Politics of Regionalism: The European Union and Mercosur Cases Contrasted

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Abstract

The purpose of this work is to carry out a study of regional integration processes in political terms. In other words, although such processes underway in various parts of the world are or have been in principle of an eminently economic nature, they are conditioned by political factors of different kinds and make national and transnational political actors to agree and trade-off, mobilize resources, and solve in a shared framework the regional socio-economic issues that affect their domestic reality. Indeed, regional integration depends, in its origin and development, on far-reaching political decisions and institutions. In this context, regional integration —in the framework of contemporary international relations— is understood as a process by which various States form an extended political unit, without the member countries losing their essential original identity, to constitute a community with its own goals, representing the bloc as a whole. Thus, any integration process can surpass the status of classical international organizations, and it has the potential to broaden and deepen, but at the same time, it stops before reaching a stage that would imply the total fusion of its parties into a new sovereign whole. Thus, this paper aims to show the unique political entity of these regional communities, as well as to contribute to Comparative Politics and Law studies, by analyzing the cases of the European Union as the most developed example of Regionalism, and Mercosur, as a potential entity of the same category.

Keywords: regional integration, international relations, political entity, European Union, Mercosur.

Resumen

El propósito de este trabajo consiste en llevar a cabo un estudio de los procesos de integración regional en términos políticos. En otras palabras, si bien los procesos que se están produciendo en diversas partes del mundo son o han sido en principio de naturaleza eminentemente económica, están condicionados por factores políticos de diferente índole, y obligan a los actores políticos nacionales y transnacionales a ponerse de acuerdo y hacer concesiones, movilizar recursos y resolver en un marco compartido los problemas socioeconómicos regionales que afectan su realidad interna. Más aún, la integración regional depende, en su origen y desarrollo, de decisiones e instituciones políticas de largo alcance. En este contexto, la integración regional -en el marco de las relaciones internacionales contemporáneas- se entiende como un proceso mediante el cual varios Estados forman una unidad política ampliada, sin que los países miembros pierdan su identidad original esencial, para constituir una comunidad con objetivos propios, representando al bloque en su conjunto. Así, cualquier proceso de integración puede superar el estatus de los organismos internacionales clásicos, y tiene potencial de ampliación y profundización, pero al mismo tiempo se detiene antes de alcanzar una etapa que implique la fusión total de sus partes en un nuevo todo soberano. Así, este artículo pretende mostrar la singular naturaleza política de estas comunidades regionales, así como contribuir a los estudios de Política y Derecho Comparados, analizando los casos de la Unión Europea como el ejemplo más desarrollado de Regionalismo, y Mercosur, como entidad potencial de la misma categoría.

Palabras clave: integración regional, relaciones internacionales, entidad política, Unión Europea, Mercosur.

Introduction[2]

This paper aims to analyze the political nature of regional integration processes, trying to place the European Union and Mercosur in that categorization. Therefore, it is necessary to begin by conceptualizing the political nature of regional integration processes in the contemporary scenario. It is an issue that presents several edges to the analysis. First, the paper explores the definition of integration among States (usually from the same region), from a political perspective. Secondly, it shows the distinction between integration processes by the voluntary accession of States Parties and those that arose historically as a result of the imposition of a superpower or a supranational arrangement. Finally, it explores the issue of whether regional integration refers to an agreement that creates an international organization of an intergovernmental character, the prefiguration of a federation, or a new category of political entity, with differentiated institutional consequences. In this sense, it is interesting to highlight the development of the Integration Theory as an autonomous approach to the classical theories of international relations, which allows us to focus more precisely on the contemporary phenomenon of interstate regionalism (Vieira de Posada, 2005, pp. 235-290).

To undertake this issue, a political-institutional approach has been adopted. Based on the goals established in the founding and constitutive agreements of a regional integration process, both in letter and in spirit, we analyze their concurrence with the organizational

[2] It is noted that the content of this paper may be part of the doctoral thesis that the author is preparing as a candidate for Doctor in Legal Sciences at the Argentine Catholic University.

structure, the action plans, and the normative plexus designed for the achievement of these ends.

As a result of the survey carried out, the work ends with a series of conclusions, focusing on the prospects for South American regionalism.

Political Ontology of a Regional Integration Process

According to the dictionary of the Royal Spanish Academy, ontology is the part of metaphysics that deals with being in general and its transcendental properties. In Aristotelian terms, it is the study of the essence of things, beyond individual particularities. We can also speak of the "what it is" of a substance, its nature or essence, distinguishable from existential circumstances. In this sense, one of the ways to define such a question is given by the verification of *what* that entity is for, or again in Aristotelian terms, its "final cause."

Based on these concepts, although the processes underway in various parts of the world —with the European Union as the most developed model in contemporary times— are or have been in principle of an eminently economic nature, they are conditioned by political factors of various kinds, and drive national and transnational political actors to coordinate among themselves, mobilize resources, and solve in a shared framework the regional socio-economic problems that affect their domestic reality. Indeed, the economic factors involved in integration processes depend, in their origin and formation, on a transcendental political decision that gives rise to that process. Likewise, in the development and fulfillment of their ends, they are subject to a set of political measures and goals that influence the economic, social, and cultural aspects (Intal, 1985).

Thus, it is understood that **regional integration —within the framework of contemporary international relations— is a process by which various States form an enlarged political unit or polity, without losing their essential identity, to constitute a community with its own personality and goals, and representing the whole**. In this way, every process of integration is under permanent construction and deepens increasingly but, at the same time, it always stops, by definition, before reaching a stage that would imply the total fusion of its integral parts into a new sovereign whole. To illustrate this clearly, neither Germany, France nor Luxembourg have ceased to be sovereign nation states by the fact of integrating the European Union and fulfilling the economic and legal commitments established in the Community framework. The right of veto for essential communitarian issues, as well as the always possible exit from the process legally and peacefully —as shown by the example of the so-called "Brexit"— give evidence of the maintenance of the national sovereignty of the member states, beyond the political and economic consequences that the integration process may entail.

Integration is an idea-project to be carried out in a social and space environment that is no longer merely national or openly international, but regional, articulating around public and private agents. Its development requires the existence of an institutional system, with diverse functional organic structures. The degree of integration achieved by each project is measured both by the achievement of the purposes established in its constituent treaties, as well as by the effective fulfillment of the common rules made by the integrated decision-making process.

A fundamental issue remains to be defined, which is the efficient cause of the integration process in terms of the will that leads to partnership. A distinction can be made here between two types of integration among States (Aja Espil, 1973). On the one hand, there is **integration by coupling**, through the absorption of the parts by the whole (the former Soviet Union or the United States-Puerto Rico relationship, for example). This situation occurs with the absorption of weak and small States by larger and more powerful ones, until harmonization is reached in a common organization. Classical International Law would refer to such a process as a "merger of States," but, as far as it could result in a new autonomous international structure with broad political, legal, economic, and public powers, it could not be placed within the limits of Classical International Law. The concept of supranationalism would be more appropriate here, setting aside the traditional notion of sovereignty of the constituent parts (Aja Espil, 1973).

On the other hand, there is **integration by conjunction**, which results from the voluntary concertation by a group of States of a community interest that is distinguished from the addition of national interests. Countries wishing to achieve certain common ends associate among themselves, voluntarily submitting to rules that they agree upon. Understood in this way, integration —even if it is political— in a pluri-national sphere is not identical to the fusion of its constituent units. Also, Sáchica (1985) distinguishes the integration process from a "phenomenon of merger or incorporation" but does not reject the term "supranational" to refer to the autonomy of action of community bodies. Overall, integration is a process in which States converge according to common interests, even starting from diverse needs,

seeking, in the concurrence of their capacities, the enhancement of their viability as national entities, maintaining awareness of their sovereign personality. Aja Espil (1973) mentions as examples of this type of integration the cases of the then European Community and the Andean Group, to which I would add, Mercosur, a project still pending its full development.

Once the political dimension of the phenomenon of integration is admitted, the existence of another essential variable emerges: the legal one. Turning once again to Aristotle, let us recall the "formal cause" (what makes something what it is and nothing else) of the *polis* (polity), attributed to the existence of a legal order and public authority. Indeed, the political decisions that promote regional integration would not reach the reality on which they intend to operate if they did not have the essential legal instruments that transform political will into concrete, legally binding provisions. The exercise of that will comes originally from the States that are linked; but the organization created for such purpose also expresses itself with its voice, according to a formula of distribution of power typical of integration processes. A new decision-making center, with specific powers, will now have jurisdiction —albeit mediated— over the territorial scope of the member States. Such jurisdiction is recognized by member States in advance, giving this center the necessary powers to fulfill its functions. In the exercise of that power, and depending on the new community of interests that has been formed, the provisions of the founding treaties and those rules emanating from the institutions created for the organization, give rise to the formation of a community of law, an integrated one, which has its own object.

As it will be seen, if it is understood that the Community of States that emerges from a process of integration is a political and legal species —and therefore economic, and not vice versa— distinct from a federal State on one side, or an international organization on the other, it will be easily accepted that one of its key elements, i.e., the relationship between its legal order and its members, enjoys similar conditions of uniqueness.

The specificity of the "communitarian," as distinguished from both the merely international and the federal, as well as from the "supranational," is developed in the following section.

Political Typology of Regional Integration

Based on its Political-Legal Nature

The main criteria that the doctrine has proposed to explain the political-legal ontology of the entities arising from a process of integration, can be grouped into the following theoretical categories:

International Association

This position, quite widespread in intellectual and political sectors —where the British stand out— in the case of the EU, and areas generally skeptical of South American integration processes, considers that the integration process does not go beyond a more or

less complex model of cooperation, basically economic, directed by a fundamentally intergovernmental system of policy coordination, with very precise limits (Sotelo, 1994).

Objections to this position arise from the degree of integration already achieved by schemes of this nature, especially the EU, which exceeds that of any classical international organization. The alternation of intergovernmental and community institutions in a common decision-making process, and the characteristics of the order they create, make these organizations qualified by what they have as specific. That is, their bodies —which can become autonomous— and implementation rules (some of which are directly applicable in the Member States, with certain primacy or priority over national ones) enjoy features that go beyond the essence of mere international cooperation, overcoming the scope of binding rules in terms of Public International Law.

However, if the intention is not to deepen integration beyond the point it has reached —for example, by not extending the community mechanisms to other areas of public policies in the EU, or by not developing the embryonic community elements that are registered in Mercosur— then the risk is stagnation or, possibly, the dissolution of the model. In that sense, just as the "State" is an always-existing conceptual category, so "States" have historically had a mutable form and a finite existence, so the same can happen with the communities that group them.

Proto-Federalism

For the followers of this theory, like Orsello (1994), the integrative project must be designed to reach a federal model, with a common political and legal system to which

national governments would be subordinated, according to criteria of subsidiarity in the interest of citizens. This model is said to be opposed to the functionalist method, which aims to advance the integration process gradually and by sectors.

In Europe, there has been an intellectual dialectic around these opposites, which has resulted in the institutional transposition of compromise formulas at successive phases of the integration process. Mangas Martín (1992, p. 28) considered, for example, that, despite the formal absence in the text of the then Treaty on European Union (Maastricht, 1992) of the expression "federal vocation", the substance of the Treaty was already federal, given the political nature of the EU.

For Orsello (1994, p. 112), after the signing of this treaty Europe entered a "pre-federal" stage because although the European Communities contained features of both confederal and federal nature, there were elements that showed a development towards the federal perspective. In particular, this theory refers to the participation of the Member States in such Community management, even if the implementation of Community policies is carried out by an independent structure, and Community legislation prevails over national law. It adds that, although the Community already has "supranational" elements such as the effectiveness of its rules within domestic law and the majority rule in the Council of Ministers, a federal order has not yet been formed. Because the European Court of Justice has not yet been given the power to sanction within the States, none of the Community bodies have autonomous supra-State coercive powers.

It should be added that these constituent elements of the European Union have been entrenched in subsequent treaties: Amsterdam (1997), Nice (2001), and especially Lisbon (2007). This last Treaty, which entered into force on December 1, 2009 and is currently in force, increased the powers of the European Parliament, changed voting procedures in the Council, established a citizens' initiative procedure, made the post of President of the European Council permanent, established a new post of High Representative for Foreign Affairs and a new EU diplomatic service. In addition, the Treaty of Lisbon clarifies which powers are attributed to the EU, which to EU Member States, and which are shared.

However, from another standpoint, this "pre-federal" hypothesis is objected to, and it is argued that the **communitarian system is different from the federal one and does not necessarily tend towards it**. In the Italian doctrine, for example, Prof. Umberto Leanza considers that an integration process does not necessarily end in a federal State (personal communication, Centro Interdisciplinare di Studi Latinoamericani of the Universitá di Roma II - Tor Vergata, June 14, 1994)

In this regard, the following patterns of differentiation can be noted:

- The federal State is sovereign, and the federated states (such as each State of the Federative Republic of Brazil, the United States of America, the German Landers, or the Argentine Provinces) are autonomous. On the other hand, Community order is autonomous, but sovereignty —in its essence— remains with the States. That is, the transfer of powers that integration entails does not imply the transfer of sovereignty that occurs in federal systems. This distinction is seen in the European agreements, where certain devices show the survival of national sovereign power, such as the national veto on so-called "essential matters," or the right to withdraw from the EU.
- In the Union of States, the procedure of an international treaty is maintained for the revision of constituent texts (at least for substantial reforms). The formal nature of the Community's primary law (treaties) remains one of international law, although it nevertheless conforms to the constitutive act of a community based on the rule of law (Borchardt, 2016).
- In a federal State, the federal constitution is reformed according to a procedure that establishes the fundamental participation in the reform process of the national legislative branch where States or provinces have participation, but the unanimous ratification of local powers may not be a requirement. In some federal States – such as Argentina, for example – individual ratification by each of the local political units is not even required. In integration communities, the favorable decision of each Member State is necessary for the amendment of the founding treaties.

- The principle of subsidiarity, a pillar of the EU's decision-making structure, is frequently cited by proponents of pre-federal theory. However, this principle is not exclusive to federal systems but applies to all systems where there may be multiple levels of decision-making and division of powers. It has been well said, even by those who support the pre-federal thesis, that the inclusion of this principle in the Treaty on European Union has been carried out based on contrasting interpretations: "a minimum interference by the Community in the jurisdiction of the States, according to the British thesis; a progressive transfer of national powers to the Community, according to the French thesis, more in line with the federal perspective of the European Union" (Orsello, 1994, p. 582).
- Unlike federal States, citizenship of the European Union is a complement to and not a subrogation of national citizenship. And, although the Court of Justice of the EU (Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria, 1992) considers that in this matter the State jurisdiction must respect Community Law, only those who are already citizens of a Member State are entitled to EU citizenship (TEU, 2009, art. 8), a condition that is defined by the national law of the State concerned.
- A federal system could not have federations within it. Germany and Belgium in Europe; and Argentina and Brazil in South America are federal states. It should at least be admitted that they would be federations of different "degrees."

Community of States

Since the beginning of this work, it has been intended to highlight the *sui generis* character of the Community or Union of States that emerges from a process of regional integration. Following Aja Espil (1998), we consider that the category of "communitarian bodies of economic integration" (and not "interstate" agencies of integration) must be assigned to those bodies that are autonomous from national governments, have been transferred powers, and might have a direct linkage with the individuals of the States Parties.

Thus, there emerges a criterion that could be called **Integrationist** to characterize this new species of political organization. In addition to the differentiation guidelines that have been drawn up for federal systems, the following are some of its essential aspects:

- It is a public entity that has its decision-making system and legal order, with its institutional framework, its ruling, administrative and jurisdictional attributions, created by procedures of International Law and structured with guidelines of Constitutional Law, but substantially different from the classic international organizations, as well as from any of the States that have originated it.
- It is a system that combines —or can combine— community and intergovernmental subsystems for policymaking and consultation.

Because of these peculiarities, we could consider this category as an *aggiornamento* of the concept of **Confederation**. Indeed, as La Pergola (1993, p. 14) says, it is not the historical form of confederal union of independent states in their internal sphere, but a modern type of confederation. In it, the Union gives itself a legal order that can confer rights and impose obligations on the citizens of the States, who also have common citizenship. The

founding treaties, which acquire a level of fundamental law, define the scope of the Community sphere regulating inter-individual relations, as well as the regulation of relations between Member States and the institutional-decisional process. But even if the Community's ruling power is given priority for action, the component States retain the essence of sovereign political power (Mangas Martin, 1988, p. 53).

Based on its Scope and Consequent Institutional and Regulatory Structure

In this category, we find that there are processes where a purely cooperative conception predominates, which emphasizes the economic purpose, does not depart from the intergovernmental model in terms of its institutional organization, and makes regulations follow the classic guidelines of Public International Law for their incorporation into the States Parties. We refer to a cooperation model rather than a true integration model, as there is joint management of an agreement in pursuit of common interests that could lead to some degree of coordination of national policies. The North American Free Trade Agreement (NAFTA) signed in 1993, now the United States-Mexico-Canada Agreement (USMCA), is an example of this conception.

At the other end, there are theories that assume a so-called **supra-nationalism** (between quotation marks because the term has been much discussed due to its imprecision and its political implications), materialized in autonomous institutions with legislative and jurisdictional power, and a virtual disappearance or subordination of the decision-making power of the sovereign national State in essential areas. This vision is not valid in practice even in the case of the European Union as it is currently constituted, because the European

nations maintain a degree of independence incompatible with the merger proposed by this theoretical model. The political and economic organization of the Union of Soviet Socialist Republics was more identifiable with this conception.

Therefore, it can be argued that there is a third way, which implies affirming the **communitarian** character of this new type of confederation or Community of States, in which the member countries delegate certain powers to both intergovernmental and autonomous bodies that issue legally binding rules which States, in turn, enforce (through different means), thus recognizing the Community's primacy. In consideration, Member States retain an essential participation in the common law-making process and two unwavering sovereign powers: that of veto in certain reserved areas, and that of eventual lawful withdrawal of the Community. This is the categorization that corresponds to the European Union (which not by chance removed the term "supranational" from the founding treaties), and potentially to Mercosur, although in the latter case the partial, limited, and even suspended or postponed application of the goals and instruments planned, have brought it quite close to the cooperative model.

Case Study I: The European Union

At present, the primary law of the European Union is headed by the "Treaty on the Functioning of the European Union" (TFEU), which was signed on 13 December 2007 during the Lisbon European Council, and, after being ratified by all Member States, entered into force on December 1, 2009.

The Treaty of Lisbon clarifies the powers of the Union as the previous treaties never did. It establishes three types of jurisdictions: *exclusive*, where the Union alone can legislate, and the Member States only implement; *shared*, where the Member States can legislate and adopt legally binding measures if the Union has not done so; and *supporting*, where the EU adopts measures to support or complement Member States' policies. Union powers can be handed back to the Member States during a treaty revision.

Also, the Treaty of Lisbon gives the EU full legal personality. Therefore, the Union obtains the ability to sign international treaties in the areas of its attributed powers or to join an international organization. Member States may only sign international agreements that are compatible with EU law.

For the first time in EU history, the Treaty provides for a formal procedure to be followed by Member States wishing to withdraw from the European Union following their constitutional requirements, namely Article 50 of the Treaty on the European Union (TEU).

The Treaty of Lisbon completes the absorption of the remaining third pillar aspects of the area of freedom, security, and justice (FSJ) (i.e., police and judicial cooperation in criminal matters) into the first pillar. The former intergovernmental structure ceases to exist, as the acts adopted in this area are now subject to the ordinary legislative procedure (qualified majority and co-decision), using the legal instruments of the Community method (regulations, directives, and decisions) unless otherwise specified.

With the Treaty of Lisbon in force, Parliament can propose amendments to the Treaties, as was already the case for the Council, a Member State, or the Commission.

In this way, we can point out as elements that distinguish the EU from classical inter-state organizations: the specificity of its typology, the powers assigned to it exercised through its institutions, and its ability to produce directly binding legal rules, not only for the Member States but also for the citizens of those States. In this regard, since the judgment in "Costa v. Enel" -S. 15/7/1964, C. 6/64-, which states that Community law "is a legal order by itself" created by the Treaties, the ECJ has consistently affirmed the *novum genus* character of the Community legal order in public law.

Thus, the achievement of the autonomy of Community law lies not only in its capacity to be produced by *meta-national* bodies, but also in that this set of rules can produce legally relevant consequences both for the Member States and for their citizens, and —in the event of non-compliance—, give rise to sanctions.

Case Study II: Mercosur

The Southern Common Market (Mercosur) was created on March 26, 1991, with the signing of the Treaty of Asunción —TA— (which entered into force on November 29, 1991), by Argentina, Brazil, Paraguay, and Uruguay. Its existence as a legal person under international law was decided in the Protocol of Ouro Preto —POP—, signed on December 16, 1994, which entered into force on December 15, 1995. According to this founding Treaty, its States Parties decided to establish a Common Market, which is still pending. So far, there is a free trade area and a customs union between the member countries, called "imperfect" because of the many exceptions allowed. No substantial progress has been made in the free

movement of productive factors or in the necessary harmonization of policies and legislation required by a common market.

In addition to the aforementioned initial Member States, the Treaty of Asunción is open to accession by other parties of the Latin American Integration Association (ALADI, by its Spanish acronym, 1980). Two of them, Venezuela and Bolivia requested their incorporation as full members. The former was admitted, but it is presently suspended because it is considered that it does not comply with the Protocol of Ushuaia on Democratic Commitment in Mercosur (1998). The latter (Bolivia) is still in the process of accession, since it has to resolve its simultaneous participation in another regional customs union, the Andean Community. In addition, political and free trade agreements have been signed with the other South American countries, which have made them "associated" States of Mercosur.

But if the term "Mercosur" were understood exclusively as the acronym that formally designates the Common Market of the South, which emerged from the Treaty of Asunción, it would not reveal all the phases of the regional integration process that were projected in that agreement and that have since given the body a multidimensional nature. It is true that, from the economic and legal point of view, Mercosur comprises a series of agreements, rules, and limited institutions. However, when talking about Mercosur from a political and strategic standpoint, a multidimensional panorama must be kept in mind, which goes beyond the original, formal Economic Complementation Agreement and its secondary rules, although it includes them in an essential way. Nowadays, by means of legal and political agreements,

Mercosur embraces areas of convergence as diverse as education, health, and security and environment, among others.

The goals established in the Treaty of Asunción, the key provisions of the Protocol of Ouro Preto, and the integrative gymnastics developed over the years by the Member States of Mercosur place this process within the framework of what has been identified as integration by conjunction. Recognizing the existence of an area of common interest that is distinguished from the addition of national interests, countries have partnered in order to achieve certain shared goals, voluntarily submitting to rules that they agree upon among themselves, while maintaining their national identity. In short, Mercosur represents a process of multidimensional integration, institutionally constituted as an international organization and a legal subject.

With regard to its institutional organization, Mercosur has been characterized by the creation of an administrative structure where decision-making is joint and consensual, within common intergovernmental bodies. The Foreign and Economy Ministries, under the leadership of presidents, lead the integration process through an intergovernmental network of political and technical officials, who work in a decentralized structure formed by specialized sub-working groups, specialized meetings, and other ad hoc instances.

In Mercosur, beyond the fact that there are no legislative and jurisdictional bodies with powers similar to those that exist in the EU, there is also no autonomous community body in the manner of the European Commission. In this South American system, the decision-making power belongs to the Common Market Council (*Consejo del Mercado*

Común - CMC), made up of the Presidents and Foreign Affairs and Economy ministers of each government; while the power of initiative essentially lies with the Common Market Group (*Grupo Mercado Común* - GMC). Both the GMC and the working subgroups (*Subgrupos de Trabajo* - SGT) that assist it are made up of officials of the governments. The expertise of each official is indeed taken into account at the time of their appointment, but the independence that characterizes the members of the Brussels Commission is not present here.

If the integrative brain and will are in the CMC assisted by the GMC, the core of the process is found in the dynamics of the SGT —for the design of policies and detailed negotiation—, and the Mercosur Trade Commission (*Comisión de Comercio del Mercosur* - CCM) —for promoting the daily progress of the process. Finally, there is a Secretariat of Mercosur (*Secretaría del Mercosur* - SM) which is made up of officials who are independent of the governments of Member States and has technical and operational capacities, but not decision-making ones.

As regards the settlement of disputes, Mercosur has an arbitration system, framed around Ad Hoc Arbitral Tribunals and a Permanent Court of Review.

Also, for the implementation of the agreed policies, Mercosur has created several permanent bodies in different cities, including the Mercosur Structural Convergence Fund (*Fondo de Convergencia Estructural* - FOCEM), the Institute for Public Policy on Human Rights (*Instituto de Políticas Públicas en Derechos Humanos* - IPPDH), and the Mercosur Social Institute (*Instituto Social del Mercosur* - ISM).

Thus, Mercosur has a twofold fundamental quality: the apparent intention of the parties to act together on the one hand, and the practice of permanent negotiation, on the other.

As regards the decision-making process, it should be noted that the personal intervention of Heads of State or Government, or of relevant ministers or political officials, through their regular meetings, decisively boosts —or delays— the integration process. Beyond the institutional network for making rules, there is the practice of making "political decisions," that are afterwards reflected in Decisions (*Decisiones*) taken by the CMC, Regulations (*Resoluciones*) taken by the GMC, and Directives (*Directivas*) taken by the CCM. These are the formal rules issued by Mercosur agencies. The exercise of this function is generally of an inter-institutional nature, by means of the interaction among political and executive officials from the Member States, and usually with the political leaders of each system playing a master role.

In this sense, the meetings of the Mercosur Council with the presence of the Presidents of the Member States —as well as the meetings of the European Council, with the presence of the Heads of Government of each State and the President of the Commission— if not an extraordinary meeting of Presidents, constitute the highest level of political leadership. The fact that they are held periodically implies a manifestation of the permanent renewal of the political will necessary not only to maintain the *affectio societatis* —i.e., the intention to work together—, but also to promote (or delay) the decisions that feed community activity.

The rulemaking and enforcing process is another fundamental feature to understand Mercosur's deficiency in reaching its original goals and deepening the integration process. The problem lies not only in the absolute consensus required to pass common rules but also in the process of incorporation of those rules into the Member States, in order to make them fully in force in their territories and for their citizens and legal persons. The reluctance of national governments to consent to some system of direct effect of common rules —as is the case with regulations in the EU—, and, consequently, their lack of efficacy in domestic legal orders until all the States have incorporated them, also shows the limitations of the political capacity of this South American organization.

The abovementioned characteristics largely reflect the political systems of the member countries. Unlike what happens in Europe, where parliamentary regimes prevail, in Mercosur countries there is a unanimous presence —with nuances— of presidential governments, where the head of the Executive Power exercises a predominant role, assisted by political appointee staffers and administrative bodies with large powers, plus the extended use of constitutional devices —like delegated and urgency decrees— that widen the reach of presidential ruling (García Mansilla, 2004). Because of this, the fundamental decisions and agreements of Mercosur, as well as the efforts to unblock relevant issues, have taken place within the semi-annual presidential meetings of the CMC or through negotiations at the highest political level.

Another factor to consider is the historical background of both integration processes. While the current stage of European integration is the synthesis of pro-federalist propositions

outlined in the immediate post-war period, integration among Latin American States has a constitutionalist prehistory in the reunifying projects of the former Spanish-Portuguese colonies of the nineteenth century, which were later diluted towards internationalism. In the post-World War II period, new political trends generated the practical distinction between Latin Americanism and Pan-Americanism under the leadership of the United States, thus making the integration process to move on more concrete plans, with ambitious medium-term objectives, but with a prevailing methodology of an economic nature. The reduction of the actors initially involved —from regional to subregional integration—, the adjustment of the economic goals (which were assessed more realistically), contemporary international conditions and, above all, a novel demonstration of political will and accompanying measures, revitalized regionalism from the 1980s onwards, though introducing institutional formulas that are still pending a definitive structuring (Barbosa, 1993; Tomassini, 1990).

However, even without having achieved the degree of development of the EU, in Mercosur there are elements that can lead to the establishment of a political-legal system that should not be confused with the national systems that gave rise to it, nor with international organizations. Mercosur has set up institutional mechanisms that work in its own and differentiated space, different from national institutions and ordinary international forums, and which produce regulations aimed at coordinating policies, harmonizing legislation, facilitating procedures, and lifting restrictions. Thus, the basic conditions are met for the creation of a specific legal system —distinct from both international law and the domestic law of the States Parties— arising from the integration process.

From a finalist point of view —underlined by different arbitral decisions pronounced within the framework of Mercosur— and considering the integrationist dynamic that has been generated, the set of rules emerging from the bodies created by the TA and the POP cannot be reduced to classic provisions of International Law or exist only due to their conversion into rules of Domestic Law. From the standpoint of national legal systems, and in accordance with the procedure established in the POP, a political consideration prevails in the sense that if these rules are issued by the decision-making system of Mercosur, they are designed to cause an effect desired by the political will that created them.

In short, to deepen the South American integration process Mercosur should develop community-like institutions and legal systems, specifically differentiated from the European model. These institutions and legal systems should be of an *ad hoc* nature and take into consideration the features of the national political systems involved, but sharing a core of powers and "meta-national" rules typical of a true regional, integrated, political community of States.

Conclusions

Both in Europe and in South America, the current crises and challenges faced by Nation States have led them to seek new ways of convergence with like-minded partners, mainly from their same region, which would enable them to truly realize their sovereign essence. As the Westendorp Report (1995) said, referring to the EU:

> [I]t is not a question of uniformity, as some fear, but of uniting with full respect for the plural wealth of the peoples of Europe. Political union is not a threat to the cultural identity of the peoples of Europe but, on the contrary, their best guarantee. (p. 416)

So, seen from a broad perspective, which implies both the overcoming of particularism and the false nationalism-integration dichotomy, the creation of a regional community is not the cause of the decline of national power, but a response to national constraints, which politically strengthens the Member States despite their cession of individual decision-making capacity. Any alleged loss of sovereignty is accompanied by the influence that each Member State gains in shared affairs. There is a trade-off between national sovereignty and international influence, in a sort of "pooling of sovereignty" (McNaughton, 2001, p. 19)

In any case, a good deal of methods used for the realization of the EU and Mercosur are different, with differences reaching their vertebral legal system, both in terms of material rules, procedures, and organization. This is important in shaping the future of the youngest project, which will be able to consider the European experience and other attempts initiated in its own hemisphere like the Andean Community and the North American free trade agreements, without automatically trying to transfer formulas conceived for another structural reality.

However, after more than three decades of existence, it could not be said that Mercosur constitutes a real Community of States like the European Union. Notwithstanding

this, it could also be said that it potentially contains the constituent elements to achieve that status.

The two analyzed processes are generically similar in the sense that they pursue not only economic and social goals, but also —and fundamentally— political ends. These ends require, for their full achievement, the means provided by a specific law produced by regional institutions, integrated with the legal order of each Member State. Overall, national interests and regional integration are not incompatible, if we consider that the Common Good may be achieved by integration with other nations with shared, common interests.

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