after 20 years of democratic experience.

Another challenge to Mercosur’s strategy of international insertion derives from the changing role of South America in the Brazilian foreign policy. As stated above, Mercosur can be seen as a (modified) follow up of a strategic partnership between, at the time, two relatively equally strong regional powers in South America. Since then, Argentina lost this position to Venezuela, and Brazil was ‘upgraded’ to an emerging global power. Brazilian foreign policy and domestic economic interest groups have redirected their priorities elsewhere as it can be seen in the initiatives of IBAS (India, Brazil and South Africa) and BRICS (Brazil, Russia, India, China, and most recently South Africa) (Soares de Lima 2006). Latin America, or rather South America, is still important in many respects, but the real strategic partners are not anymore Argentina or Venezuela, rather South Africa, India, Russia and China

This is an evolving process, and not unproblematic, therefore, it would be too soon to classify Mercosur’s weak health as a chronic matter. The successful consolidation of Brazilian democratic regime does not allow the country to choose partners according exclusively to short term economic interests. Brazilian society is engaged in normative considerations on the desirability of giving up being part of the West, even if this ‘affiliation’ is ever more perceived as a ‘wrong bet’ in terms of having advanced Brazilian long standing ambitions in the international politics and institutions since the creation of the League of Nations and Breton Woods system, to the current regimes of nuclear weapons to give an example (Herz 2011). An indication of this dilemma which Brazilian society faces can be found in the contradictory polices of pursuing strategic partnerships with Russia and China and promoting democracy and human rights abroad in its bilateral foreign policy and within Mercosur. The latter will be addressed in details in this study.

**2.2. Legal framework and institutional structure**

The definitive institutional structure of Mercosur was defined three years after its creation, with the conclusion of the Ouro Preto Protocol on the 17/12/1994 (ratified by Argentina on 15/11/95, Brazil on 16/02/96, Paraguay on 12/09/95, and Uruguay on 15/11/95). The Ouro Preto Protocol accorded international legal personality to Mercosur. Interestingly, even before Mercosur acquired a legal personality, on the 29/05/1992, the European Council and the European Commission concluded an ‘Inter-institutional Cooperation Agreement’ signalising the interest of the, then, European Communities, in supporting regional integration in the South America. The Inter-institutional Agreement was actually central for the creation of permanent institutions in Mercosur as it provided funding to the Secretariat, located in Montevideo in the margins of the Rio de la Plata.

Despite the influence of the ECs/European Union in the early stages of Mercosur institutionalisation, it did not include any supranational component. According to the Ouro Preto Protocol (Art.37), the decision-making processes in all Mercosur’s organs are to be taken by consensus with the presence of all member-states. In addition, all norms originated by Mercosur must be incorporated in member-states according their national legal procedures. The legal procedures of member-states, however, vary, and a main difference is that while Argentina and Paraguay have monist legal systems, Brazil and Uruguay have dualist systems. A result is that although Art.40 of Ouro Preto Protocol states that all norms should enter into force simultaneously 30 days after the information of the incorporation of the last member-state, this does not take place in practice (Ventura and Perotti 2004 , Vieira and Chiappini 2010). Mercosur dispute mechanism system has evolved with time, but there is so far no regional (supranational) Court and there is no ‘communitarian law’ in Mercosur, rather a ‘regional integration law’. A brief description of Mercosur main organs and competences is presented next.

Table 1: Main legal framework of Mercosur

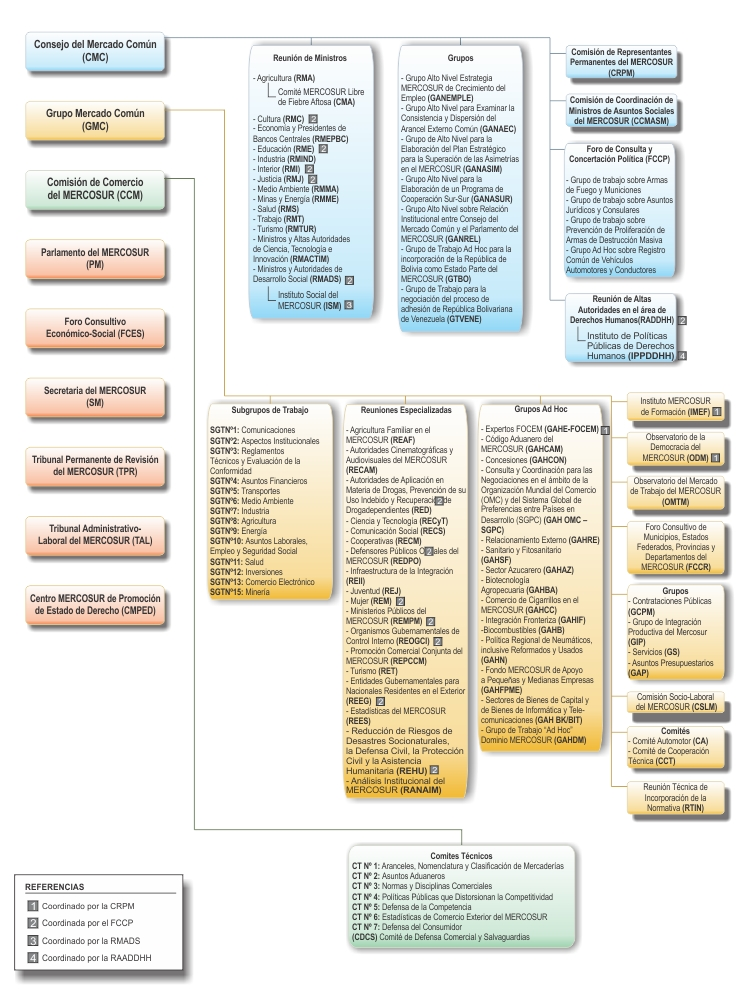
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|  | **Date signature** | **Date in force** | **Content** |
| 1.Treaty of Asunción | 26/03/1991 | 29/11/1991 | Constitutional Treaty |
| 2. Brasilia Protocol | 17/12/1991 | 22/04/1993 | Dispute settlement mechanism |
| 3.Ouro Preto Protocol | 17/12/1994 | 15/12/1995 | Institutional structure, legal personality |
| 4.Fortaleza Protocol | 16/11/1996 | 26/08/1999 | Cultural integration |
| 5.Ushuaia Protocol | 24/07/1998 | 17/01/2002 | Democratic clause ; Zone of Peace |
| 6.Olivos Protocol | 18/02/2002 | 10/02/2004 | Dispute settlement mechanism |
| 7.Asuncion Protocol | 20/05/2005 | 30/04/2010 | Promotion and Protection of Human Rights |
| 8.Protocol Constitutive of Mercosur Parliament | 09/12/2005 | 24/02/2007 | Creation of Parlasur |
| 9.Protocol of Adhesion of Venezuela | 04/07/2006 | - | Adhesion of Venezuela as a full member-state |
| 10. Rio de Janeiro Protocol | 19/01/2007 | - | Modifications to the dispute settlement mechanism |

**2.2.1. Main organs and competences**

Mercosur main organs as created by the Ouro Preto Protocol were the Common Market Council (CMC), the Common Market Group (CMG), the Trade Commission (TC), the Joint Parliamentary Commission (JPC), the Economic and Social Advisory Forum (ESAF), and the Administrative Secretariat (AS). Some modifications took place over time, the most important being: the evolution of the dispute settlement mechanism, which is analysed separately below; the creation of new organs such as the Mercosur Advisory Forum for Municipalities, Federal States, Provinces and Departments (FMFSPD) and the Mercosur Fund for the Structural Convergence (FOCEM) in 2004; and the upgrade of the Joint Parliamentary Commission into a Regional Parliament in 2006.

In its current institutional design, the CMC is the main legislative body and is composed by the ministries of finances and foreign affairs. At least once a year Presidents are also present. Its decisions, agreed by consensus, are mandatory. It can also agree on (non mandatory) recommendations. The CMG is an executive body and is composed by the ministers of foreign affairs, economy and the presidents of the Central Banks. It agrees on mandatory resolutions. The TC main functions’ include the monitoring and implementation of trade norms, and it agrees on mandatory directives. The ESAF was created as a body for civil society participation, but its tripartite structure (business, workers and others) and separation in national sections has undermined its role. Civil society has consequently participated via alternative spaces such as the Social Mercosur analysed below in session 3.a.2.2. The AS is located in Montevideo and has mainly administrative functions; its director is elected by the CMG for a mandate of two years but has a very limited role. The Regional Parliament has a seat in Montevideo as well, and despite the increase of competences from the JPC, it has so far no legislative powers.

An organogram of Mercosur current institutional design can be seen below.



**2.2.2. Mercosur’s Dispute settlement mechanism (MeDSM)**

Mercosur’s dispute settlement mechanism deserves special attention given its peculiarities. The Treaty of Asunción in its Annex III stated that controversies should be addressed by non-judicial methods, firstly by direct negotiations. If unsuccessful, controversies should be addressed by the Common Market Group (CMG) which would have 60 days to formulate its recommendations. If again unsuccessful, controversies should be sent to the Common Market Council (CMC). The Treaty also established the deadline of 120 days after it has entered into force for the adoption of a transitory dispute settlements mechanism, and the deadline of 31/12/1994 for the adoption of a permanent dispute settlements mechanism.

The Protocol of Brasilia, signed on 17/12/1991 and in force on 22/04/1993 created the transitory mechanism. The main differences from the system established by the Asuncion Treaty is that it provided private individuals and companies from Member-states with access to the DSM, and established a judicial method of dispute resolutions: the ad hoc arbitration tribunals. According to the Protocol of Brasilia, controversies should be, therefore, addressed firstly by direct negotiations, then consideration by the CMG (as in the previous system), and then by an arbitral procedure (the new judicial method). The jurisdiction of the ad hoc arbitration tribunals was mandatory and *ipso facto*, not requiring any additional special treaty. The procedure consisted of an *ad hoc* tribunal composed by three arbiters belonging to the list indicated in Art.10. The findings were decided by a majority in a confidential vote and were mandatory and unappealable. As for the innovation regarding the possibility of private individuals and companies to access the DSM, their complaints had to be presented to the CMG National Sessions. As stated by Salvio and Cabral: “the disputes involving claims from private individuals and companies referred to the application of legal or administrative measures by a member-state contrary to Mercosur agreements or decision, with restrictive or discriminatory effects or resulting in unfair competition. However, the private parties were not granted with direct access to the Mercosur DSM. They had to present a formal complaint at the local section of the CMG, which would make a first attempt to solve the controversy. If a solution was not reached at that level, the private party could have its complaint sent to the CMG, which would provide an experts opinion on the case. If this opinion favored the private party’s arguments, the member state which adopted the controversial measures could be challenged by any other member states within the CMG and subsequently before an arbitration tribunal” (Salvio and Cabral 2006:5).

The Protocol of Ouro Preto (in force on 01/01/1995) stated that before the conclusion of the common external tariff, a permanent mechanism should be adopted (Art.44), extending as well the validity of the Protocol of Brasilia to beyond the transition period ended in December 1994. It also established procedures for complaints in its Annex. The Protocol also: “introduced the possibility of submitting the controversies to the Mercosur Trade Commission (MTC), which would act as a mediator either in conflicts solely among member-states or in disputes involving member-states and private parties. Therefore, the CMG became a sort of political ‘instance of appeal’ for the conflicts not solved within the MTC (even though the controversies could still be directly submitted to the CMG).” (Salvio and Cabral 2006:6).

The Olivos Protocol (in force on 01/01/2004) finally established a permanent dispute settlement mechanism for Mercosur. One first innovation was the introduction of a (controversial) forum choice rule, allowing member-states to choose between multilateral or preferential free-trade agreements DSMs (and excluding thereafter the competence of any other DSM). Another change was that member-states were allowed to resort to judicial means after the failure of the direct negotiations without any prior intervention from Mercosur’s political bodies. The most important innovation, however, was the creation of a permanent judicial body, the Permanent Review Court (PRC), with seat in Asuncion, Paraguay, since August 2004. PRC findings prevail over the decisions from the ad hoc arbitration tribunals which can be upheld, modified or reversed. The PRC can also work as a first instance court if member-states submit their disputes directly to it. In both cases PRC findings are unappeasable and binding on the parties from the moment the respective notification is received. In case of total or partial non-compliance with the rulings rendered by the ad hoc arbitration tribunals or the PRC, the prevailing party may impose retaliatory measure within one year from the end of the designated period for implementing such ruling. The PRC also works as an advisory jurisdiction; member-states, the CMC, the CMG, the MTC and the Mercosur Parliament are allowed to request the PRC to give advisory opinions on legal questions concerning the interpretation of Mercosur rules and decisions. The member-states Superior Courts with nationwide jurisdiction can request advisory opinions from the PRC as well, provided that they are related to cases on trial and involve the interpretation of Mercosur rules and decisions. Opinions are neither binding nor mandatory and cannot refer to issues being discussed within the Mercosur DSM (Salvio and Cabral 2006:6-9). [[2]](#footnote-2)

Proposals for a Regional (Supranational) Court have been debated for a long time, pushed by Paraguay and Uruguay, and by legal scholars in the context of the ‘Dialogue Between the Supreme Courts of Mercosur member-states’, and the **‘Permanent Forum of Supreme Courts of Mercosur’, created in 2004. The proposal was taken to a higher political level** with the “Political Agreement for the Consolidation of MERCOSUR and Relevant Proposals” from 18th Oct 2010. The Court, however, would demand changes in the Brazilian and Uruguayan Constitutions, an extremely challenging development especially in the case of Brazil; the Argentinean and Paraguayan already accept that possibility.

A list of MeDSM findings, advisory opinions and resolutions can be seen in table 2 below. It includes the findings of the Permanent Review Court, the findings of the Ad Hoc Arbitration Tribunals, the findings of the Ad Hoc Arbitration Tribunals under the Brasilia Protocol, the Advisory Opinions and Resolutions.

Table 2: Mercosur dispute settlement mechanism jurisprudence

|  |  |
| --- | --- |
| **Findings of the Permanent Review Court** |  |
| 01/2005 | Proibição de importação de pneumáticos remodelados Procedentes do Uruguai". Recurso de Revisão Apresentado pela República Oriental do Uruguai contra o Laudo Arbitral do Tribunal Arbitral Ad Hoc de 25 de Outubro de 2005 |
| 01/2006 | Proibição de importação de pneumáticos remodelados procedentes do Uruguai". Recurso Declaratório interposto pela República Argentina contra o Laudo Arbitral ditado por este ente em 20 de dezembro de 2005 |
| 02/2006 | "Impedimentos Impostos à Livre Circulação pelas Barreiras em Território Argentino de Vias de Acesso às Pontes Internacionais Gral. San Martin e Gral. Artigas". Recurso de Revisão apresentado pela República Argentina contra a decisão do Tribunal Arbitral Ad Hoc, de 21 de junho de 2006. |
| 01/2007 | Controvérsia entre o Uruguai e a Argentina sobre "Proibição de importação de Pneumáticos Remodelados procedentes do Uruguai", a respeito da solicitação de pronunciamento sobre excesso na aplicação de medidas compensatórias |
| 01/2008 | Divergência sobre o cumprimento do Laudo N° 1/05, iniciada pela República Oriental do Uruguai (Art. 30 Protocolo de Olivos)". |
| **Findings of the Ad Hoc Arbitration Tribunals** |  |
| 09/2006 | constituído com competência para decidir a respeito da Controvérsia apresentada pela República Oriental do Uruguai à República Argentina sobre "Omissão do Estado Argentino em Adotar Medidas Apropriadas para Prevenir e/ou Fazer Parar os Impedimentos Impostos à Livre Circulação pelas Barreiras em Território Argentino de Vias de Acesso às Pontes Internacionais Gral. San Martin e Gral. Artigas que unem a República Argentina com a República Oriental do Uruguai". |
| 10/2005 | , constituído com competência para decidir a respeito da Controvérsia apresentada pela República Oriental do Uruguai à República Argentina sobre "Proibição de Importação de pneumáticos remodelados". |
| Findings of the Ad Hoc Arbitration Tribunals under the Brasília Protocol |  |
| 01 (1999) | Laudo do Tribunal Arbitral Ad Hoc do MERCOSUL constituído para a controvérsia sobre os comunicados Nº. 37, de 17 de dezembro de 1997 e Nº 7, de 20 de fevereiro de 1998 do departamento de operações de comércio exterior (DECEX) da Secretaria de Comércio Exterior (SECEX): aplicação de medidas restritivas ao comércio recíproco. |
| 02 (1999) | Laudo do Tribunal Arbitral Ad Hoc do MERCOSUL Com competência para decidir a respeito da reclamação da República Argentina à República Federativa do Brasil, sobre subsídios à produção e à exportação de carne de porco. |
| 03 (2000) | Laudo do Tribunal Arbitral Ad Hoc do MERCOSUL constituído para decidir sobre a aplicação de medidas de salvaguarda sobre produtos têxteis (RES. 861/99) do Ministério de Economia e Obras e Serviços Públicos. |
| 04 (2001) | Laudo do Tribunal Arbitral Ad Hoc do MERCOSUL constituído para decidir sobre à  controvérsia entre a República Federativa do Brasil e a República Argentina sobre a aplicação  de medidas antidumping contra a exportação de frangos inteiros, provenientes do Brasil, (RES. 574/2000) do Ministério de Economia da República Argentina. |
| 05 (2001) | Laudo do Tribunal Arbitral Ad Hoc do MERCOSUL constituído com competência para decidir a respeito da controvérsia apresentada pela República Oriental do Uruguai à República Argentina sobre restrições de acesso ao mercado argentino de bicicletas de origem uruguaia. |
| 06 (2002) | Laudo do Tribunal Arbitral Ad Hoc do MERCOSUL constituído com competência para decidir a respeito da controvérsia apresentada pela República Oriental do Uruguai á República Federativa do Brasil sobre proibição de importação de pneumáticos remodelados (remolded) procedentes  do Uruguai. |
| 07 (2002) | Laudo do Tribunal Arbitral Ad Hoc do MERCOSUL constituído com competência para decidir a respeito da controvérsia apresentada pela República Argentina á República Federativa do Brasil sobre obstáculos ao ingresso de produtos fitossanitários argentinos no mercado brasileiro. A não incorporação das Resoluções GMC Nº. 48/96, 87/96, 149/96, 156/96 e 71/98 impede sua entrada em vigência no MERCOSUL |
| 08 (2002) | Laudo do Tribunal Arbitral Ad Hoc do MERCOSUL constituído com competência para decidir na controvérsia entre a República do Paraguai e a República Oriental do Uruguai sobre a aplicação do "IMESI" (Imposto Específico Interno) à comercialização de cigarros. |
| 09 (2003) | Laudo do Tribunal Arbitral Ad Hoc do MERCOSUL constituído com competência para decidir na controvérsia entre a República Argentina e a República Oriental do Uruguai sobre a incompatibilidade do regime de estímulo à industrialização de lã, outorgado pelo Uruguai estabelecido pela Lei Nº. 13.695/68 e decretos complementares com a normativa MERCOSUL que regula a aplicação e utilização de incentivos no comércio intrazona. |
| 10 (2005) | Laudo do Tribunal Arbitral Ad Hoc do MERCOSUL constituído com competência para decidir na controvérsia entre a República Oriental do Uruguai e a República Federativa do Brasil sobre medidas discriminatórias e restritivas ao comércio de tabaco e produtos derivados do tabaco. |
| Advisory Opinions |  |
| 01 /2007 | "Norte S.A. Imp. Exp. c/ Laboratórios Northia Sociedade Anônima, Comercial, Industrial, Financeira, Imobiliária e Agropecuária s/ Indenização de Danos e Prejuízos e Lucro Cessante", petição encaminhada pela Corte Suprema de Justiça da República do Paraguai, a respeito dos autos do processo do Juizado de Primeira Instância no Cível e Comercial da Primeira Vara da jurisdição de Assunção |
| 01/2008 | Sucessão Carlos Schnek e outros com o Ministério de Economia e Finanças e outros. Cobrança de pesos", petição encaminhada pela Suprema Corte de Justiça da República Oriental do Uruguai a respeito dos autos do processo do Juizado de Direito no Cível da 1ª vara IUE 2-32247/07. |
| 01/2009 | "Frigorífico Centenário S.A. c/ Ministério de Economia e Finanças e outros. Cobrança de pesos. IUE: 2-43923/2007". Petição encaminhada pela Suprema Corte de Justiça da República Oriental do Uruguai a respeito dos autos do processo do Juizado de Primeira Instância da 2ª Vara Cível. |
| Resolutions |  |
| 1/2008 | do Tribunal Permanente de Revisão a respeito da Apresentação Processual do Pronunciamento Prévio introduzido pela República Argentina no âmbito do Assunto Nº. 1/2008 "Divergência sobre o Cumprimento do Laudo Nº. 1/05, iniciada pela República Oriental do Uruguai (Art. 30 do Protocolo de Olivos)". |
| 1/2009 | da Presidência no marco da Opinião Consultiva Nº1/2008 petição encaminhada pela Suprema Corte de Justiça da Republica Oriental do Uruguai a respeito dos autos do processo do Juizado de Primeira Instância da 1ª Vara Cível "Sucessão Carlos Schnek e outros com o Ministério de Economia e Finanças e outros. Cobrança de pesos IUE: 2-32247/2007" com relação a admissão da solicitação. |
| 2/2009 | da Presidência no marco da Opinião Consultiva Nº1/2009 petição encaminhada pela Suprema Corte de Justiça da Republica Oriental do Uruguai a respeito dos autos do processo do Juizado de Primeira Instância da 2ª Vara Cível "Frigorífico Centenário S.A. c/ Ministério de Economia e Finanças e outros. Cobrança de pesos" com relação a admissão da solicitação. |
| 3/2009 | da Presidência no marco da Opinião Consultiva Nº1/2009 petição encaminhada pela Suprema Corte de Justiça da Republica Oriental do Uruguai a respeito dos autos do processo do Juizado de Primeira Instância da 2ª Vara Cível "Frigorífico Centenário S.A. c/ Ministério de Economia e Finanças e outros. Cobrança de pesos" com relação a suspensão do prazo. |

**2.2.2.1 MeDSM and good governance**

Despite the fact that Mercosur’s dispute settlement mechanism is entitled to deal with any controversy emanating from the interpretation, implementation or compliance of all Mercosur’s norms, it has so far only dealt with trade disputes or trade related disputes. However, nothing seems to exclude the possibility that MeDSM addresses the topics of good governance, rule of law, democracy, human rights.

Given the absence of an academic literature dealing with the question of whether MeDSM can deal with good governance matters, some interviews of experts were conducted.[[3]](#footnote-3) The preliminary findings confirm the argument that there is no impediment for the MeDSM to deal with human rights matters, and that this would be a question of political will of Mercosur’s member-states. On the likehood of such development, the interviewed experts were sceptical. Although they acknowledge that member-states agreed on a definition of Fundamental Rights on Mercosur by the means of Decisions CMC 28 and 64 from 2010, the decisions, on their opinion, cannot be characterized as a normative instrument of human rights as they do not list which are the rights referred to and do not establish normative standards of human rights protections. The decisions are therefore a first step, but they would have to be complemented by a Charter of Fundamental Rights in order for Mercosur (and MeDSM) to deal with human rights matters.

The question of the Charter raises in itself the question of the necessity of a further development of MeMSD into a Regional Court, already mentioned above. But, as Prof.Ricardo Alonso Garcia, from the Universidad Complutense de Madrid, and present on the VII Meeting of the ‘Dialogue Between the Supreme Courts of Mercosur member-states’, in September 2009, stated: “It is better to have a Court without a Charter of Fundamentals Rights than a Charter without a Court” [free translation by author].[[4]](#footnote-4)

Other challenges were raised by the interviewed, such as the compatibility between Mercosur and the Inter-American system (such as for the case of the European Union and European system of protection of human rights); they were uncertain about the desirability of Mercosur to deal with human rights; some were concerned that a Mercosur Court to deal with human rights could created more uncertainty at the domestic level, and weaken the important) Inter-American system.

**2.3. Membership statuses and enlargement**

Mercosur has two types of membership: full members and associate members. The original full members are Argentina, Brazil, Paraguay and Uruguay. The Treaty of Asunción (Art.20) allows for the accession of any member-state of the Latin American Integration Association (LAIA/ALADI) as full members, conditioned to the unanimous approval by Mercosur member-states. Since the conclusion of the Protocol of Ushuaia in 1998, applicants must also commit to the defence and promotion of democracy.

As of July 2011, the only member-state which formally applied for full membership and was accepted was Venezuela. Venezuela signed a Treaty of Accession on the 04/07/2006 but this has not yet entered into force given that Paraguay has not yet ratified it. Argentina ratified on the 14/02/2007 and Uruguay on the 30/08/2007. Ratification in Brazil took place only on the 04/03/2010 having being delayed due to criticism by the opposition on the democratic credentials of Chavez regime as already discussed. In addition to Venezuela, Ecuador and Bolivia are expected to join as full members in the near future, but have so far not signed any treaty of accession yet. A working group on the accession of Bolivia was created in 2007 after the solicitation of President Evo Morales (CMC Decision 01/07).

Mercosur associated members have a free trade agreement with Mercosur and participate as observers in all organs; despite the lack of formal right to vote, their role cannot be underestimated in the creation of consensus. As of July 2011 Mercosur associated member-states are Bolivia, Chile, Peru, Colombia and Ecuador.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Full Member-states** | http://upload.wikimedia.org/wikipedia/commons/thumb/1/1a/Flag_of_Argentina.svg/20px-Flag_of_Argentina.svg.png[Argentina](http://pt.wikipedia.org/wiki/Argentina) (1991) | http://upload.wikimedia.org/wikipedia/commons/thumb/0/05/Flag_of_Brazil.svg/20px-Flag_of_Brazil.svg.png[Brasil](http://pt.wikipedia.org/wiki/Brasil) (1991) | http://upload.wikimedia.org/wikipedia/commons/thumb/2/27/Flag_of_Paraguay.svg/20px-Flag_of_Paraguay.svg.png[Paraguai](http://pt.wikipedia.org/wiki/Paraguai) (1991) | http://upload.wikimedia.org/wikipedia/commons/thumb/f/fe/Flag_of_Uruguay.svg/20px-Flag_of_Uruguay.svg.png[Uruguai](http://pt.wikipedia.org/wiki/Uruguai) (1991) | http://upload.wikimedia.org/wikipedia/commons/thumb/0/06/Flag_of_Venezuela.svg/20px-Flag_of_Venezuela.svg.png [Venezuela](http://pt.wikipedia.org/wiki/Venezuela) (in process of acession) |
| **Associate Member States** | http://upload.wikimedia.org/wikipedia/commons/thumb/4/48/Flag_of_Bolivia.svg/20px-Flag_of_Bolivia.svg.png [Bolívia](http://pt.wikipedia.org/wiki/Bol%C3%ADvia) (1996) | http://upload.wikimedia.org/wikipedia/commons/thumb/7/78/Flag_of_Chile.svg/20px-Flag_of_Chile.svg.png [Chile](http://pt.wikipedia.org/wiki/Chile) (1996) | http://upload.wikimedia.org/wikipedia/commons/thumb/c/cf/Flag_of_Peru.svg/20px-Flag_of_Peru.svg.png [Peru](http://pt.wikipedia.org/wiki/Peru) (2003) | http://upload.wikimedia.org/wikipedia/commons/thumb/2/21/Flag_of_Colombia.svg/20px-Flag_of_Colombia.svg.png [Colômbia](http://pt.wikipedia.org/wiki/Col%C3%B4mbia) (2004) | * [Equador](http://pt.wikipedia.org/wiki/Equador)   (2004) |

**2.4. Mercosur international agreements with 3rd parties**

Mercosur has concluded agreements with many countries and other regional organisations as it can be seen in the table 3 below. As already mentioned, the first agreement Mercosur concluded with a third part was the Inter-institutional Agreement with the European Commission of 1992. In its first ten years of existence, in addition to the agreements concluded with the European Communities/European Union (after the 1992 Inter-institutional Agreement the European Communities and Mercosur concluded a Framework Agreement in 1995, and are negotiating a free trade agreement since 1999), Mercosur had only concluded agreements with other Latin American countries, mostly with its own associated members and members of the Andean Community. It was only in the beginning of the 21st that Mercosur external relations expanded towards other regions of the world. As already mentioned, especially after ‘left turn’ in Mercosur member-states governments, Mercosur began to conclude agreements with a range of developing countries. The content of these agreements regarding good governance is analyzed in session 3.a below.

Table 3: Mercosur agreements with third countries/group of countries

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Date Signature** | **Type of agreement** | **Date in force** | **Partner** | **Reference to good gov, rule of law, human rights or democracy** |
| 1992 | Inter-Institutional |  | European Community |  |
| 15/12/1995 | Framework | 01/07/1999 | European Communities + Member states | YES |
| 25/06/1996 | FTA | 01/10/1996 | Chile | YES |
| 17/12/1996 | FTA | 28/02/1997 | Bolivia (CAN) | YES |
| 16/04/1998 | Framework | 16/04/1998 | Andean Community | YES |
| 28/06/1999 | Memorandum Understanding | 28/06/1999 | Republic of Guyana | YES |
| 28/06/1999 | Memorandum Understanding | 28/06/1999 | Trinidad y Tobago | YES |
| 15/12/2000 | FTA | 15/12/2000 | South Africa | no |
| 05/07/2002 | Econ Compl | 05/01/2006 | Mexico | no |
| 17/06/2003 | Framework | - | India | no |
| 25/01/2004 | PTA | 01/06/2009 | India | no |
| 07/07/2004 | Framework | - | Egypt | no |
| 18/10/2004 | FTA | 2005 | Colombia, Ecuador, Venezuela (CAN) | YES |
| 26/11/2004 | Framework | 29/04/2010 | Marroco | no |
| 16/12/2004 | PTA | - | Southern African Customs Union (SACU) | no |
| 10/05/2005 | Framework | - | Gulf Cooperation Council | no |
| 25/08/2005 | FTA | 2005/2006 | Peru (CAN) | YES |
| 08/12/2005 | Framework | 08/12/2005 | Israel | no |
| 20/07/2006 | Framework | - | Pakistan | no |
| 15/12/2006 | Political dialogue | 15/12/2006 | Russia | no |
| 24/09/2007 | Memorandum of Understanding | 24/09/2007 | Singapore | no |
| 18/12/2007 | **FTA** | **Isr-Uru 23/12/09** Par 24/03/10 Bra 03/04/10 | Israel | no |
| 30/06/2008 | Framework | - | Jordan | no |
| 30/06/2008 | Framework | - | Turkey | no |
| 15/12/2008 | PTA | - | SACU | no |
| 23/07/2009 | Memorandum of Understanding | 23/07/2009 | South Korea | no |
| 02/08/2010 | FTA | - | Egypt | no |
| 16/12/2010 | Political Dialogue | 16/12/2010 | Turkey | YES |
| 16/12/2010 | Framework | - | Syria | no |
| 16/12/2010 | Framework | - | OLP | no |
| 16/12/2010 | Memorandum Understanding | 16/12/2010 | Cuba | no |
| Under negotiation | coop | - | Canada | - |
| Under negotiation | FTA | - | Dominican Republic | - |
| Under negotiation | FTA | - | Gulf Cooperation Council | - |
| Under negotiation | FTA | - | SACU | - |
| Under negotiation | FTA |  | Mexico | - |
| Under negotiatiion | FTA | - | South Korea | - |
| Under negotiation | trade | - | Panama | - |
| Under negotiation | - | - | Central American Integration System (SICA) | - |
| Under negotiation | - | - | CARICOM | - |
| Under negotiation | FTA | - | European Union | - |

1. **Mapping governance transfer**

**a.Framework: Prescription & policy**

Mercosur normative contains many prescriptions and policies in the areas of good governance, rule of law, human rights and democracy. This session contains a brief description of the main trends of the processes of institutionalization of these four areas in Mercosur, and a list in chronological order of these norms. The norms included are the Treaties, Protocols, Political Declarations and CMC Decisions, as they are considered to cover the most relevant. Each norm which contains reference to the four areas is described in the excel tables in the Annex.

**3.a.1.Protection and promotion of democracy**

The instruments of protection and promotion of democracy can be grouped in two main topics: democratic conditionality, i.e. the necessity that member-states have democractic regimes (which is typically restricted to political and legal norms, and might contain sanctions) and electoral observation (which might be done *ad hoc* or via specific institutions created for that aim, as the case of the Mercosur Democracy Observatory). Mercosur’s framework regarding democracy also includes norms and policies for the promotion of a legitimate *regional* governance, such as channels of representations (such as Parlasur and the Consultation Forum for Municipalities, Federal States, Provinces and Departments of Mercosur) and participation (such as the Economic and Social Advisory Forum) but these are not included in this analysis since it is directed at the *regional* level and not at the member-states level or third-parties.

As I have elaborated elsewhere (Ribeiro Hoffmann 2004), democracy was a common value among Mercosur founding member-states, and was seen as a precondition to integration in the Southern Cone. However, Mercosur’s constituent treaty, the Treaty of Asuncion, signed in 1991, did not contain any norm on democratic conditionality. There is no reference to it in the Preamble, in Article 1, which refers to the principles and objectives, or Article 20, which refers to the accession of new members (and states that it is open to any member-state of ALADI). The first reference to democracy in Mercosur was in the Declaration of the Second Presidential Meeting of Mercosur of June 1992. A second declaration, the Declaration of the Democratic Agreement of July 1996, stated more clearly the idea of democratic conditionality and specified sanctions in the case of disruptions in the democratic order. A democratic clause was finally formally incorporated to the Treaty of Asuncion by the means of the Protocol of Ushuaia, signed in July 1998, and in force since January 2002. The Protocol foresees, after a period of consultation, the suspension the rights of the member-state in which the democratic order was broken in the participation of the integration organs, followed by the suspension of the rights and duties of the Treaty of Asuncion and its protocols.

The process of institutionalization of the democratic conditionality in Mercosur can be linked with two crises which occurred in Paraguay; the first in 1996, after a failed coup attempt by General Oviedo, and the second, in 1999, after the assassination of Vice-President Argana and resignation of President Cubas. As advanced by historical institutionalism, crisis seems to have been the main driving force behind the institutionalization of democratic conditionality in Mercosur. Path dependency also plays a role to the extent what once in force; the respect to democratic conditionality was difficult to be avoided even in face of conflicting interests, as the debate on the process of accession of Venezuela indicates. Despite the economic and geopolitical interests of Mercosur member-states to include Venezuela as indicated in the conclusion of the Accession Treaty in July 2006, the governments of Brazil and Paraguay faced difficulties in the process of ratification of the treaty on the grounds of the democratic credentials of President Chavez government. The Brazilian congress ended up ratifying it in March 2010; one of the arguments advanced by the government in its campaign against the opposition was that, as stated by the Brazilian Foreign Ministry at the time, Celso Amorin, (independently of the evaluation of democracy in Venezuela) “living in coexistence with democracies in Mercosur will help strengthening democracy in Venezuela”[[5]](#footnote-5) in an inversion of the logic of the expected working of the democratic conditionality. The still pending ratification in Paraguay seems to indicate that Paraguayan people do put a value in the democratic conditionality; after all, it did play a role in the democratic stability of the country.

Table 4: Mercosur norms regarding democracy

|  |  |  |  |
| --- | --- | --- | --- |
| **Date** | **Type of norm** | **Title** |  |
| 1992 | Political Declaration | Declaration of the 2nd Presidential Meeting of Mercosur | Dem cond |
| 1996 | Political Declaration | Declaration of the Democratic Agreement | Dem cond |
| 24/07/1998 | Protocol | Protocol of Ushuaia | Dem cond |
| 19/06/2005 | CMC Decision 14/05 | Aprobación de la adhesión de la República de Colombia a la Declaración Presidencial sobre el compromiso democrático en el MERCOSUR | Dem cond |
| 19/06/2005 | CMC Decision 15/05 | Aprobación de la adhesión de la República del Perú al Protocolo de Ushuaia sobre el compromiso democrático en el MERCOSUR, la República de Bolivia y la República de Chile y a la Declaración Presidencial sobre el compromiso democrático en el MERCOSUR | Dem cond |
| 19/06/2005 | CMC Decision 16/05 | Aprobación de la adhesión de la República Bolivariana de Venezuela al Protocolo de Ushuaia sobre el compromiso democrático en el MERCOSUR, la República de Bolivia y la República de Chile y a la Declaración Presidencial sobre el compromiso democrático en el MERCOSUR | Dem cond |
| 08/12/2005 | CMC Decision 36/05 | Misión de Respaldo al Proceso Electoral en la República de Bolivia | Elecopral obs |
| 21/07/2006 | CMC Decision 24/06 | Observatorio de la Democracia del MERCOSUR | Electoral obs |
| 18/01/2007 | CMC Decision 05/07 | Observatorio de la Democracia del MERCOSUR | Electoral obs |

In addition to the framework to protect and promote democracy within its member-states, Mercosur has also engaged in governance export towards third countries by the means of the inclusion of commitments with democratic values in its international agreements. All agreements with the EC/EU and the associated members contain references to democratic values. Except from these, only two other agreements contain references to democracy and human rights; the one concluded with Trinidad and Tobago in 1999, and with Turkey, in 2010. Excluding the cases of the EC/EU, which could be considered a case of governance import rather than export, both other agreements are only Memorandums of Understandings, not Framework Agreements or agreements including trade liberalization. The references to democracy and human rights in the agreement with Trinidad and Tobago are in the Preamble, and with Turkey they are more specific, in the third article. Despite these two cases, Mercosur governance export to non-South American countries can be evaluated therefore as almost insignificant.

I have argued elsewhere (Ribeiro Hoffmann 2011) that Mercosur’s increasing proactive in governance export to third countries can be attributed to the changing pattern of Brazilian foreign policy, which has been of relaxing the absolute priority to non-interference in the domestic affairs of other countries and engaging itself more actively in governance export in the areas of democracy and human rights. The timing of the inclusion of commitments related to governance export coincides with the increase of Brazilian foreign policy proactive behavior. It should be emphasized, however, that the incorporation of these commitments, and therefore of Mercosur governance export, has been consensual; they were never controversial and there is no reported opposition from the third parties to incorporate them. This is valid even for the case of Venezuela despite the controversies around President Chavez government democratic credentials. It was also argued that this is also in line with Brazilian foreign policy style of consensual hegemony.

As regards electoral observation, Mercosur first activity was an *ad hoc* mission sent to the elections in Bolivia in 2005 when the country faced a political crisis (Domingues 2008). In 2008, the Observatory of Democracy was created as an internal organ of Parlasur, with the aim of contributing to the strengthening of the objectives stated in the Protocol of Ushuaia. The Observatory’s role is to follow the electoral processes in the member-states, to coordinate the Electoral Observation Missions (when solicited by the member-state), to elaborate reports as demanded by Parlasur or the Common Market Council, and to elaborate an Annual Report of its activities. The Observatory should also advance activities and studies related to the consolidation of the democracy in the region, including indicators and statistics. Its internal regulations were approved in 2009 (Mercosur/PM/SO/DISP 07/2009) (http://www.parlamentodelmercosur.org/innovaportal/v/4525/1/secretaria/observatorio\_da\_democracia.html)

It is difficult to evaluate the main driving forces behind the creation of electoral observation; this seems to be a standard instrument used by many international institutions. Once there was an agreement on democratic conditionality, electoral observation followed as in a process of path dependency.

**3.a.2. Human Rights**

As stated by Borzel et all 2010 op cit: “three different generation of human rights can be distinguished: the first generation of human rights contains fundamental civil and political rights which protect the individual from state excess and entitles the individual to political participation. The second generation extends this protection to economic, social and cultural rights the state has to guarantee. A so-called third generation goes back to the engagement of the developing countries since the 1970s including a broad spectrum of human rights such as groups and collective rights, right to development or the right to a healthy environment.” (p.9-10)

Mercosur has established norms, policies and institutions in a broad range of rights such as: the civil rights of free access to justice and rights of women; the social rights of social security and health; the economic rights such as a right to work and social security; the cultural rights of education and cultural life, and finally; the collective rights of environment and cultural heritage (guarani language). The respect of human rights is included in the democratic clauses in international agreements such as the case of democracy just seen, but have received specific treatment as well. The process of institutionalization of some of these rights is seen below.

**3.a.2.1) Cultural Rights**

Education was one of the first areas of human rights included in the process of integration; the Meeting of Ministers of Education was created already in 1991 by the Treaty of Asuncion. Most initiatives so far refer to the recognition of diplomas and cooperation in the primary and secondary school, and higher education levels. Two of the most important current policies are the Mercosur Trajectories (Caminhos do Mercosul) and the project Bilingual Frontier Schools (Escolas de Fronteira). Mercosur Trajectories is in place since 2003; it selects and give prizes to the best essays from high schools students from the full and associated member-states about topics which are selected yearly, and seek to increase the perception of a regional identity. The Bilingual Frontier Schools were first implemented in the Brazilian-Argentinian frontier and were expanded to the mutual frontiers between Argentina, Bolívia, Colombia, Paraguay, Uruguay and Venezuela (<http://www.sic.inep.gov.br/>). Another important project was the creation of the University of Latinamerican Integration (UNILA) in 2009; legally it is a Brazilian university but it is bilingual and the aim is have both students and academic staff from all Mercosur member-states. It started its activities in 2009 and the target is to achieve 10.000 students and 500 academic staff in 5 years (http://www.unila.edu.br/).

Still within cultural rights, Culture itself was included a bit later; the first meeting of Ministers of Culture took place in 1996. Until the late 2000s cooperation in this area was however rather superficial, consisting mainly of political declarations. In 2007/2008, many new initiatives were advanced, and a blog was created via the Brazilian Ministry as a temporary instrument until funding is allocated to the creation of a definitive webpage (<http://blogs.cultura.gov.br/mercosur/>). A Declaration of Cultural Integration was signed in June 2008 stating, among others, the willingness to include the areas of production and distribution of cultural products in the scope of cultural cooperation, what would imply a stronger link with the economic and commercial aspects of the regional integration. In the same year, the 17th December was denominated the Mercosul Cultural Day, and the Project Sello Cultural began to be implemented. Sello is a customs instrument that allows the free movement of cultural goods and services within Mercosur, giving them the temporary status of importation in order to facilitate their transit for exhibitions and events. Another important project was the creation of the so-called Cultural Intineraries (Intinerarios Culturais), in which research and incentives for the turism sector are developed around historical ‘trails’ such as the mate tea trade (Rota da Erva-Mate), the jesuits missions in the guaranis indiginous groups (Rota das Missões Jesuíticas Guaranis), the trail of gauchos (Caminho do Gaúcho) and the guaranis cultural univese (Universo Cultural Guarani) (Coutinho, Kfuri and Ribeiro Hoffmann 2008).

The institutionalization of education and culture at the regional level has been an endogenous process. External actors have had no relevant role in it; cooperation has been led mainly by the member-states (full and associated) ministries of culture in a phenomenon that has been characterized as a new practice of foreign policy where ministries engage in foreign policy making bypassing the ministries of foreign affairs. While this has already been the case for countries such as the US, it is quite new for Latin American countries. Advocacy groups such as academic associations and civil society groups engaged in cultural activities have also been active in this process (Lima 2002, Pinheiro 2007)

**3.a.2.2) Social and economic rights[[6]](#footnote-6)**

A debate about the impact of Mercosur to social rights was present from early on as organized labour followed the process of integration closely. The first institution created to deal with it, already in 1991, was the Work Subgroup on Labor issues (SG10) (Tullo 1998). A Multilateral Agreement of Social Security was concluded in 1997. In 1998, Mercosur Presidents issued the Sociolaboral Declaration, which deals with a number of individual social rights such as non-discrimination, equality of treatment and opportunities, protection of migrant and frontier labor, unemployment protection and social security, among others . In the same year the Sociolaboral Commission was created to support the implementation of these rights. The inclusion of the sociolaboral dimension in Mercosur was supported by the European Union as stated in the financing agreement of 2004 (CMC Dec 11/04).

In 2000, the Meeting of Ministries of Social Development was created (CMC Dec 61/00), and since the mid-2000s the promotion of social rights gained preeminence in Mercosur in the context of the changing paradigm of economic development advanced by the new left governments mentioned above. In 2005, the Permanent Secretary of Social Mercosur and the project SOMOS Mercosur were created. SOMOS Mercosur is a public initiative, launched by the ProTempory Presidency of Uruguay in 2005 with the support of the Friedrich Ebert Stiftung – Uruguay (FESUR), which has the objective the development of a citizenship in the process of regional integration, generating new spaces for the civil society and local governments to debate, formulate demands and participate in the decision-making processes. (<http://www.somosmercosur.org/>).

The Social Institute was created in 2007 (CMC Dec 03/07) and its structure, budget and strategic plan were approved in a number of norms in 2010 and 2011 (<http://www.mercosur-social.org/>). The Commission for the Coordination of Mercosur Member-states Ministries of Social Affairs (CCMASSM) was also created in 2010 (CMC Decs 45.46.47/10).

The EU 2004 agreement and the support of FESUR to Somos Mercosur suggests that the EU has had a role in the institutionalization of sociolaboral rights in Mercosur, but local social movements and organized civil society were also actively engaged. The political priority accorded to social rights by the new left governments is also an essential variable.

**3.a.2.3) Women rights**

Women rights are part of a broad iniatives and policies related to gender, which have been discussed its civil, cultural and social rights components (Ribeiro Hoffmann 2011). Gender began to be directly addressed in Mercosur in 1998 when the Specialized Meeting of Women (Reunion Especializada de la Mujer – REM) was created. Before REM, gender was only occasionally addressed in Economic and Social Consultive Forum (created in 1996); in the Work Subgroup on Labor issues - SG10 (created in 1991), and in the Work Subgroup on Health - SG11 (created in 1996). As supported by the analysis of Michelle Ratton on the participation of civil society in Mercosur, this channel was not appropriated for the participation of transversal civil society interests such as gender because FCES representatives were from *national* business associations and labor union organizations (Ratton 2007). This changed over time as other groups demanded the right to participate; by 1994, consumers, cooperatives, insurance companies and some universities were included, and stakeholders for environmental and gender issues started to mobilize, also from a regional (and not exclusively national) base.

A number of events[[7]](#footnote-7) organized by social groups and NGOs led to the creation of the network ‘Women and Mercosur’ in 1995. The network’s strategies initially focused on the influence of Mercosur on employment, an agenda inspired by the regional efforts towards the (UN) Beijing World Conference, but later broadened their scope to include other topics such as political participation and culture. In 1997, women labor unions created the ‘Women’s Commission the Southern Cone Union Head Offices Coordinating Agencies’ in order to “encourage the active participation of female workers in Mercosur, send updated information to all unions and women departments and secretariats, disseminate the contents of the Social Charter[[8]](#footnote-8) (later called the Social and Employment Declaration of Mercosur, 1998), formulate policies of affirmative action for women in the region along the lines with the commitment with the Beijing Action Platform, adopt measures to eliminate all forms of discrimination against women, and ratify the International Labor Organization (ILO) Agreements” (Espino 2008:2-3). In December the same year, representatives of the Women’s Affairs Offices of Mercosur member-states and Chile, supported by the United Nations Development Fund for Women (UNIFEM), met in an International Seminar on Mercosur and Women and drafted a proposal for gender issues to be formally represented in the integration process.

As a result of these developments REM was created on July 22 1998 by the Resolution nr. 20 of the Common Market Group. Espino argues convincingly that the creation of REM was “clearly an achievement of the activities of the women’s movement” (Espino 2008:4). According to the resolution, REMs main objective is to establish a space for the analysis of the women conditions in Mercosur member-states’ legislation. As stated in its homepage (http://www.mercosurmujeres.org/), originally REM was directly subordinated to Common Market Group (GMC), but in 2002 it was transferred to the competences of the Foro de Consulta e Concertação Política (FCCP) together with other meetings of non-economic character. REM is composed by representatives from member-states and associated states, the coordination of the respective National Sessions, and observers where organizations of the civil society with a regional character can participate.

Despite the importance of REM, Espino argues that one should not take for granted the effectiveness of institutions, and that it was not until the XIII REM Meeting in 2005 that participation of civil society was broadened, pushed by the Brazilian and Uruguayan delegations. From then on civil society organizations such as the Network Women Mercosur acquired a stronger role in REM (Espino 2008:4-5, and Historia from REM site). Regarding the specific role of REM three decisions taken by the Common Market Council (CMC) in 2000 are of particular relevance; Dec 37/2000 in which Mercosur Council demanded REM to conduct a broad study of Mercosur’s impact in gender; Dec 79/2000 in which it called member-states to conduct studies and approve special laws on inter-familiar violence, and; Dec 83/2000 in which it called member-states to promote the integration and harmonization of national databases in order to allow for the development of regional indicators which can be used to the formulation of public policies related to the situation of women, and Dec 84/2000 in which it demands Mercosur forums to incorporate a gender perspective in its activities. In 2006, the Council demanded REM to coordinate and follow a campaign to the information and prevention of traffic of people, especially women and children (Dec 12/2006). In 2008, the Council issued a recommendation for member-states to identify common criteria to promote a Campaign related to the International Day for the Elimination of Violence against Women (25 November) (Rec 4/2008), and a recommendation for member-states to incorporate a gender perspective in their national policies and programs related to HIV-AIDS and in the works of Mercosur which deal with health and HIV-AIDS (Rec 5/2008). After the creation of REM, other institutions addressing social issues were created in Mercosur which have also addressed gender issues occasionally, such as the Sociolaboral Commission (1999), the Specialized Meeting on Familiar Agriculture (2004), the Meeting on High Authorities of Human Rights (2004), the SOMOS Mercosur (2005) and the Social Institute (2007).

The institutionalization of gender and women rights in Mercosur has been a complex process in which international institutions such as the UN and the EU, states and non-states actors have played a role. For the specific case of REM, the role of local social movements and organized civil society actors was essential.

**3.a.2.4) Human rights mainstreaming?**

In addition to all these norms and policies in specific human rights, the most important developments in the institutionalization of human rights in Mercosur are the conclusion of the Protocol on Human Rights in 2005, and the creation of the Institute of Human Rights Public Policies in 2010. The institute evolved from the Mercosur Meeting of Human Rights High Authorities, on one hand (top-down), and the Observatory of Human Rights Public Policies in Mercosur, a coalision of organizations from the civil society,[[9]](#footnote-9) on the other hand (bottom-up), both created in 2004. The creation of the Institute is indicative of how human rights have become a defining concept in Mercosur, such as democracy. In an extraordinary development, Decisions CMC 28 and 64 from 2010 advance a concept of Fundamental Rights to Mercosur.[[10]](#footnote-10)

The activities of these new institutions might imply a broad process of human rights mainstreaming in the region. This broad process of institutionalization of human rights norms in Mercosur seems to have had a different history from the area of democracy or specific rights as the ones analyzed above. The most powerful actors behind the broad process institutionalization of human rights have been the organized civil society and epistemic communities (Haas 1992). Legal scholars of Mercosur member-states have constituted a community from early on. They also interact in the context of the Interamerican System of Human Rights and are organized around academic and specialized conferences and meetings.

Table 5: Mercosur norms regarding human rights

|  |  |  |  |
| --- | --- | --- | --- |
| **Date** | **Type of norm** | **Title** | **HRs Type** |
| 17/12/1991 | CMC Decision 07/91 | Reunion de Ministros de Educacion | Cultural - education |
| 27/06/1992 | CMC Decision 06/92 | Recomendacion sobre Ratificacion de la Convencion Interamericana sobre Restituicion Interantional de Menores | Civil |
| 27/06/1992 | CMC Decision 07/92 | Plan Trienal para el sector Educacion en el context del Mercosur | Cultural - education |
| 05/8/1994 | CMC Decision 04/94 | Protocolo de integracion educative y reconocimiento de certificador, titulos y studios de nivel primario y medio no tecnico | Cultural - education |
| 05/08/1995 | CMC Decision 02/95 | Reunion de Ministros de Cultura | Cultural – culture |
| 05/08/1995 | CMC Decision 03/95 | Reunion de Ministros de Salud | Social - health |
| 05/08/1995 | CMC Decision 04/95 | Protocolo de Integracion Educativa sobre reconocimiento de Titulos Universitarios para la prosecucion de Estudios de Post-Grado en las universidades de los paises del Mercosur | Cultural - education |
| 05/08/1995 | CMC Decision 07/95 | Protocolo de Integracion Educativa y Revalida de Diplomas, CErtificados, Titulos y reconocimiento de studios de nivel medio tecnico | Cultural - education |
| 16/12/1996 | CMC Decision 08/96 | Protocolo de Integracion Educacional para el Proseguimiento de Estudios de Post-Grado en las Universidades de los Estados Partes del Mercosur | Cultural - education |
| 16/12/1996 | CMC Decision 09/96 | Protocolo de Integracion Educacional para Formacion de Recursos Humanos de novel de post-grado entre los Estados Partes de l Mercosur | Cultural - education |
| 16/12/1996 | Protocol | Protocolo de Integración Cultural del MERCOSUR | Cultural - Culture |
| 18/06/1997 | CMC Decision 03/97 | Protocolo de Admision de Titulos y grados universitarios para el ejercicio de actividades academicas en los estados partes del mercosur | Cultural - education |
| 15/12/1997 | CMC Decision 19/97 | Acuerdo Multilateral de Seguridad Social del Mercosur | Social – social sec. |
| 15/12/1997 | CMC Decision 25/97 | Proroga de la vigencia del Plan TRienal para el sector Educaion en el context del Mercosur | Cultural - education |
| 15/12/1997 | CMC Decision 26/97 | Anexo al Protocolo de Admision de Titulos y Grados Universitarios para el Ejercicio de actividades academicas en los estados partes del Mercosur | Cultural - education |
| 15/06/1999 | CMC Decision 04/99 | Acuerdo de Admision de Titulos y Grados universitarios para el ejercicio de actividades academicso en los estados partes del Me | Cultural - education |
| 15/06/1999 | CMC Decision 05/99 | Acuerdo de Admision de Titulos y Grados universitarios para el ejercicio de actividades academicso en los estados partes del Mercosur, Rep de Bolivia y Rep Chile | Cultural - Education |
| 29/06/2000 | CMC Decision 06/00 | Complementacion del Plan General de Cooperacion y Coordinacion Reciproca para la Seguridad Regional en MAteria de Trafico de Menores | Civil |
| 29/06/2000 | CMC Decision 07/00 | Complementacion del Plan General de Cooperacion y Coordinacion Reciproca para la Seguridad Regional en MAteria de Trafico de Menores ente el MERCOSUR , la Republica de Bolivia y la Republica de Chile | Civil |
| 15/12/2000 | Agreement | Acuerdo sobre Beneficio de Litigar sin Gastos y la Asistencia Jurídica Gratuita entre los Estados Partes del MERCOSUR | Civil |
| 15/12/2000 | Agreement | Acuerdo sobre Beneficio de Litigar sin Gastos y la Asistencia Jurídica Gratuita entre los Estados Partes del MERCOSUR, la República de Bolivia y la República de Chile | Civil |
| 15/12/2000 | CMC Decision 49/00 | Acuerdo sobre el Beneficio de la Justicia Gratuita y Asistencia Juridica Gratuita entre los Estados Partes del Mercosur | Civil |
| 15/12/2000 | CMC Decision 50/00 | Acuerdo sobre el Beneficio de la Justicia Gratuita y Asistencia Juridica Gratuita entre los Estados Partes del Mercosur, la Republica de Bolivia y la Republica de Chile | Civil |
| 15/12/2000 | CMC Decision 61/00 | Creacion de la Reunion de Ministros y Autoridades de Desarrollo Social del Me | Social |
| 22/06/2001 | CMC Decision 02/01 | Acuerdo Marco sobre Medio Ambiente en el Me | Collective - environ |
| 06/12/2002 | CMC Decision 26/02 | Acuerdos emanados de la XXIII Renion de Ministros de Educacion del ME, Rep Bol y Rep Chile | Cultural - education |
| 17/12/2003 | CMC Decision 19/03 | Reunion de Ministros de Medio Ambiente | Collective - environ |
| 08/07/2004 | CMC Decision 11/04 | Convenio de Financiacion Me-UE para el proyeto dimension sociolaboral del ME | Social |
| 08/07/2004 | CMC Decision 14/04 | Protocol Adicional al Acuerdo Marco sobre Medio Ambiente del Me en material de Coop y assistencia ante Emergencias ambientales | Collective - environ |
| 14/12/2004 | CMC Decision 40/04 | Creación de la reunión de altas autoridades sobre Derechos Humanos del MERCOSUR | all |
| 19/06/2005 | CMC Decision 09/05 | Acuerdo de Adision de Titulos, Certificados y Diplomas para el ejercicio de la ensenanza del Espanol y Protugues como lenguas extranjeras en los Estados partes | Cultural - education |
| 19/06/2005 | CMC Decision 17/05 | Protocolo de Asunción sobre compromiso con la promoción y protección de los derechos humanos del MERCOSUR | all |
| 20/06/2005 | Protocol | Protocolo de Asunción sobre Compromiso con la Promocion y Protección de los Derechos Humanos del MERCOSUR | all |
| 09/12/2005 | Protocol | Protocolo Constitutivo del Parlamento del MERCOSUR | all |
| 21/07/2006 | CMC Decision 06/06 | Mecanismo para la implementacion del PRotolco de integracion educative y reconocimiento de certificados, tituls y studios de nivel primario y medio no tecnico | Cultural - education |
| 21/07/2006 | CMC Decision 11/06 | Sede Permanente del MErcosur Cultural | Cultural - culture |
| 21/07/2006 | CMC Decision 19/06 | Instituto Social del MERCOSUR | Social |
| 15/12/2006 | CMC Decision 35/06 | Incorporación del guaraní como idioma del MERCOSUR | Collective – cultural heritage |
| 18/01/2007 | CMC Decision 03/07 | Instituto Social del MERCOSUR | Social |
| 28/06/2007 | CMC Decision 28/07 | Acuerdo de Sede entre la Rep del Paraguay y el ME para el funcionamento del Instituto Social | Social |
| 30/06/2008 | CMC Decision 17/08 | Acuerdo sobre la creacion e implementacion de un sistema de acreditacion de carreras universitarias para el reconocimiento regional de la calidad academica de las respctivas titulaciones en el Me y estados asociados. | Cultural - education |
| 30/06/2008 | CMC Decision 20/08 | Adhesion de la Rep del Ecuador al Protcolo de Integracion Educativa y reconocimiento de certifacos, titulos y studios de nivel primario y medio no tecnico | Cultural - education |
| 30/06/2008 | CMC Decision 24/08 | Fondo de Financiamento del Sector Educacional del Mercosur | Cultural - education |
| 30/06/2008 | CMC Decision 25/08 | Acuerdo entre los Estados Partes del MERCOSUR y Estados Asociados sobre Cooperación Regional para la Protección de los Derechos de Niños, Niñas y Adolecentes en Situación de Vulnerabilidad | Civil |
| 30/06/2008 | CMC Decision 26/08 | Acuerdo para la Implementación de Bases de Datos Compartidas de Niños, Niñas y Adolescentes en Situación de Vulnerabilidad del MERCOSUR y Estados Asociados | Civil |
| 15/12/2008 | CMC Decision 33/08 | Sello Mercosur Cultural | Cultural - culture |
| 15/12/2008 | CMC Decision 37/08 | Estructura del Instituto Social del MERCOSUR | Social |
| 15/12/2008 | CMC Decision 38/08 | Presupuesto del Instituto Social del MERCOSUR Para el Ejercicio 2009 | Social |
| 15/12/2008 | CMC Decision 39/08 | Comisión de Coordinación de Ministros de Asuntos Sociales del MERCOSUR | Social |
| 15/12/2008 | CMC Decision 46/08 | Adhesion de la Rep Bolivariana de Venezuela al Acuerdo sobre la creation e implementacion de un sistema de acreditacion de carreras universitarias | Cultural - education |
| 24/07/2009 | CMC Decision 02/09 | Fondo para la Convergencia Estructural del MErcosur Proyecto de Implementacion de la Biblioteca UNILA y del Instituto Mercosur de Estudios Avanzados, de la Universidade Federal de la Integracion LAtinoamericana | Cultural - education |
| 24/07/2009 | CMC Decision 08/09 | Designacion del Director Ejecutivo del Instituto Social del Mercosur | Social |
| 24/07/2009 | CMC Decision 14/09 | Instituto de Políticas Públicas de Derechos Humanos | all |
| 07/12/2009 | CMC Decision 29/09 | Procedimientos y criterios para la implementacion del acuerdo de admission de titulos y grados universitarios para el ejerciio de actividades acadeimicas en los estados partes | Cultural - education |
| 07/12/2009 | CMC Decision 30/09 | Criterios communes de concesion del Sello del Mercosur Cultural | Cultural - culture |
| 07/12/2009 | CMC Decision 31/09 | Presupuesto del Instituto Social del Me para el ejerciocio 2010 | social |
| 07/12/2009 | CMC Decision 32/09 | Acuerdo de Sede entre la República Argentina y el Mercado Común del Sur (MERCOSUR) Para el Funcionamiento del Instituto de Políticas Públicas de Derechos Humanos | all |
| 02/08/2010 | CMC Decision 12/10 | Estructura del Instituto de Políticas Públicas de Derechos Humanos | all |
| 02/08/2010 | CMC Decision 13/10 | Presupuesto del Instituto de Políticas Públicas de Derechos Humanos para el Ejercicio 2011 | all |
| 02/08/2010 | CMC Decision 20/10 | Adhesión de la República del Perú al Protocolo de Integración Cultural del MERCOSUR | Cultural - culture |
| 02/08/2010 | CMC Decision 21/10 | Protocol de Integracion Educativa y reconocimiento de certificados, titulos y studios de nivel primario/fundamental/basico y medio/secundario entre los estados partes del Me y estados asociados | Cultural - education |
| 16/12/2010 | CMC Decision 28/10 | Criterio de representación ciudadana | Fundamental rights |
| 16/12/2010 | CMC Decision 38/10 | Fondo MERCOSUR Cultural | Cultural - culture |
| 16/12/2010 | CMC Decision 45/10 | Comisión de Coordinación de Ministros de Asuntos Sociales del MERCOSUR | Social |
| 16/12/2010 | CMC Decision 46/10 | Presupuesto del Instituto Social del MERCOSUR para el Ejercicio 2011 | Social |
| 16/12/2010 | CMC Decision 47/10 | Disposiciones para el funcionamiento del Instituto Social del MERCOSUR | Social |
| 16/12/2010 | CMC Decision 64/10 | Estatuto de la Ciudadanía del MERCOSUR Plan de Acción | Fundamental rights |
| 16/12/2010 | CMC Decision 65/10 | Unidad de Apoyo a la Participación Social | Social |
| 16/12/2010 | CMC Decision 67/10 | Plan Estratégico de Acción Social del MERCOSUR | Social |
| 28/06/2011 | CMC Decision 05/11 | Estructura Organica y reglamento interno de la reunion de ministros de educacion y los organos dependientes del secotr educativo del Me | Cultural - education |
| 28/06/2011 | CMC Decision 07/11 | Designacion del Diretor Ejecutivo del Instituto Social del Merocsur | Social |
| 28/06/2011 | CMC Decision 08/11 | Aportes para el Presupuesto del Instituto Social | Social |
| 28/06/2011 | CMC Decision 12/11 | Plan Estrategico de Accion Social | Social |
| 28/06/2011 | CMC Decision 20/11 | Plan de Accion del setor Educativo del Me 2011-15 | Cultural - education |

**3.a.3. Rule of Law**

Norms included under the topic of rule of law related to a number of sub-issues such as: procedures related to the Dispute Settlement Mechanism (CMC Decisions 28/94, 17/98, 23/00, 37/03, 23/04, 30/04, 26/05, 30/05, 02/07); norms on judicial cooperation on civil, commercial, labour and administrative matters; preliminary measures; extradition and norms incorporation.

One norm that deserves special attention is CMC Decision 24/04, which deals with the promotion of rule of law. The decision creates the Mercosur Centre for the Promotion of the Rule of Law to be located in Asuncion in the office of the Permanent Tribunal. The objectives of the Centre are to analyse and support the development of the State, democratic governability, and all aspects related to the process of regional integration via the organisation of conferences, publication of reports and exchange programs, among others. The centre has already an internet site, but it is under construction (<http://www.cmpedmercosur.org/>). The fact the Konrad Adenauer Foundation in Montevideo had a program to support the consolidation of the rule of law in Latin America could indicate an influence of external actors in the process, as they have supported initiatives from the Secretariat to promote conferences and a public debate about governance and the rule of law in Mercosur. [[11]](#footnote-11)

Table 6: Mercosur norms regarding rule of law

|  |  |  |
| --- | --- | --- |
| **Date** | **Type of norm** | **Title** |
| 27/06/1992 | CMC Decision 02/92 | Cronograma de medidas que aseguran el cumplimiento de los objetivos del Tratado de Asuncion |
| 27/06/1992 | CMC Decision 05/92 | Protocolo de Cooperation y Asistencia Jurisdiccional en Material Civil, Comercial, Laboral y administrativa |
| 05/08/1994 | CMC Decision | PROTOCOLO DE BUENOS AIRES SOBRE JURISDICCION INTERNACIONAL EN MATERIA CONTRACTUAL |
| 17/12/1994 | CMC Decision 28/94 | Tribunales Ad –Hoc del Protocolo de Brasilia |
| 25/06/1996 | CMC Decision 02/96 | Protocolo de Asistencia Juridica Mutua en Asuntos Penales |
| 18/06/1997 | CMC Decision 05/97 | ACUERDO COMPLEMENTARIO AL PROTOCOLO DE COOPERACIÓN Y ASISTENCIA JURISDICCIONAL EN MATERIA CIVIL, COMERCIAL, LABORAL Y ADMINISTRATIVA |
| 15/12/1997 | CMC Decision 09/97 | ACUERDO COMPLEMENTARIO AL PROTOCOLO DE MEDIDAS CAUTELARES |
| 10/12/1998 | CMC Decision 14/98 | Acordo sobre Extradição entre os Estados Partes do MERCOSUL |
| 10/12/1998 | CMC Decision 15/98 | Acordo sobre Extradição entre o MERCOSUL, a República da Bolívia e a República do Chile |
| 10/12/1998 | CMC Decision 17/98 | Reglamento del Protocolo de Brasilia para la Solución de Controversias |
| 29/06/2000 | CMC Decision 23/00 | Relançamento do Mercosul - Incorporação da Normativa Mercosul |
| 29/06/2000 | CMC Decision 23/00 | Relançamento do Mercosul - Aperfeiçoamento do Sistema de Solução de Controvérsias do Protocolo de Brasília |
| 29/06/2000 | CMC Decision 34/00 | Grupo de Trabalho sobre Assuntos Consulares e Jurídicos, no âmbito do Foro de Consulta e Concertação Política do Mercosul |
| 15/12/2000 | CMC Decision 55/00 | Vigência Simultânea da Normativa Mercosul Incorporada pelos Estados Partes |
| 05/07/2002 | CMC Decision 07/02 | Enmienda al Protocolo de Cooperación y Asistencia Jurisdiccional en Material Civil, Comercial, Laboral y Administrativa entre los Estados Partes del MERCOSUR |
| 05/07/2002 | CMC Decision 08/02 | Acuerdo de Cooperación y Asistencia Jurisdiccional en Materia Civil, Comercial, Laboral y Administrativa entre los Estados Partes del MERCOSUR y la República de Bolivia y la República de Chile |
| 06/12/2002 | CMC Decision 20/02 | Aperfeiçoamento do Sistema de Incorporação da Normativa Mercosul ao Ordenamento Jurídico dos Estados Partes |
| 06/12/2002 | CMC Decision 27/02 | Acuerdos emanados de la XXIII Reunión de Ministros de Justicia del MERCOSUR, de la República de Bolivia y de la República de Chile |
| 17/06/2003 | CMC Decision 07/03 | Aplicación directa de la normativa MERCOSUR a los ordenamientos jurídicos de los estados partes |
| 17/06/2003 | CMC Decision 08/03 | Procedimiento para la derogación de normas MERCOSUR |
| 17/12/2003 | CMC Decision 37/03 | Reglamento del Protocolo de Olivos para la Solución de Controversias en el MERCOSUR |
| 08/07/2004 | CMC Decision 23/04 | Procedimiento para atender los casos excepcionales de urgencia, a que hace referencia el artículo 24 del Protocolo de Olivos para la Solución de Controversias en el MERCOSUR |
| 08/07/2004 | CMC Decision 24/04 | Creación del Centro MERCOSUR de Promoción de Estado de Derecho |
| 14/12/2004 | CMC Decision30/04 | Reglas modelo de procedimiento para los tribunales arbitrales AD HOC del MERCOSUR |
| 19/06/2005 | CMC Decision 06/05 | Coordinación de la reunión especializada de defensores públicos oficiales del MERCOSUR |
| 19/06/2005 | CMC Decision 10/05 | Reunión especializada de ministerios públicos del MERCOSUR |
| 08/12/2005 | CMC Decision 26/05 | Procedimiento Especial del Protocolo de Olivos para la Solución de Controversias originadas en Acuerdos emanados de Reuniones de Ministros del MERCOSUR |
| 08/12/2005 | CMC Decision 30/05 | Reglas de Procedimiento del Tribunal Permanente de Revisión |
| 18/01/2007 | CMC Decision 02/07 | Regulamento do procedimento para solicitação de opiniôes consultivas ao Tribunal Permanente de Revisão pelos tribunais superiores de Justiça dos Estados Partes do MERCOSUL |
| 30/06/2008 | CMC Decision 21/08 | Adhesión de la República del Ecuador al Acuerdo de Cooperación y Asistencia Jurisdiccional en Materia Civil, Comercial, Laboral y Administrativa entre los Estados Partes del MERCOSUR, la República de Bolivia y la República de Chile |
| 30/06/2008 | CMC Decision 22/08 | Adhesión de la República del Ecuador al Acuerdo de Asistencia Jurídica Mutua en Asuntos Penales entre los Estados Partes del MERCOSUR, la República de Bolivia y la República de Chile y al Acuerdo Complementario al Acuerdo de Asistencia Jurídica Mutua en Asuntos Penales entre los Estados Partes del MERCOSUR, la República de Bolivia y la República de Chile |
| 30/06/2008 | CMC Decision 23/08 | Adhesión de la República del Ecuador al Acuerdo de Extradición entre los Estados Parte del Mercosur y la República de Bolivia y la República de Chile |
| 15/12/2008 | CMC Decision 31/08 | Foro de Asuntos Tributarios |
| 15/12/2008 | CMC Decision 35/08 | Seguimiento y Actualización del Acervo Normativo del MERCOSUR |
| 15/12/2008 | CMC Decision 47/08 | Grupo de Alto Nivel sobre la Relación Institucional entre el Consejo del Mercado Común y el Parlamento del MERCOSUR |
| 16/12/2010 | CMC Decision 49/10 | Propuesta MERCOSUR de Régimen de Solución de Controversias para los Acuerdos celebrados entre el MERCOSUR y los Estados Asociados en el ámbito del MERCOSUR |

**3.a.4. Good Governance**

As regards to good governance, this seems to have been the less addressed of the four areas being analysed. The few existing norms refer to transparency in public service recruitment and procurement. No particular driving force could be found for the inclusion of these topics in Mercosur normative, it could indicate a process of path dependency.

Table 7: Mercosur norms regarding good governance

|  |  |  |
| --- | --- | --- |
| **Date** | **Type of norm** | **Title** |
| 09/12/2004 | CMC Decision 27/04 | Protocolo de contrataciones públicas del MERCOSUR |
| 14/12/2004 | CMC Decision 39/04 | Reunión especializada de organismos gubernamentales de control interno |
| 14/12/2004 | CMC Decision 55/04 | Reglamentación del Protocolo de Contrataciones Públicas del MERCOSUR |
| 09/12/2005 | Protocol | Protocolo Constitutivo del Parlamento del MERCOSUR |
| 24/07/2009 | CMC Decision 05/09 | Procedimiento para la Realización de Concursos para la Contratación de Funcionarios del MERCOSUR |
| 02/08/2010 | CMC Decision 23/10 | Revisión del Protocolo de Contrataciones Públicas |
| 16/12/2010 | CMC Decision 66/10 | Prórroga del plazo para la revisión del Protocolo de Contrataciones Públicas del MERCOSUR |
| 28/06/2011 | CMC Decision 09/11 | Proroga del Pralzo para la Reivison del Protocolo de Contrataciones Publicas del Mercosur |

**b.Measures: Adoption & Application**

This session on Measures: Adoption & Application focus on some few examples of effective pursue of implementation and compliance of democracy and human rights norms to allow for an assessment of the relations between the Mercosur’s frameworks and measures in the area of legitimate governance.

**b.1. Paraguay democratic stability**

As I have elaborated elsewhere (van der Vleuten and Ribeiro Hoffmann 2010), during the two Paraguayan crisis, the main driving forces of the implementation of the commitment to defend and promote democracy in Mercosur member-states were the ideational interests pursued by the EU, the US and the OAS, and the material and ideational interests of the regional power, Brazil.

**b.2. Electoral observation missions**

The first electoral observation mission implemented by Mercosur was the one sent to Bolivia during a political crisis in 2005. President Morales solicited it amid fears that the elections could be manipulated (CMC Decision 36/05). After the creation of the Observatory of Democracy missions were sent to Bolivia in January 2009[[12]](#footnote-12) and to Brazil in October 2010.[[13]](#footnote-13) The implementation of electoral observation missions seems to follow a process of path dependency, no other particular driving force was found.

**b.3. Culture and Education**

The Common Market Council approved in June 2008 (CMC Dec 07/08) resources from the Structural Funds (FOCEM) for the implementation of project from the Historical Itineraries ‘Development of competitive Touristic Products in the Integrated Tourist Trail Iguazu Missiones, a tourist attraction of Mercosur’.[[14]](#footnote-14)

Another project which received funding from FOCEM (CMC Dec 02/09) was the Project ‘Implementation of the library from the Federal University of Latinamerican Integration, Universidade Federal de la Integracion Latinoamericana - UNILA) and its institute, IMEA (Instituto Mercosur de Estudios Avanzados). [[15]](#footnote-15)

The stronger driving forces behind the creation of UNILA were the Education ministries and the academic network of Mercosur experts in the context of Fomerco (epistemic communities). The implementation of cultural projects were advanced by the ministries of culture (Coutinho, Kfuri and Ribeiro Hoffmann 2008).

**b.4. Social Institute**

The Social Institute had its first Executive Director appointed in 2009 (CMC Dec 08/09): Maria Helena Rivalora – from Paraguay), and the second in 2011 (CMC Dec 07/11): Christian Adel Mirza – from Uruguay). The Institute had budgets approved for the years of 2009 (CMC Dec 38/08), 2010 (CMC Decision 31/09) and 2011 (CMC Decisions 46/10 and 08/11). In February 2011, the Institute started a new phase with the incorporation of a technical staff from all member-states. [[16]](#footnote-16)

The creation of the Social Institute and the implementation of its activities were promoted as an agenda of the left governments and the civil society (Interviews).

**b.5. Institute of Human Rights Public Policies**

The Institute of Human Rights Public Policies had its first Executive Secretary, Victor E.Abramovich, appointed in April 2010 and its first budget approved for 2011 (CMC Dec 13/10) .[[17]](#footnote-17) The creation of the Institute was promoted by epistemic communities and the civil society of Mercosur member-states (Interviews).

**c. Summary of the mapping**

It was seen in the two previous sessions (a.Framework and b.Measures) that Mercosur issued a number of norms and created a range of instruments in the areas of democracy, human rights, rule of law and good governance.

The protection and promotion of democracy was addressed primarily by the development of the norm of democratic conditionality. This norm evolved with time from the creation of Mercosur, and was legally codified in the Protocol of Ushuaia in 1998. Democratic conditionality was also addressed in measures, such as in the context of the crisis of Paraguay in 1996 and 1999, and in the process of accession of Venezuela. Other measures of protection and promotion of democracy are the creation of the Observatory of Democracy, created in 2006, and the organization of electoral observation missions such as in Bolivia (2009) and Brazil (2010).

Mercosur has addressed many aspects of Human Rights. It has developed a framework and created measures regarding first, second and third generation of human rights. The examples analyzed covered education, culture, social, economic rights and women rights, in which both norms and institutes and programs were created. The paper advanced the argument that Mercosur is under a process of human rights mainstreaming, for which the conclusion of the Protocol of Human Rights in 2005 and the creation of the Observatory of Human Rights Public Policy in 2010 are of central relevance.

As regards the rule of law, in addition to the development of the dispute of settlement mechanism, Mercosur has addressed norms on judicial cooperation on civil, commercial, labour and administrative matters, preliminary measures and extradition and norms incorporation.

Mercosur has not addressed good governance as it has the other three areas, but some norms regarding transparency in public recruitment and procurement were established.

1. **Explaining governance transfer**

The ‘Research Guidelines for Case Study Authors’ suggests case studies authors to look at a broad range of approaches in International Relations, and to focus “on three levels of potential explanatory factors, namely actors and factors at the international, regional and national levels, and to investigate what role they play for the different dimensions of governance transfer by regional organizations” (Borzel et all 2010: 16). At the international level examples are external nation-states, other international organizations, transnational actors. At the regional level, the regional organization itself, regional politics, sub-regional organizations, regional transnational actors, regional structural factors. At the domestic level, domestic politics of member-states is the main variable. Approaches referred to were the literature on policy diffusion, historical institutionalism, rational approaches, and constructivism among others.

The analysis conducted for Mercosur supports the argument that Mercosur governance transfer is explained by different set of variables for different issue areas, and different stages of transfer (framework and measures). The main findings are summarized in the two tables below.

Table 8: Explaining the process of institutionalization of norms in Mercosur (framework)

|  |  |
| --- | --- |
| **Norm** | **Stronger explanatory variables** |
| Promotion and protection of democracy within ME | Crisis, path dependency, OAS |
| Promotion and protection of democracy towards 3rd countries | Brazilian foreign policy |
| Electoral observation missions | Path dependency |
| Cultural rights (education and culture) | Education and culture ministries, left governments |
| Social and economic rights | EU, left governments, domestic civil society |
| Gender | UN, EU, domestic civil society |
| HR mainstreaming | EU, US, OAS, epistemic communities of legal scholars |
| Rule of Law | EU, Mercosur Secretariat |
| Good governance | Path dependency |

Table 9: Explaining the implementation of norms in Mercosur (measures)

|  |  |
| --- | --- |
| **Measure** | **Stronger explanatory variables** |
| Democratic cond: Paraguay | US, EU, Brazil |
| Electoral missions | Path dependency |
| Culture projects (Iguazu Missiones Historical Itinerary) | Ministries of culture |
| Education Projects (Unila) | Brazilian Education Ministry and epistemic communities |
| Social Institute | Left governments, civil society |
| HR Institute | Civil society, epistemic communities |

Despite the ‘esquizofreny’ of the process of governance transfer by Mercosur, some broad common points can be drawn in regard to the three levels of analysis. One main conclusion is that, overall, Mercosur governance transfer to its own member states has been a endogenously driven process, in other words, external actors and ‘out-of –area’ organizations have played a smaller role that what is perhaps usually expected from south-south regional organizations. One exception is the Organization of American States (OAS), which despite including the United States, has had a significant influence in the issue-areas of democracy and human rights. So far there is not sign of competition between Mercosur and the OAS in these issue-areas; they have played complementary and mutual supportive roles in the crisis of Paraguay for instance. However, interviews conducted about the possibility of Mercosur to consider cases of human rights in its dispute settlement mechanism pointed to concerns on the part of the human rights epistemic communities in that regard. The United Nations has been relevant especially in the case of gender, but its role has been complementary, and not in competition with Mercosur. The European Union (including EU and EUMSs policies and bilateral/birregional activities) has continuously supported Mercosur’s engagement in governance export, such as in the cases of promotion of democracy, human rights and the rule of law.

Regarding the endogenous driving forces, national governments of member-states have played an important role, both at the presidential level (democracy promotion in Paraguay and Venezuela) and the ministerial level (such as in the case of Culture and Education). The political inclination of federal governments was found to be relevant in the prioritization of Mercosur in the national foreign policies and in the use of Mercosur to promote cooperation in other areas beyond free trade. In that sense, the turn to the left has been a major driving force of governance export in Mercosur. Brazilian foreign policy interests have been relevant in the cases democracy promotion in the case of Paraguay and Venezuela, and in the case of democracy promotion towards third countries. For these cases, a link between the promotion of good governance and other foreign policy objectives can be found, but otherwise, the cases of governance promotion driving by national and transregional civil societies support the argument that Mercosur has promoted governance for the intrinsic and normative values of these norms, and not for their instrumental value in achieving other objectives. The secretariat seems to have been relevant only in the case of the promotion of the rule of law, supporting the argument that at the institutional level, Mercosur’s remains strongly intergovernmental, it does not have supranational powers, formally or informally.

1. <http://www.iirsa.org/> [↑](#footnote-ref-1)
2. In 19 January 2007 Mercosur member-states signed a Protocol introducing some modifications to the Olivos Protocol in case Mercosur increases the number of its member-states, but it is not yet in force. [↑](#footnote-ref-2)
3. Interviews done per email, among others, with Adriana Dreysin de Klor, Marcia Nina Bernardes and Flavia Piovesan. [↑](#footnote-ref-3)
4. <http://www.diariojudicial.com/contenidos/2009/09/02/noticia_0010.html> (accessed on 10/11/2011) [↑](#footnote-ref-4)
5. Estado de São Paulo, 21/11/2007. [↑](#footnote-ref-5)
6. Areas such as the right to unemployment were not yet included. [↑](#footnote-ref-6)
7. Such as a panel during the Regional Preparatory Forum of NGOs towards the Beijing Summit held in Mar del Plata in 1994, a panel during the forum of NGOs held in Beijing in 1995, a seminar organized by UNIFEM, FLACSO and IDB in Sao Paulo in 1995, a seminar organized by the Women’s National Council of Argentina with the support of the European Union in Buenos Aires in 1995. See also Historia in REM internet site (http://www.mercosurmujeres.org/) [↑](#footnote-ref-7)
8. Espino notes that the Social and Employment Declaration of Mercosur was inspired by the chapter on Fundamental Social Rights of Workers of European Economic Community, and a result of a proposal submitted by SubGroups 10 and 11 and that it was an important step forward in securing equal rights and access of employment regardless of race, nationality, skin colour, gender, sexual orientation, age, political beliefs, political or union-related opinion, economic situation or any other social or family related circumstance (Espino 2008). [↑](#footnote-ref-8)
9. The observatorty is integrated by 12 organisations from the civil society, namely: Centro de Estudos Legais e Sociais (CELS), o Serviço Argentino de Direitos Humanos (SADH) e o Centro de Direitos Humanos e Ambiente (CEDHA), da Argentina; o Instituto Sou da Paz, Themis-Assessoria Jurídica e Estudos de Gênero e Conectas Direitos Humanos, do Brasil; o Instituto Paraguaio de Direitos Humanos (IPDH), Comissão de Igrejas para Ajuda de Emergência (CIPAE) e Raízes para o Fortalecimento e o Desenvolvimento, do Paraguai; o Serviço Paz e Justiça (SERPAJ), o Instituto Solidariedade e Desenvolvimento (ISODE) e o Instituto de Estudos Legais e Sociais do Uruguai (IELSUR), pelo Uruguai http://www.observatoriomercosur.org.uy/pr/observatorio.php [↑](#footnote-ref-9)
10. This development and the (potential) creation of a regional Court would strengthen the possibility for Mercosur’s dispute settlement mechanism to rule on human rights. Proposals for a Supreme Court have been debated for a long time, pushed by Paraguay and Uruguay, and by legal scholars in the context of the Dialogue Between the Supreme Courts of Mercosur member-states, and the **Permanent Forum of Supreme Courts of Mercosur, created in 2004, but it was taken to a higher political level** with the “Political Agreement for the Consolidation of MERCOSUR and Relevant Proposals” from 18th Oct 2010. The Court, however, would demand changes in the Brazilian and Uruguayan Constitutions, an extremely challenging development especially in the case of Brazil; the Argentinean and Paraguayan already accept that possibility. [↑](#footnote-ref-10)
11. http://www.kas.de/rspla-uru/ [↑](#footnote-ref-11)
12. Report available at <http://www.parlamentodelmercosur.org/innovaportal/v/4018/1/secretaria/relatorio_da_miss%C3%A3o_de_observac%C3%A3o_eleitoral_do_mercosul_sobre_as_eleic%C3%B5es_gerais_e_referendos_auton%C3%B4micos_do_estado_plurinacional_da_bolivia_celebrado_em_6_de_dezembro_de_2009.html> [↑](#footnote-ref-12)
13. Report available at http://www.parlamentodelmercosur.org/innovaportal/v/4992/1/secretaria/observatorio\_da\_democracia\_do\_parlasul\_apresenta\_relatorio\_das\_eleic%C3%B5es\_no\_brasil.html [↑](#footnote-ref-13)
14. Available at http://www.mercosur.int/focem/archivo.php?a=d6e3eadaebd6e895dbded8ddd6e895e5e7e4eedad8e9e4e895e5d9dba4e5d6e7d6dcead6eea4d8e4db95a5a8a2a5ad95e5e7e4d9ead8e9e4e895e9eae7dee8e9ded8e4e8a3e5d9dbd6075&x=14140b2&y=1b1b0b9 [↑](#footnote-ref-14)
15. Available at http://www.mercosur.int/focem/archivo.php?a=95a2a999aa95a7549a9d979c95a754a4a6a3ad9997a8a3a754a4989a6396a695a79da06397a39a546561656454969da9a29da09562a4989a95034&x=d9d9078&y=efef08e [↑](#footnote-ref-15)
16. http://www.grupomontevideo.edu.uy/index.php?option=com\_content&view=article&id=598%3Apro-tempore-uruguaya-del-mercosur-2011-&catid=3%3Anewsflash&lang=es [↑](#footnote-ref-16)
17. http://www.mercosur.int/show?contentid=661&channel=secretaria#derechos [↑](#footnote-ref-17)