

Legitimacy, democracy, and accountability within Mercosur*

Legitimidade, democracia e accountability no Mercosul

Légitimité, démocratie et accountability dans le Mercosur

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ABSTRACT

Mercosur reflects, as many other Regional Integration Processes do, the consequences of a process of Nation-State mutation, as this Nation-State seems incapable of keeping acting as the vital regulator of social life. Nevertheless, the perception of this mutation persists anchored on Nation-State interpretations' patterns. The institutional cartography that emerges from this situation encloses some inconsistencies and incompatibilities between: on the one hand, the real demands of social actors and economic agents; and, on the other hand, the de facto political institutions shaped. This article proposes to investigate how governance has been transformed within Mercosur. It focus on the intricate and complex relations between regional, national and, particularly, sub-national levels. It is composed by two parts: the first seeks to situate the problem of the relationship between legitimacy, democracy, and accountability in the sphere of regional governance and the action of sub-national actors; the second, under this prism, inquires, empirically, about the Brazilian-Argentinean connections and about the institutional design and relationship networks in Mercosur.

Keywords: Legitimacy; Democracy; Accountability; Governance; Mercosur.

RESUMO

O Mercosul reflete, ao lado de inúmeros outros processos de organização regional internacional, as conseqüências de um processo de mutação do Estado-nação, que parece não mais conseguir atuar como primo regulador da vida social. A percepção dessa mudança, no entanto, persiste ancorada em padrões interpretativos ainda por demais tributários da lógica estado-cêntrica. A cartografia institucional que daí deriva encerra incoerências e incompatibilidades entre de um lado, a demanda real dos atores sociais e agentes econômicos e, de outro, as instituições políticas de fato concebidas e implementadas. Este artigo propõe-se a investigar como o fenômeno da governança tem se transformado no seio do Mercosul. O autor detém-se nas complexas e imbricadas relações entre os níveis regional, nacional e, sobretudo, subnacional, privilegiando os nexos institucionais que daí derivam.

Palavras-chave: Legitimidade; Democracia; Responsabilidade; Governança; Mercosul.

RESUMÉ

Le Mercosur reflète, aux côtés d'autres processus d'organisation régionale internationale (ORI), les conséquences d'un processus de mutation de l'État-nation, qui semble ne plus être capable de jouer le rôle de principal régulateur de la vie sociale. La perception de cette mutation demeure, néanmoins, ancrée à des paramètres d'interprétation tributaires d'une logique régaliennne. La cartographie institutionnelle qui en découle abrite, de ce fait, des incohérences et des incompatibilités entre, d'une part, la demande réelle des acteurs sociaux et des agents économiques et, d'autre part, les institutions politiques concrètement conçues et mises en place. Cet article propose une analyse sur le développement du phénomène de la gouvernance au sein du Mercosur. L'auteur concentre son attention dans les rapports entre les niveaux régional, national et, surtout, sous-national, en privilégiant les liens institutionnels qui en découlent.

Mots-clés: Légitimité; Démocratie; Responsabilité; Gouvernance; Mercosur.

Neighboring states are obliged not only to treat one another according to the rules of justice and good faith, but must also, both for the sake of their own security and the common interest, create for themselves a kind of society and general republic.

FRANÇOIS DE SALLIGNAC DE LA MOTHE FÉNELON¹

Introduction

The Southern Common Market, Mercosur, completed fifteen years in March 2006. It reflects, along with many other processes of international regional organization

(IRO), the result of a process of mutation of the Nation-states, which seems no longer able to act as a prime regulator of social life. As Deutsch states:

In this present-day world, the State - and this is typically the more or less sovereign national state - is both indispensable and inadequate. It is indispensable instrument to get many things done, to provide many needed services and to deal with many real problems. But it is inadequate to cope with an increasing number of other problems of life and death for many of its inhabitants (1981, p. 331).²

This mutation, however, remains anchored in interpretative standards still too tributaries of the State-centered logic. Such has been the case, for instance, of the attempts to understand the evolution of the political system of the European Union, a contemporary pioneer reference on what concerns to integrationist innovation (Hoffmann and Van der Vleuten, 2007). Therefore, the resulting institutional cartography³ contains inconsistencies and incompatibilities between, on one hand, the actual demand of the social actors and economic agents, and, on the other hand, the actually conceived and implemented political institutions. The teleological effort waged by both sides aims, however, at finding a mode of governance capable of reconciling efficiency and legitimate control of power.

In this context, this paper intends to investigate how the phenomenon of governance has been changing in the Mercosur sphere. We focus on the complex and intertwined relationships between the regional, national and especially subnational levels, privileging the institutional links that follow from this. The first part, more theoretical, seeks to place the issue of the relationship between legitimacy, democracy and accountability in the field of regional governance and the action of the subnational state actors. We will privilege the political framework of the European Union (EU), since this process, for being the deepest, has been the subject of most theoretical analyses available in the specialized literature. These assessments, in most cases, are seminal and compelling as benchmarks for comparison.⁴ The second part focuses, in this light, on the empirical analysis of the relationship of the Argentinean-Brazilian *tandem* and on the study of the institutional cartography and the social networks in the core of the Southern Common Market. Here, the EU emerges only as a yardstick, an exogenous benchmark, an element of passage, through which one transits in order to execute a better process of endogenous knowledge of Mercosur.

Legitimacy, democracy and accountability versus regional governance

One criticism that has been deprecating more intensely the regional and international organizations points to the so-called democratic deficit. However, not infrequently, they are based on a comparative exercise that takes as reference the classic Nation-states:

Comparisons are drawn between EU and an ancient, Westminster-style, or frankly utopian form of deliberative democracy. While perhaps useful for philosophical purposes, the use of idealistic standards no modern governments can meet obscures the social

context of contemporary European policy-making (Moravcsik, 2002, p. 605).⁵

Nevertheless, this comparative fallacy has been also characterizing the analysis of other processes of regional integration - including the Mercosur. It is true that for the processes of regional integration after the Treaty of Rome the comparative reference is no longer solely the Nation-state, but also the very political system of the European Union, with all the complexity of the institutional mimicry that this implies (Meny, 1993, pp. 7-38). Thus we must consider, in the analysis of the concepts of legitimacy, democracy and accountability in the Mercosur context, the reference of the contemporary Nation state, of an increasingly managing kind (Bresser Pereira and Cunill Grau, 1999, pp. 15-50), and also that of the EU, essential for its ability of intellectual co-optation and empiricism - successes and failures, a real laboratory. The question that arises then is: so that there may be a legitimate control of the power established by the international regional organizations, is the existence of a democratic participation imperative?

Conceptual aspects

One of the most striking features of the contemporary Nation-state is the fact that the Legislative Power has lost a great deal of its ability to legislate. The Executive Powers have increasingly made use of rapid legal institutions to mark not only the actions that are historically situated within its area of competence, such as the trade, monetary and fiscal policies, but also to make incursions into other areas more typically associated with the parliamentary control, such as the ones of social security, employment and education, which most closely affect the daily lives of citizens. Two examples, one in the Mercosur and the other in the European Union, explain this trend: Brazil and France.

In Brazil, the 1988 Constitution, in its Article 62, marks the legislative power of the Executive by means of the institution of the Provisional Measure (PM), which, in principle, should only be used in case of relevance and urgency. Now, what is observed is that the executive has been making systematic use of this instrument,⁶ -, and that despite the attempts of the Legislative Power to limit the abuses - for example, with the Constitutional Amendment no.32 of September 11, 2001, which seeks to restrict the field of use of such measures and to link them to the ordinary legislative procedure, and may even block it (Art. 62, Paragraph 6).⁷ According to the "justification" of the Proposed Constitutional Amendment by the Congressman Carlos Souza (PP-AM),⁸ which proposes that the President of the Republic may adopt up to three Provisional Measures per month,

[...] after the reform in 2001, along a period of 15 months of the second term of Fernando Henrique Cardoso and three years of Lula (until December 2005), the average number of PMs increased from three to five. On the other hand, the average number of bills remained stable. Before the reform, of all legislative proposals based on a simple majority, 28% were PMs. After the reform, that percentage increased to 52%. If we consider that, of all PMs sent to Congress, 79% were approved by the plenary sitting, this indicates that the Executive is still ruling on the basis of extraordinary acts, in total disregard to the Legislative.

Perhaps, more refined statistical studies could identify phenomena not properly perceived by the view of the aforementioned congressman. The national literature lacks them. However, such studies would very hardly contradict the general tendency of higher legislative expression of the Brazilian Executive. As noted by Limongi, "The fact is that the Brazilian president is powerful from the legislative point of view not because he usurps the legislative power, but because the Constitution of 1988 thus established" (2006, p. 27).⁹

However, this is not a unique phenomenon in Brazil or South America. The France of the Fifth Republic also brings, in its Constitution (1958), a legislative instrument, the *ordonnance*, which guides the action of the Executive as a producer of law. This is Article 38, which states that: "The Government may, for the execution of its program, request to the Parliament an authorization to take, by means of *ordonnances*, for a limited period, measures which are normally in the purview of law." What happens in practice, however, is that between 1984 and 2005, 290 *ordonnances* were issued, of which more than two-thirds since 2000. In 2004, the number of edited *ordonnances* reaches 52 and in 2005, 83, or more than one third of the total number of *ordonnances* edited since 1984. Thus, along the year 2005, approximately two thirds of the produced legislation were established by means of this instrument of the Executive.¹⁰ Recently, French politicians linked to many different ideological hues - the former prime minister Dominique de Villepin, of the same party of President Sarkozy, the Socialist Ségolène Royal, defeated by him in May last year, the centrist leader François Bayrou, and Pierre Lefranc, former Chief-of-office of President De Gaulle - launched a warning manifesto against the pro-monarchy trend in the style and policies of President Nicolas Sarkozy. This manifesto warns against "a form of personal power that resembles that of an elected monarch," crystallizing, therefore, this historical tendency of hypertrophy of the Executive of the French presidential system of the Fifth Republic.¹¹

We can observe, both in the French case and in the Brazilian one, a bias that is less of a supporting and ideological kind and more of a bureaucratic and administrative character, based, among others, on the criterion of urgency, which reaffirms the hypertrophy of the Executive.

To counteract this hypertrophy of the Executive Power in face of the Legislative Power, we are seeing an increasing rise and politicization of the Judiciary Power. As pointed out by Carvalho: "The expansion of the judicial power is a phenomenon that has gripped the end of last century. The vast majority of the democratic western countries adopted the Constitutional Court as a mechanism for controlling the other powers" (2004, p. 115). However, because it is essentially a political court whose members are appointed by the Head of State / Government, it has often manifested itself in line with its original loyalty. Hence the question whether it is a real counterweight or a degeneration of the harmony between the three powers.

Beyond the borders of the Nation-state, what we observe is not different. That is, the exclusive supranational competencies are rare and almost always confined to specific domains, historically situated in spheres of exercise of the Executive Power. These are the cases of the Common Commercial Policy and Monetary Policy within the European Union. In both, the Nation-state is driven out of its sovereignty. Berlin, Paris or London do not decide individually in those domains of

public policies. Decisions are made at the level of the Council of Ministers by means of votings by qualified majority. Brussels is to decide. As noted by Françoise de la Serre in relation to the integration project proposed by the Treaty of Maastricht - which was actually the base for the subsequent Treaties of Amsterdam and Nice (still in force) - "The originality of the project [of the European Union] is to establish the existence, at least for some time, of an economic integration possessing a federal essence and a [political] cooperation possessing a confederal inspiration" (1992, p. 7).¹²

That does not mean, however, that there is no spillover and that there is not also a control by the national executive instances. The European Union and, *a fortiori*, the latest international regional organizations still limited, at a great extent, its actions and themes of a more economic than political nature. They still exist more for the consumer than for the individual. Nevertheless, it is true that the cross-sector contamination gradually begins to take shape and that some domains related to social issues, such as police and justice, begin to be processed by fledgling supranational public policies. This is the case, for example, of the visa policy of the European Union. The Treaty of Amsterdam (1999, p. 88), in its Article 62, provides that, for the visas with a maximum duration of ninety days, there should be a common list containing the names of the countries that require them and those who do not to allow the traveler to cross the Union borders. In fact, this communitarian device was the one that has led France to abolish, in the last decade of last century, the visa for Brazilians, as no other country of the European Union required this procedure. France has lined up, voluntarily, before it was constrained to do so by an imposing decision by qualified majority within the Council of Ministers of the Union.

In some international regional organizations the Judiciary Power has been performing as a capital actor, even when restricted to specific arenas. It has proved to be an indispensable agent of the credibility of the institutions and the communitarian public policies. Moreover, contrary to what happens with the supreme courts of Nation-states such as Brazil or the United States, where the loyalty of the magistrate to the Executive Power is very clear, the supranational courts - for instance, the Court of Justice of the European Community - seem to be less permeable to this process of co-optation by the Executive Power (Legal, 2001).

Behind national borders, we must emphasize a movement of mobilization by subnational entities. It comes up with the aim of better controlling the decision-making at the national and supranational levels, but also in order to defend its own interests in the international arena. Thus, the Committee of Regions was created by the Treaty of Maastricht. Although playing a merely advisory role, it reveals itself as a major *locus* of contestation, with the potential to support new forms of legitimacy. This contestation, as will be seen below, also occurs by the exercise of constitution of the national diplomacy and / or of a paradiplomacy.

The interweaving of these three competency levels results in the concept of multilevel governance as defined by Banchoff and Smith: "the EU as a fluid polity outside the statist mold, a constellation of institutions embedded in a dense and evolving network of informal interactions that brings together supranational, national and subnational actors" (1999, p. 12).¹³ Despite the fact that the definition is tied to the European Union and its idiosyncrasies, it can, as long as the

due precautions of relativity are taken, be used for the interpretation of other international regional organizations like Mercosur.

The technical complexity and the need for swift decisions seem to stimulate other forms of legitimacy than just the one modeled exclusively on the direct (via referendum) or semi-direct (via representation) democratic control. One of these forms is what Scharpf (2000, p. 192) calls legitimation by inputs, that is, what has, in fact, provided legitimacy to the use of power has not necessarily been the existence of the *de jure* democratic control, but multiple and indirect mechanisms of accountability. Or what Scharpf calls legitimation by outputs, for in his view, in terms of democratic self-determination, what matters is the institutional ability of effective resolution of the public problems and the presence of institutional safeguards against the abuses of the public power.

If we assume that legitimacy is grounded solely in the binomial recognition and representativeness, the international regional organizations, indeed, can not be identified as legitimate. The most advanced of these, the European Union, shows very low rates of identification of the citizen with it, this citizen whose manifest loyalty is undoubtedly with the Nation-state, where in fact there is a historically constructed and recognized *demos*. Similarly, in spite of the systematical advances of the European Parliament (EP) and the creation of advisory bodies like the Economic and Social Committee and the Committee of Regions, the representation is limited by the minor role of these institutions in the process of *stricto sensu* decision-making, little legitimized by the scarce citizen participation in the electoral process of the European Parliament. The situation is further complicated in international regional organizations that are less politically active and operating with less representative elements, such as Mercosur.

However, we realize that, although this binomial pattern - recognition and representativeness - is not covered, the international regional organizations present themselves as a significant alternative space of dispute. For the social actors and economic agents, whatever their nature and relationship, the supranational arena emerges, gradually, as a place to demonstrate and exercise the wishes connected with themes often marginalized in the national and / or subnational scenario. Such is the case, for example, of the themes related to ecology, human rights or respect for the democratic principles. The communal *acquis* is, in this regard, illustrative within the European Union, since it ensures to the new members minimum standards of conduct and new opportunities for handling interests with the most diverse kinds of authority. Also in the case of Mercosur, the Protocol of Ushuaia, stating that "the full validity of the democratic institutions is an essential prerequisite for the development of the processes of integration between the States Parties,"¹⁴ works as an exogenous stay that is relevant for the consolidation of democracy in the Southern Cone. In fact, one can mention the adoption of regional regimes, which are stricter than the international ones, but keeping their main conceptual parameters: "Regimes can be defined as sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations " (Krasner, 1988, p. 2).¹⁵

That is, the potential for contestation supports the intertwining of the three levels of governance and, in some ways, forges a legitimacy of the seminal kind between the formal and informal channels that permeate them. The multiple regional

regimes are built according to the expectations of social and political actors, as well as of subnational, national and supranational economic agents. As Banchoff and Smith stated: "These more informal, fluid forms of representation do not meet the standards of popular sovereignty set by traditional democratic theory. Nonetheless, they reflect the reality of the EU as polity composed of multiple identities embedded at multiple levels of governance" (1999, p. 15).¹⁶

Thus, in the same line as Scharpf, Grant and Keohane affirm: "If governance above the level of the nation-state is to be legitimate in a democratic era, mechanisms for appropriate accountability need to be institutionalized. Yet these mechanisms cannot simply replicate, on a larger scale, the familiar procedures and practices of democratic states" (2005, p. 29).¹⁷

Assuming that there are two basic types of accountability¹⁸ - delegation and representation - each conceived within a different parameter of legitimacy,¹⁹ these authors identify seven mechanisms of accountability that can be detected in the international regional organizations and that, in fact, correspond, *grosso modo*, to the regional regimes mentioned above.²⁰ The idea is that these mechanisms generate a mesh for protection against abuses of power in a regional system characterized by an intense variety of power-wielders and by a lack of centralized power. However, as suggested by Majone (1996), in the international regional organizations the accountability has been increasingly practiced not in its form of direct participation in processes of decision-making based on the majority, but by means of complex systems of representation, selection of delegates, professional socialization, ex post review and balances between governmental spheres. This is because we see the gradual need for greater attention, efficiency and expertise in areas where most citizens remain rationally ignorant or scarcely participant (Moravcsik, 2002, p. 614). Or yet, as Nicolaidis and Howse state: "Surely, the sources of legitimacy are diverse: some are technocratic, and relate to presume expertise to manage the complexities of policies" (2001, p. 4).²¹

Anyway, if one is capable, in principle, of setting free from the analytical shackles inspired in the Nation-state and conceives the international regional organizations as possible genuine *units of survival* (Elias, 1987), one can consider a real likelihood that there is a legitimate control of the power radiated by the international regional organizations without, necessarily, the occurrence of democratic participation. In this context of search for legitimacy, among others, the political actors that have shown more interest in participation are the subnational entities.

Subnational state actors

In the search for legitimacy, one of the most basic principles that have guided the action of the European Union is that of subsidiarity.²² This principle advocates, *latu sensu*, that decisions should be made as close as possible to the citizens. In that sense, and considering the subnational, national and supranational levels of governance involved, it can be inferred that the sub-governmental entities assume an outstanding role. The creation of the Committee of Regions by the Treaty of Maastricht illustrates the institutional galvanization of this legitimist effort (Medeiros, p. 2004). But it is just the tip of an iceberg. In fact, the subnational state actors are mobilizing on other fronts, perhaps less formal, within the Nation-state, as well as directly in the supranational sphere,²³ which is a function of the

intrinsic characteristics of each actor, as follows: GDP, population and territory. This *démarche* generates new kinds of control and, therefore, raises the level of accountability of the system as a whole. It is in this conjunction that the concepts of paradiplomacy and constituent diplomacy emerge.

As Keating points out: "Globalization and the rise of transnational regimes, especially regional trading areas, have eroded the distinction between domestic and foreign affairs and by the same token have transformed the division of responsibilities between state and subnational governments" (1999, p. 1).²⁴ The increased permeability of national borders exposes more strongly the subnational entities to the external reality. And even if one can not discern (yet) the "end of the territory" (Badie, 1995), one can not deny that its conception is metamorphosed. It no longer appears, as before, necessarily associated with the Nation-state and with the concept of a hermetic and unambiguous sovereignty. The territory now assumes the role of a catalyst between society and the global market, at the same time in which it provides a *locus* for political debate and collective actions. Its ties with power takes place in multiple forms and, essentially, according to a functional logic. The subnational state actors are expressed, therefore, as territorial alternatives in this functional logic. They act as a third level of power and, given the decrease in the Nation-state's capacity of mediation, the prerogatives of a public character dispute with it, both on the endogenous and the exogenous sphere. The action of the subnational state actors in the latter sphere is called paradiplomacy.

For Keating,

Paradiplomacy is not the same as conventional state diplomacy, which is about pursuing a defined state interest in the international arena. It is more functionally specific and targeted, often opportunistic and experimental. [...] Paradiplomacy is also characterized by a high degree of involvement of civil society and the private sector (*Idem*, p. 11).²⁵

Therefore, it is a concept that embraces, *pari passu*, distinct teleological aspirations with regard to the external action and the ability of association of local actors - an ability that promotes an increase in accountability and, consequently, in legitimacy. Paradiplomacy is not incompatible with diplomacy. In fact, it also acts internally trying to shape it to the specific interests of each subnational state actor.

In this sense, the conflict of the *papeleras* between Argentina and Uruguay is illustrative. As pointed out by Saraiva and Medeiros:

In the dispute of the *papeleras* the conflict is established between, on one hand, the Uruguayan State, which holds a greater power of decision in the case and, on the other, an amalgam formed by the national government of Argentina, the government of Entre Ríos and sectors of the civil society. Considering paradiplomacy as an epiphenomenon within the Uruguayan scenario and focusing on the problem of the subnational issue in Argentina, the rationale of this amalgam seems to rest on three basic factors: 1)

the consistent use of the international regime governing the environmental issues, 2) the ability of Entre Ríos to file a parochial collective lawsuit combining governmental and non-governmental interests, 3) the ability of the federal government to take advantage of the flag of the sub-governmental movement, subscribing it (2007, p. 177).²⁶

This reflects a complex relationship between central and subnational power, alerting, at the same time, to the fact that the Nation-state still has a decisive influence over the management of foreign affairs (understood here as an intertwining between diplomacy and paradiplomacy).

Considering this latter aspect as essential and remembering that the prefix *para* refers to the idea of hierarchy, Kincaid suggests the use of the terminology *constituent diplomacy*:

The term constituent diplomacy is intended to be a neutral descriptor, one that avoids the implication that the activities of constituent governments are necessarily inferior, ancillary, or supplemental to the high politics of nation-state diplomacy. What is high or low politics depends on one's perspective (2001, p. 74).²⁷

This original equity is often based on the very federative pact.²⁸ Innovative is the fact that, if in the past that pact established a reserve of action in the international scenario for the central authorities, now the relevance of the extent of this activity for the subnational state actors is under discussion. Conflict and competition are intrinsic characteristics of the domestic policy. So why can not they be present in the foreign policy? Why should they be suppressed? What seems to remain is the myth of the already mentioned hermetic and unambiguous sovereignty used by national governments to give legitimacy to such suppression. As Kincaid notes, "whatever competition may exist, and exist legitimately, within other policy fields, in foreign affairs the seemingly instinctual reaction of national élites is to try to suppress competition and shield foreign-policy-making behind a veil of state secrecy. The nation, it is said, must speak with a single voice" (*Idem*, p. 61).²⁹ It is argued that the subnational state actors would not act, necessarily, under the veil of ignorance,³⁰ which would lead to the protection of individual interests and not of the public interest, thus reducing the degree of legitimacy of the action. However, the *temps mondial* of the market democracy (Laidi, 1993), established in the late twentieth century, reveals itself as distinct from the one that guided the Westphalian design of the international scenario. There, the power control devices try to fit within the complex interdependence (Keohane and Nye, 1987) providing new mechanisms of external accountability by means of the constituent diplomacy.

However, we must not forget to point out that, in a seminal article published in *International Organization* in 1988, Putnam already signaled to this internal dimension of the constituent diplomacy, imagining the relationship between diplomacy and domestic politics according to a game logic in two levels:

The politics of many international negotiations can usefully be conceived as a two-level game. At national level, domestic groups pursue their interests by pressuring the government to adopt favorable policies, and politicians seek power by constructing

coalitions among those groups. At the international level, national governments seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments. Neither of the two games can be ignored by central decision-makers, so long as their countries remain interdependent, yet sovereign (1988, p. 434).³¹

This logic, however, did not focus, *stricto sensu*, on the action of the subnational state actors, as the concept of constituent diplomacy did subsequently.

In summary, one detects that: (1) some international regional organizations are equipped with instruments of power control that ensure a kind of legitimacy resting primarily on a mesh of accountability of the supranational public policies. Standards, sanctions and information constitute the tripod that ensures the legitimacy of these public policies, (2) the international regional organizations are working as an alternative space for opposition and thus can be considered, in a sense, a vector that is a propeller of legitimacy; and (3) in the spirit of subsidiarity revisited by the European Union,³² the subnational state actors turn out to be an important link between the citizen and the national and supranational powers. They act, in regard to their exogenous interests, by means of the constituent diplomacy, which, in spite of being incipient, reinforces the parameters of legitimacy of the system.

The Mercosur experience

The Southern Common Market comes at a time of re-democratization of Latin America (Campbell, 2006). It could not, therefore, fail to reflect on its core a primary interest for the validity of democratic principles. Given the unsuccessful experience of the Andean Pact, whose institutions have antedated the Nation-states' *de facto* ability of subordination, Mercosur hesitates to embark on institutional projects not corresponding to the actual capacity of commitment of its member States. Nevertheless, the Southern Common Market is home to an authentic political dynamics that blends, formally and informally, a multitude of networks and actors. Among them, the subnational state actors begin, gradually, to take up more space and weave their own networks by means of a constituent diplomacy favored by constitutional reforms that took place in Argentina and Brazil (Vigevani *et al.*, 2004). However, as elsewhere, the relationship of these actors with the central power within Mercosur is not simple. According to Kulgemas and Branco:

Two forces act side by side and tighten up in the relationship between central government and the provinces: a centripetal tendency, which seeks to retain power for the central government, not preventing autonomous actions of the subnational units, but regulating and controlling them; and the centrifugal tendency, which shows the action of subnational units that seek a greater political and economic autonomy for their own interests, facilitated by the growing asymmetries in the distribution of domestic resources and the business opportunities open due to the effects of globalization (2005, p.

169).

This relation of forces and its assumptions of legitimacy are mainly anchored on the relation of the Argentine-Brazilian *tandem*, and are also a function of the institutional cartography and the social networking.

The Argentinean-Brazilian tandem

First of all, we must emphasize that Argentina and Brazil account, *grosso modo*, for 95% of the GDP of the territory and population of the Common Market.³³ And that Brazil alone represents, *grosso modo*, two thirds of those variables. In addition to this abyssal heterogeneity of an exogenous nature, one can also identify a not less considerable endogenous heterogeneity. The Argentinean Patagonia, the Brazilian Northeast or the Paraguayan Chaco, in contrast to far more developed regions in those same countries, such as, respectively, Buenos Aires, São Paulo or yet Asunción. Thus, we identify in Mercosur a center-periphery logic at multiple levels (Medeiros, 2003, p. 155), which generates huge difficulties for the functioning of the Mercosur institutions, so far characterized by intergovernmental mechanisms of consensual decision-making. Moreover, contrary to the European Union, the Southern Common Market does not have its own budget, which prevents it, in part, of promoting positive integration (Scharpf, 1996, p. 15) and acting as a vector of redistribution – something that, obviously, erodes the foundations of its legitimacy.

Hence the fact that the institutional transformations of Mercosur have been tributary of the convergence within the existing Brazilian-Argentinean *tandem*. When this convergence occurs, there is an effect of attraction in relation to the other partners, which recognize a cost too high in adopting an opting-out-of stance. They are almost commercially aspirated. This is especially the case of Paraguay and Uruguay, both economically quite dependent on the decisions of Brasília and Buenos Aires. As indicated by Cervo and Bueno: "Since the early 1990s, Brazil outlined a regional strategy that would remain unchanged: the strengthening of the Mercosur with a political convergence between Brazil and Argentina, and the organization of the South American space with autonomy in face of the United States"; (2002, p. 486). Of course, not always this strategy is shared by the Buenos Aires foreign policy, which has, obviously, influenced in the evolution of the Southern Common Market. As pointed out by Paulo Nogueira Batista Jr.:

During the period of Carlos Menem and Domingo Cavallo, in the 1990s, my main concern was that the Argentineans could be dragged into the total dollarization and complete subordination to the United States, infecting in some extent the Brazil's position and undermining, once and for all, the South American integration. Then came the terrible crisis of 1999-2002, one of the worst we have ever heard about (2007, s/p).

This crisis, which can not be overlooked, was caused, among other things, by the devaluation of the Real made unilaterally by the Brazilian monetary authorities. On the other hand, the dynamics of the Brazilian-Argentinean *tandem* proved very significant in the negotiations of the Free Trade Area of the Americas - FTAA - before the United States. As Tulchin notes, "More significant in the long run were

the painfully slow negotiation to include Argentina and the rest of Mercosur in the free trade area contemplated by the United States in its treaty with Mexico and Canada" (1998, p. 187).³⁴

Under a neo-institutional perspective, Mercosur seems to be understood within a vision of said second movement,³⁵ that is, as a phenomenon simultaneously indebted to a path dependence, to a rational choice and to cognitive elements that permeate the civil society's understanding. The exacerbated intergovernmentalism is due to a historic attachment, albeit recent, to the exercise of sovereignty achieved after the processes of decolonization in the first quarter of the nineteenth century, and the near absence of significant belligerent conflicts that might have prompted the Nation-states of the Southern Cone, as was the case in Europe, to admit with less reluctance the limitations of sovereignty.³⁶ The South American Nation-state is, even now, deeply rooted in its formula founder of centrality,³⁷ in which the subnational state actors have a limited room for maneuver. On the other hand, there is no denying that this centralized power has been acting in accordance with a fine analysis of the cost-benefit relation. Despite the fact that the Mercosur integration is asymmetric, and, in the short term, concentrates the gains and socializes the losses, it is carried out for being perceived by its components, in the long term, as a rewarding project from the political and / or economic point of view. Yet, despite the drawbacks of legitimacy that the centrality may create, the civil societies of the States-parties do not perceive the Mercosur in a negative way, unlike, for example, what occurs with the view of the Free Trade Area of the Americas - FTAA. It is as if the pragmatic phase of the integration of South America (Barbosa, 1996, p. 135), which began in the mid 1980s, also contained a romantic stale in the imagination of the peoples and decision-makers - the Bolivarian dream still remaining.³⁸ This widespread recognition in the minds of the South-American people acts as a potential substrate for the legitimate development of the integrationist construction.

The return of the democratic regimes to the Southern Cone and the constitutional reforms in Argentina and Brazil are crucial for changing the settings of governance. Internally, the authoritarian regime had exhausted its capacity to legitimacy via economic growth, in fact, a pseudo-legitimation by outputs, since the presence of institutional safeguards against abuse of public power did not exist. Externally, immune to the intrinsic hermetism that marks the warlordships, Argentina and Brazil get closer, inaugurating pragmatically an unprecedented partnership (Almeida, 1998). The goal is to think a re-foundation of the Nation-state on democratic foundations and due to the new international competitive reality (Vaz, 1999). The Southern Common Market, then, emerges as an intermediate set of outline conditions, an educational catalyst that contributes to a new institutional arrangement (Medeiros, 2000).

The Brazilian Constitution of 1988 presents itself as a decentralizer - a natural tendency after two decades of centralism, in which the units of the federation, as well as the municipalities, had a very little leeway. In his Article 18, the Constitution establishes: "The political and administrative organization of the Federative Republic of Brazil comprises the Union, the States, the Federal District and the Municipalities, all of them autonomous, under this Constitution". As noted by Frazão: "The Constitution of 1988 extends, to some extent, the legislative competence of the states. It also benefits the municipal authorities of this extension" (1994, p. 318).³⁹ Thus, the Brazilian subnational state actors acquire the possibility of a greater action in the national politics, and, at least in principle,

in the international one as well, as the Constitution of 1988 also attests, in his Article 4: "The Federative Republic of Brazil shall seek the economic, political, social, and cultural integration of the peoples of Latin America, aiming at the formation of a Latin American community of nations". This way, the elements for the practice of a constituent diplomacy are launched and, in fact, in 1997, Fernando Henrique Cardoso creates the Advisory Office of Federative Relations (ARF – *Assessoria de Relações Federativas*) in the office of the Minister of Foreign Affairs in order to encourage an approach to states and municipalities by means of regional offices.⁴⁰ In the Lula government, the ARF is transmuted into the Special Advisory Office of Federative and Parliamentary Affairs (AFEPA - *Assessoria Especial de Assuntos Federativos e Parlamentares*) and a Deputy Headship of Federative Affairs (*Subchefia de Assuntos Federativos*) in order to coordinate the actions of the Executive with those of the states and municipalities. The latter, then, take a proactive role in foreign relations within their respective constitutional competencies and may, in such a way, include public policies in the areas of health care, education, culture, environment, transportation, among others. It is precisely this Deputy Headship, linked to the Secretariat of Institutional Relations, that co-organizes with its Argentinean counterpart, in May 2007, the Seminar of Tucumán, bringing together the governors of the Brazilian Northeast and the Argentinean Northwest to discuss partnerships in several areas.⁴¹

The Argentinean Republic, a genuine federal Nation-state,⁴² executes, in 1994, a constitutional reform that will both internally and externally have relevant implications. The Article 24 of the new Constitution allows the approval of treaties of integration "that delegate powers and jurisdiction to supranational organizations under reciprocal and equal conditions, and that respect the democratic order and human rights. The norms derived from this have a hierarchy that stands above the law".⁴³ This innovation makes clear the possibility of predominance of the Community law over the national law within a classical approach envisioned by the monist theory (Kelsen, 1992, p. 352). On the other hand, the Article 124 provides that the provinces will be allowed to "enter into international agreements, as long as they are not inconsistent with the foreign policy of the Nation and do not affect the powers delegated to the federal government or the public credit of the Nation, with knowledge of the National Congress"⁴⁴ – something that, as in the case of Brazil, provides a range of action of the Argentinean subnational state actors that is far more consistent than in the past.

As such, the views of Argentina and Brazil combine democracy and decentralization, at the same time in which they associate them to the idea of efficiency. The management has not been simple. The strong patronage still present in the local spheres and the lack of knowledge of its bureaucracies have been greatly hampering the mechanisms of governance. Internally, some devices of accountability had to be designed to stop private appropriations of public goods and acts of corruption, such as the Law of Fiscal Responsibility in Brazil.⁴⁵ The enlargement of the participatory capacity of the subnational state actors would thus start to contribute to the legitimacy of the national political process in a limited fashion if, and only if, coupled with rigorous mechanisms of control. The legitimacy would therefore be forged by a mixed accountability, combining, *pari passu*, participation and delegation. The dynamics of Mercosur offers an alternative channel for the movement of the subnational state actors and acts as a complementary support to the national accountability.

Institutional cartography and social networking

Mercosur, since its inception, has stimulated discussions about the re-foundation of the federative pacts of Argentina and Brazil, allowing the dialogue between their subnational state actors to intensify. This intensification has come about in two main forms: the first is an attempt for greater participation in the formal institutions of Mercosur; the second occurs through the articulation of networks. This is how the subnational state actors operate in the governance of the Southern Common Market.

This is a two-way road with a feedback, as illustrated by the diagram on the next page: Democracy and free market in the Nation-states (internal input) promoting decentralization with accountability internally (internal output) and regional integration externally (external output); this regional integration, in its turn, contributes: (i) for the consolidation of decentralization as a *locus* for the action of the subnational units [input (A + P1 +...+ Pn) + (B + P1 +...+ Pn)] and (ii) to increase the accountability of the multilevel governance of the system as a whole. This whole is inserted into the international regimes (represented, in the diagram, by the white background circumscribed by the rectangular framework). The constituent diplomacy is represented in the expressions input (A + P1 +...+ Pn) and (B + P1 +...+ Pn), that is, the action on Mercosur by an Argentinean and / or Brazilian foreign policy made up by the federal and subnational components. The paradiplomacy, in its turn, proves to be more connected to the relationships between the Subnational State Actors (AES – *Atores Estatais Subnacionais*) – states and municipalities in Brazil and provinces and municipalities in Argentina -, represented in the diagram by the networks, namely: AES1, AES2, AESn.

Within the formal institutions of Mercosur, only in 2004 the subnational state actors obtained, *de jure*, a prerogative of participation, when, in Belo Horizonte, the Common Market Council (CMC – *Conselho Mercado Comum*) decided: "To create the Advisory Forum of Municipalities, Federated States, Provinces and Departments of Mercosur, in order to stimulate dialogue and cooperation between the authorities of the local, state, provincial, and departmental levels of the States Parties of MERCOSUR".⁴⁶ This forum⁴⁷ supersedes, in fact, the Specialized Meeting of Municipalities and Stewardships (REMI - *Reunião Especializada de Municípios e Intendências*), created in 2000 by resolution of the Common Market Group (GMC – *Grupo Mercado Comum*).⁴⁸ It is, however, more comprehensive, encompassing not only the municipalities and stewardships, but also provinces, federated states and departments, levels of power generally more developed within a federal system. Nor is anodyne the fact that REMI has been created by a resolution of the GMC, and the forum has been established by a decision of the CMC. The political content of the decision is much stronger than that of the resolution, since it expresses the direct will of the heads of State. Still, it may be noted that the forum has the status of a full institution of Mercosur and, therefore, is more permanent, while the REMI, being just a meeting, presents a more ephemeral character. Given the problems of heterogeneity faced by the singleness of the Committee of Regions in the European Union, the FUES is formed by a municipal committee and a committee of federated states, provinces and departments - with which a greater fluidity is expected in the dialogue and manifestations of interests. The forum may propose to the GMC measures to coordinate policies in order to promote the citizens' welfare and improve their quality of life.

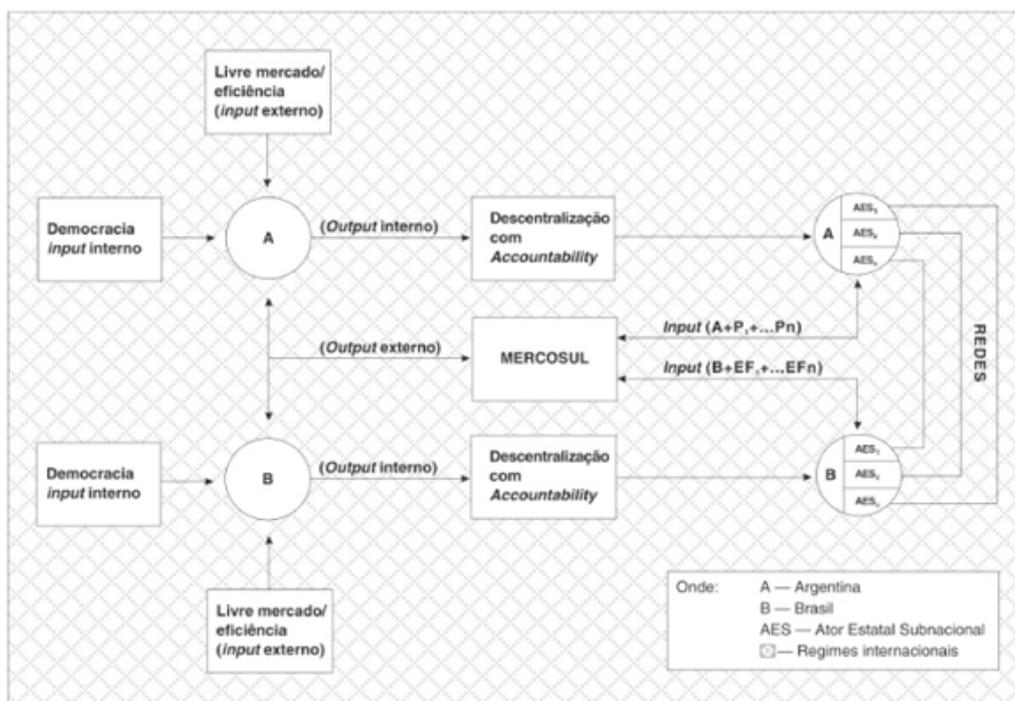


Diagrama elaborado pelo autor (EF – Estado Federado e/ou Município brasileiro e P – Província e/ou Município argentino).

Livre Mercado / eficiência (input externo)	Free Market / efficiency (external input)
Democracia input interno (Output interno)	Democracy internal input (Internal output)
Descentralização com accountability	Decentralization with accountability
AES	SSA
(Output externo)	(External output)
MERCOSUL	MERCOSUR
REDES	NETWORKS
Democracia input interno (Output interno)	Democracy internal input (Internal output)
Descentralização com accountability	Decentralization with accountability
Livre Mercado / eficiência (input externo)	Free Market / efficiency (external input)
Onde: A – Argentina B – Brasil AES – Ator Estatal Subnacional [Símbolo] – Regimes internacionais	Where: A – Argentina B – Brazil AES – Subnational State Actor [Symbol] – International regimes
Diagrama elaborado pelo autor (EF – Estado Federado e / ou Município brasileiro e P – Província e / ou Município Argentino)	Diagram prepared by the author (EF - Federated State and / or Brazilian Municipality and P - Province and / or Argentinean Municipality)

However, this more direct participation of the subnational state actors in the institutional framework of Mercosur was preceded by activities of relationship within two networks: Crecenea / Codesul and Mercocidades. The network comprising the Regional Commission of Foreign Trade of Northeastern Argentina (Crecenea - *Comissão Regional de Comércio Exterior do Nordeste Argentino*) and the Council for Southern Development and Integration (Codesul - *Conselho de Desenvolvimento e Integração Sul*) gathers in a summit twice a year, since June 1995, the governors of the northeastern provinces of Argentina and the southern and central-western states of Brazil. This summit goes well beyond the strictly administrative challenges and is a political act in which the subnational state actors proclaim the importance of their roles in the process of regional governance. They claim to be the main link in the chain of public policies and holders, next to the central power, of competencies, as referenced above, in areas of integration such as education, culture, environment, and transport. Moreover, the *mercocidades* (mercocities) network was established in November 1995 by nineteen cities of Mercosur and Chile. Not much differently from the perception of Crecenea / Codesul, this network believes that the primary objective of the integration resides in the citizens' participation and that, consequently, the cities should, in issues within their competence, join the process of decision-making of the institutions of Mercosur. To this end, the *mercocidades* created nine thematic committees seeking to develop collaborative projects that encourage a micro-location of industrial and commercial activities and services (local productive arrangements, clusters, etc.) within the Southern Common Market.

An important tool that could strengthen the role of the subnational state actors is the Fund for the Structural Convergence of Mercosur (Focem - *Fondo para la Convergencia Estructural del Mercosur*). Created by the CMC Decision No. 45/04, it aims at funding programs to promote the structural convergence, develop the competitiveness, promote the social cohesion of smaller economies and less developed regions, and support the operation of the institutional structure and the strengthening of the integration process. This fund consists of annual contributions of one hundred million dollars by the States Parties; Argentina contributes with 27%, Brazil with 70%, Paraguay with 1%, and Uruguay with 2%. Unlike the European Union's structural funds, the Focem is subject to the contributive discretion of the States-parties, which reduces the degree of independence of the supranational structure. However, it points to a possible effective participation of subnational state actors in its management, as it touches powers constitutionally assigned to them. In addition, the Focem, by means of its redistributive action, may also contribute to an increased legitimacy that would grow on what concerns both to its participating bias and that related to an increase in the level of accountability.

Closing remarks

We can observe, so, either formally or by means of networks, that the subnational state actors have been sharing the regional governance of Mercosur. They are recognized by the national States themselves as capital entities for the attainment of the democratic practice - at least when it happens behind their borders. Beyond

those borders, the position is much more mitigated and the central power is reluctant to discard its original competences. As Keating writes: "opportunities for regions to act in Europe remain limited and states are still the dominant actors" (1999, p. 7).⁴⁹ Even the Treaty of Lisbon, currently under ratification by Member States, brings evidence that the Nation-state insists on keeping itself as major actor in the community arena: the "Protocol on the role of National Parliaments in the European Union." This protocol aims at "encouraging a greater involvement of the national Parliaments in the activities of the European Union and strengthening their ability to express their views on the drafts of legislative acts of the European Union and other issues that may be of particular interest for them".⁵⁰ Thus, in the institutional gears of the Union, another state actor is introduced, beside the already bloated power of the Council, strengthening, therefore, the intergovernmental logic in detriment of the supranational one - even if, as alleged by the Commission, this happens in parallel with an increase in power of the European Parliament⁵¹ and with the goal to "enhance democracy and increase legitimacy in the functioning of the Union".⁵²

In Mercosur the situation is even more limited. The influence of subnational state actors occurs by a constituent diplomacy restricted to its internal action on the federal Executive (federative diplomacy for the Ministry of Foreign Relations). Nevertheless, one can not deny the existence of a growing interconnection between the different political levels, creating, in effect, a multilevel governance, in which, in one way or another, the subnational state actors operate (see Diagram above), even if one cannot yet speak of supporting levels of governance. Nor can one disprove that the Southern Common Market has emerged as an alternative space for opposition, becoming, from that point of view, a bastion of legitimation, as demonstrated by the creation of the Advisory Forum of Municipalities, Federated States, Provinces and Departments of the Mercosur.

Salomón and Nunes, by studying the case of the action of the state of Rio Grande do Sul and the city of Porto Alegre in the Mercosur sphere, and revisiting the studies of Hocking (2004), Paquin (2004) and Rosenau (1990), conclude

[...] that both the regional and the local governments may be considered mixed international actors, partly driven by the sovereignty they share with other governments in the territory under their administration, but also freer than the central governments on what concerns to their options of foreign policy, with some norms of performance similar to non-state actors (2007, p. 139).

This condition makes of the subnational actor a relevant link in the chain of the public policies related to the regional and / or international arena - and both as regards the process of democratization of actions and with regard to the procedures of legitimation and accountability.

Nevertheless, as Jenkins notes, "one of the most contentious questions of our era [is] whether globalization is draining away the political lifeblood of the nation-state, its sovereignty" (2003, p. 63).⁵³ The peculiar thing is that both the tradition of transnationalism and the realistic one, both in the hope of answering this question, point out and recognize the emergence of subnational actors in the international arena as a factor relevant to this debate, although for different

reasons. As the first notes this emergency as a loss of sovereignty by Nation-states with respect to foreign business (Ohmae, 1995), the second sees the phenomenon as a mere reconfiguration of the national state in order to better respond to the new demands of globalization (Shipman, 2002), that is, as suggested by Slaughter: "The State is not disappearing; it is disaggregating into its component institutions" (1999, p. 178).⁵⁴

However, what is observed, in both views, is that the Nation-state does not present itself anymore as the sole trustee of the regulatory elements of society. In this sense, Held notes that:

New demands are made for regional and local autonomy as groups find themselves buffeted by global forces and by inappropriate or ineffective political regimes. [...] They portend a political order of democratic associations, cities and nations as well as of regions and global networks. In such an order, the principle of autonomy would be entrenched in diverse sites of power and across diverse spatial domains (1996, p. 357).⁵⁵

Causing these other levels of governance - the supra and the subnational ones - to operate as genuine and additional *loci* of legitimacy and accountability.

It is what we can observe in the evolution of Mercosur. This evolution, as a whole, demonstrates a concern for reconciliation between institutional efficiency and democratic practice. The formula seems to go through a nanoaccountability, that is, a multipoint accountability that merges participation and delegation in an ideal measure. As Félix Pena said, referring to the idea of a new stage in the integration of Mercosur, marked by the establishment of Parlasur and the Permanent Court of Review, "the path has begun of a necessary institutional improvement of the integration process" (2005,s/p).⁵⁶

Notes

¹ *Apud* Brown, Nardin and Rengger (2002, p. 301).

² "In this present-day world, the State - and this is typically more or less the sovereign national state - is both indispensable and inadequate. It is indispensable instrument to get many things done, to provide many needed services and to deal with many real problems. But it is inadequate to cope with an increasing number of other problems of life and death for many of its inhabitants".

³ We construe the institutional cartography not only as the set of formal and informal institutions, but also the modes of relationship existing between them. This dynamic set has a reticulated nature, consisting in a mesh of regimes of power.

⁴ In terms of literature review, we tried to focus on the matrix ideas related to the examined issues. It was found that most of the pertinent literature is not Brazilian. That does not mean that the national authors were not used, but only that they were when presenting arguments that were innovative or applied to the reality of Mercosur.

5 "Comparisons are drawn between EU and an ancient, Westminster-style, or frankly utopian form of deliberative democracy. While perhaps useful for philosophical purposes, the use of idealistic standards no modern governments can meet obscures the social context of contemporary European policy-making".

6 The total list of all Provisional Measures is available in the website <http://www.planalto.gov.br/ccivil/MPV/Quadro/Quadro%20Geral.htm#posteriorec> (visited in 2/14/2008).

7 This amendment is available in the website http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc32.htm (visited in 2/14/2008).

8 Available in the website <http://www.camara.gov.br/sileg/integras/456085.pdf> (visited in 2/14/2008).

9 Limongi also states: "I purposely left for last the most powerful weapon on which the president counts, the power to decree, the provisional measure, to show that it is one among many other resources available to the president. The most powerful of them, no doubt about it, since it changes the *status quo* unilaterally" (2006, p. 27).

10 The French Senate held in February 10, 2006, a historical analysis of the use of *ordonnances* during the Fifth Republic. Information available in the website http://www.agoravox.fr/article.php3?id_article=7600.php3?id_article=61 (visited in 2/14/2008).

11 Cf. *Folha de São Paulo*, "Manifesto dá a Sarkozy estilo monárquico" ("Manifesto provides Sarkozy with a monarchical style"), in the website <http://www1.folha.uol.com.br/fsp/mundo/ft1802200820.htm> (visited in 2/18/2008).

12 "L'originalité du projet [de l'Union Européenne] consiste à faire coexister, au moins pour un temps, une intégration économique d'essence fédérale et une coopération [politique] d'inspiration confédérale".

13 "[...] the EU as a fluid polity outside the statist mold, a constellation of institutions embedded in a dense and evolving network of informal interactions that brings together supranational, national and subnational actors".

14 Article 1 of the Protocol of Ushuaia on Democratic Commitment in Mercosur, Bolivia and Chile (cf. website <http://www2.mre.gov.br/dai/ushuaia.htm> [visited in 4/25/2006]).

15 "Regimes can be defined as sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations".

16 "These more informal, fluid forms of representation do not meet the standards of popular sovereignty set by traditional democratic theory. Nonetheless, they reflect the reality of the EU as polity composed of multiple identities embedded at multiple levels of governance".

17 "If governance above the level of the nation-state is to be legitimate in a democratic era, mechanisms for appropriate accountability need to be institutionalized. Yet these mechanisms cannot simply replicate, on a larger scale, the familiar procedures and practices of democratic states".

18 We have used the definition of Grant and Keohane for accountability: "as we use the term, implies that some actors have the right to hold other actors to a set of standards, to judge whether they have fulfilled their responsibilities in light of these standards, and to impose sanctions if they determine that these responsibilities have not been met" (2005, p. 1).

19 "In the participation model, those affected hold power-wielders accountable directly through participation, whereas in the delegation model, those delegating power hold power-wielders accountable through a variety of mechanisms for

judgment after fact" (Grant and Keohane, 2005, pp. 32-33).

[20](#) They are: Hierarchical, Supervisory, Fiscal, Legal, Market, Peer and Public reputational (Grant and Keohane, 2005, p. 36)

[21](#) "Surely, the sources of legitimacy are diverse: some are technocratic, and relate to presume expertise to manage the complexities of policies".

[22](#) Preamble of the Treaty of the European Union and Article 5 of the Treaty of the European Community consolidated in Nice in 2002. Title III, Article I-11 of the Treaty establishing a Constitution for Europe (this Treaty was not approved by the *referenda* held in France and the Netherlands in 2005).

[23](#) There is a considerable number of offices of representation and regional missions in Brussels. Their work on publicity and lobbying has assumed relevant proportions. It is also worth remembering that the Treaty of Maastricht established not only the possibility, in specific circumstances, of subnational entities assuming the chair of the Nation-state within the Council of Ministers - which has been practiced by the German Länder, Austrians and Belgian regions -- but also the possibility of frequent involvement of regional officials in the management of structural funds and also the constant sectorial networking among the subnational state actors.

[24](#) "Globalization and the rise of transnational regimes, especially regional trading areas, have eroded the distinction between domestic and foreign affairs and by the same token have transformed the division of responsibilities between state and subnational governments".

[25](#) "Paradiplomacy is not the same as conventional state diplomacy, which is about pursuing a defined state interest in the international arena. It is more functionally specific and targeted, often opportunistic and experimental. [...] Paradiplomacy is also characterized by a high degree of involvement of civil society and the private sector".

[26](#) "En la disputa de las papeleras la contienda se establece entre, por un lado, el Estado uruguayo, que concentra un mayor poder de decisión en el caso, y, por otro, una elusiva amalgama formada por el gobierno nacional argentino, el gobierno de Entre Rios y sectores de la sociedad civil. Considerando la paradiplomacia como un epifenómeno em el cuadro uruguayo y enfocando en la problemática de la cuestión subnacional en la Argentina, la rationale de esa amalgama parece repousar sobre tres factores basilares: 1. la utilización coherente del régimen internacional que rige lãs cuestiones ecológicas; 2. la capacidad de Entre Rios de mover uma acción colectiva parroquial conjugando intereses gubernamentales y no gubernamentales; 3. la habilidad del gobierno federal de apropiarse de la bandera del movimiento infraestatal, suscribiéndolo internacionalmente".

[27](#) "The term constituent diplomacy is intended to be a neutral descriptor, one that avoids the implication that the activities of constituent governments are necessarily inferior, ancillary, or supplemental to the high politics of nation-state diplomacy. What is high or low politics depends on one's perspective".

[28](#) Although not specific of the Democratic federal nation states or their counterparts, the constituent diplomacy has been widely practiced by them.

[29](#) "[...] whatever competition may exist, and exist legitimately, within other policy fields, in foreign affairs the seemingly instinctual reaction of national élites is to try to suppress competition and shield foreign-policy-making behind a veil of state secrecy. The nation, it is said, must speak with a single voice".

[30](#) This concept is explored by Rawls: "Somehow we must nullify the effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage. Now in order to do this I assume that the parties are situated behind a veil of ignorance. They do not know how the

various alternatives will affect their own particular case and they are obliged to evaluate principles solely on the basis of general considerations" (1999, p. 118).

[31](#) "The politics of many international negotiations can usefully be conceived as a two-level game. At national level, domestic groups pursue their interests by pressuring the government to adopt favorable policies, and politicians seek power by constructing coalitions among those groups. At the international level, national governments seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments. Neither of the two games can be ignored by central decision-makers, so long as their countries remain interdependent, yet sovereign".

[32](#) One of the possible sources of inspiration for the principle of subsidiarity is the Encyclical Letter *Quadragesimo Anno*, written by Pius XI in 1931. In it the Pope says: "Truth is, and is amply demonstrated by history, that, due to changing conditions, only large societies can now accomplish which previously even the small ones could; however, remains unchanged that solemn principle of social philosophy: just as it is unfair to deprive people of what they can make with their own initiative and industry and assign it to the community, in the same way, assigning to a larger and higher society what the smaller and lower ones could accomplish is an injustice, a serious damage and a disruption of the good social order. The natural purpose of society and its action is to assist its members, not to destroy them or absorb them" (Pius XI, 1969, p. 36).

[33](#) We are considering the Mercosur without its associate members, that is, formed only by Argentina, Brazil, Paraguay and Uruguay. It is only those countries that participate fully in the institutional dynamics.

[34](#) "More significant in the long run were the painfully slow negotiation to include Argentina and the rest of Mercosur in the free trade area contemplated by the United States in its treaty with México and Canada".

[35](#) "[...] "in the late 1990s scholars began calling for a second movement in institutional analysis, that is, a more constructive dialogue that explores the ways in which these paradigms [rational choice, historical and organizational] might complement and connect to each other favor (Campbell, 2004, p. 4).

[36](#) It is worth mentioning the so-called Paraguayan War and its disastrous consequences especially for the Guaraní people (Chiavenatto, 1979). For a literary-philosophical reflection on the dictatorial regime in Latin America and the controversial figure of José Gaspar de Francia and its importance for the development of Paraguay, see Roa Bastos (1974).

[37](#) It is true that the United Provinces of Río de la Plata, Argentina today, had an important confederative experience until 1860. But, since then, the Bonarens hegemony is constitutionally felt in a systematic fashion. That will change somewhat, as we shall see, with the constitutional reform of 1994.

[38](#) See, for example, the Republic of Venezuela, which, following the arrival of Hugo Chavez to power, was renamed as Bolivarian Republic of Venezuela. Chavez asked the Mercosur the adhesion of his country. Decision No. 29/05 of Mercosur states that the Common Market Council decides: "Acoger com satisfacción la solicitud de la República Bolivariana de Venezuela de incorporarse al Mercosur como Estado Parte" (Art. 1). The classic populism of Chavez is anchored on the positive pre-disposition that the popular perception has of the integrationist and anti-imperialist ideas of Bolívar.

[39](#) "La Constitution de 1988 étend jusqu'à un certain point la compétence législative des États. Elle fait également bénéficier les autorités municipales de cette extension".

[40](#) In 1996 the then Brazilian Chancellor Luiz Felipe Lampreia, already stated: "New issues, new forms of interaction between the chancelleries and between

these and other agencies of the government and of the civil society, the imperatives of the public and federative diplomacy, the imperatives of the diplomacy of Heads of State and Government, exponential mark of our time, the computerization, the pursuit of efficiency and economy in the management of the federal administrative machinery — this is a complex reality that points to the need for continuous upgrading of the Ministry of Foreign Affairs, the diplomatic service and our working methods". Speech by Minister of Foreign Affairs, Ambassador Luiz Felipe Lampreia, during the graduation ceremony of the class "Florestan Fernandes" of the Rio Branco Institute on April 30, 1996.

[41](#) We were invited by Mr. Vicente Trevas, head of the Deputy Headship of Federative Affairs and National Coordinator of the Advisory Forum of Municipalities, Federated States, Provinces and Departments of Mercosur, to participate in preliminary discussions aiming at holding the Seminar of Tucumán, with the function of academic expert. The main objective was to try to arrange a technical seminar before the meeting of the governors. This technical seminar had two purposes: to grant visibility to the two regions involved, and suggest recommendations to the governors. On the other hand, it had three spheres: Academia, Public Management, and Businesses.

[42](#) Contrary to Argentina or the United States, which result from the union between sovereign entities, Brazil is federalized, in 1889, from a centralized monarchy. This is an inverted federalism, in which the central power transfers competencies to its parties, rather than a traditional federalism, in which the parties waive jurisdiction in favor of the center (Abrucio, 1998).

[43](#) "[...] que deleguen competencias y jurisdicción a organizaciones supraestatales em condiciones de reciprocidad e igualdad, y que respeten el orden democrático y los derechos humanos. Las normas dictadas en su consecuencia tienen jerarquía superior a las leyes".

[44](#) "[...] celebrar convênios internacionais en tanto no sean incompatibles con la política exterior de la Nación y no afecten las facultades delegadas al Gobierno federal o el crédito público de la Nación; con conocimiento del Congreso Nacional".

[45](#) "The Law of Fiscal Responsibility – LRF – *Lei de Responsabilidade Fiscal* (Complementary Law no. 101, of May 4, 2000) sets norms of public finances focused on responsibility in fiscal management, by means of actions that prevent risks and correct the deviations that may impact the balance of public accounts, highlighting the planning, control, transparency, and accountability as basic assumptions". Definition caught on 4/30/06 on the official website of the Ministry of Finance of the Brazilian government (http://www.tesouro.fazenda.gov.br/hp/lei_responsabilidade_fiscal.asp).

[46](#) "Crear el Foro Consultivo de Municipios, Estados Federados, Provincias y Departamentos del Mercosur, con la finalidad de estimular el diálogo y la cooperación entre las autoridades de nivel municipal, estadual, provincial y departamental dos Estados Partes del Mercosur". Mercosur/CMC/DEC. no. 41/04, art. 1 (website <http://www.mercosur.int/msweb/>, visited in 2/14/2005).

[47](#) Due to the length of the name of the forum, from now on, for the sake of vocabulary convenience, we will mention it as *Fórum das Unidades Estatais Subnacionais* - FUES (Forum of State-owned Subnational Units – FUES).

[48](#) Mercosur /GMC/RES. No. 90/00 (website <http://www.mercosur.int/msweb/>, visited in 5/1/2006).

[49](#) "[...] opportunities for regions to act in Europe remain limited and states are still the dominant actors".

[50](#) Protocol on the role of national parliaments in the European Union - Treaty of Lisbon.

[51](#) Treaty of Lisbon (Article 9A).

[52](#) "[...] enhance democracy and increase legitimacy in the functioning of the Union". Information available in the official website of the European Union, http://europa.eu/lisbon_treaty/glance/index_en.htm (visited in 2/21/2008).

[53](#) "[...] one of the most contentious questions of our era [is] whether globalization is draining away the political lifeblood of the nation-state, its sovereignty".

[54](#) "The State is not disappearing; it is disaggregating into its component institutions".

[55](#) "New demands are made for regional and local autonomy as groups find themselves buffeted by global forces and by inappropriate or ineffective political regimes. [...] They portend a political order of democratic associations, cities and nations as well as of regions and global networks. In such an order, the principle of autonomy would be entrenched in diverse sites of power and across diverse spatial domains".

[56](#) "[...] se inició el camino de un necesario perfeccionamiento institucional del proceso de integración".

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