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The Parliamentary Dimension of Regional Integration. A Comparison of the European Union and MERCOSUR

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Abstract

This article analyzes the development of parliamentary institutions in processes of regional integration. Its focus is on two cases, the European Union and MERCOSUR, and their respective parliamentary bodies: the European Parliament and the Joint Parliamentary Commission of MERCOSUR. The article looks into whether and how ongoing processes of regional integration are transforming the historical role performed by parliamentary bodies, and evaluates the degree to which path-dependency impinges on such transformations.

Keywords: regional integration, supranational parliaments, path-dependency, European integration, Latin American integration

Resumen

El trabajo analiza el rol de las construcciones parlamentarias en los procesos de integración regional a partir de los casos de la UE y el MERCOSUR, es decir, de la trayectoria político-institucional del Parlamento Europeo y de la Comisión Parlamentaria Conjunta del MERCOSUR. Asimismo, da cuenta de hasta qué punto el marco regional lleva a una transformación del rol históricamente asumido por Parlamentos y Congresos a nivel nacional y regional, así como de qué forma la transformación institucional y política de aquellas construcciones se encuentra condicionada por su propio sendero.

Palabras clave: integración regional, parlamentos supranacionales, *path-dependency*, integración europea, integración latinoamericana

Introduction

This paper deals with the parliamentary dimension of integration processes. It is based on the analysis of two cases, the European Union (EU) and the Common Market of the South (MERCOSUR), and intends to provide a comparative framework for understanding the new political and institutional configurations that are currently emerging at the regional level.

Parliaments and Congresses have assumed, in modern representative democracies, a critical role as spaces for the exercise of popular sovereignty. They seek the peaceful reaching of consensus and the resolution of conflicts of complex societies, and they hold the purpose of legitimating the political process. This role has been historically related to certain functions (to represent, legitimate, legislate and control) that are not exercised, at least not in the same manner or with the same principles, by the executive branches. A debate of this issue is significant in the light of the most recent regional developments.

The paper is organized in three parts. The first and second parts are devoted to the analysis of the parliamentary dimension of the cases chosen. I present both processes as political and institutional forms in order to subsequently focus on the decision-making process and on its parliamentary dimension. In the third part, I enquire into the similarities and differences between both cases, which will allow us to discover the unique features of MERCOSUR. The comparison develops around three axes: the type of political and institutional construction, the characteristics of the relationship between the executive and the legislative branches at multiple levels, and the parliamentary dimension itself. The latter deals with the extent to which the functions that have been traditionally assumed by parliaments and congresses are accomplished by regional parliaments –or what are the consequences if they are not.

The parliamentary dimension of the European integration process

The European Union as a Political System

General characteristics of the system

There are solid grounds to consider the EU as an emerging political system at the European level. Simon Hix (1999), based on the theoretical framework designed by Almond (1956) and Easton (1957) to define political systems, analyzes to what extent the EU has all its characteristic elements. First, he refers to its high level of institutional complexity. The treaties have given European institutions growing executive, legislative and judicial powers, producing a highly evolved system of rules and procedures that establish the manner in which these powers are to be exercised. Second, he points out that as the EU institutions have these government powers, a complex network has been established of public and private groups that seek to satisfy their demands through the European political system. Third, he emphasizes that the EU decisions are highly significant in terms of their impact on the allocation of economic resources and social and political values through the whole system. Last, the author indicates that the political process of the EU is a permanent trait in the political life of Europe. The central issues of European politics, in contrast to the image that periodical summits seem to show, are built on a daily basis with the interaction between European

institutions and with the interaction between them and national governments in bilateral or multilateral agreements between governments and between private interests and European and national officers.

Specific features of the community legislative sub-system

The scope of the community law shows the importance of what is at stake in the decision-making process. The precedents laid down by the European Court of Justice in order to guarantee the consistent application of community law make a direct connection of the European legal order with that of the member states, on the basis of two principles: the direct effect and the supremacy of community law over domestic law.

The first originates in the judgment Gend & Loos (1963), in which the Court held: "The Community is a new international law order, in whose benefit the member states have limited, in some restricted respects, their sovereign law, and whose subjects are not only member states but their citizens as well" (Morata 1998: 248). This means that the provisions laid down by community law create duties and/or rights for individuals, which they can invoke in national jurisdictions.

It is on this interpretation that the direct effect doctrine has been based, in accordance to which the provisions contained in treaties and in the rules of the derived law adopted by community institutions have direct effects on the member States if their efficacy is not subject to prior execution measures. This doctrine grants citizens a leading role in the application of community law by including them in the control of such application and making control more efficacious. At the same time, citizens are subject to the obligations resulting from community law.

It was with the Simmenthal judgment (1979) that the notion of direct application of community law started, to supplement the prior one, according to which "community law rules must deploy their full effects consistently through all member states as from their enforcement and throughout their duration so that their provisions may become an immediate source of rights and duties for all concerned, either member states or individuals (…), that such effect is equally related to all the judges that in the framework of their jurisdictions have been commissioned to, as bodies of a member State, protect the rights conferred to individuals by community law" (Bertrand 2002).

The principle of supremacy of community law over domestic law was born with the judgment Costa-ENEL (1964) and applies both in the case of primary law as in the case of derived law. In accordance with it, community law maintains its supremacy over the constitutions of the member states. In the judgment mentioned, the Court held that, in contrast to ordinary international treaties, the Treaty of the European Community has instituted its own legal order, integrated into the legal system of member States since its enforcement and imposed in their jurisdictions. For the Court, this original trait of community law constitutes the grounds for the supremacy principle, without which compliance with treaties and the existence of the community itself would not be feasible. Both the direct effect and the supremacy of community law principles, supplemented by the precedents laid down by the Court, attach legal strength, and therefore, efficacy, to community rules and regulations.

Finally, community law owes a major part of its development to pre-judicial issues, corresponding to the resource that empowers domestic judges, when the case they are hearing has implications related to community law, to question the Court on the interpretation to be given to community provisions or to the validity of the actions implemented by institutions in relation to community law. Given the non-binding nature of the judgments entered by the European Court, the decision adopted by the domestic judge in accordance with the pre-judicial resource is legally valid and is binding upon the authorities and individuals of member States.

In order to proceed to the creation and reform of the community law, the EU has developed "the most complex legislative system in the world" (Hix 1999: 62). In spite of this complexity, this system has proven to be effective in terms of its ability to reform and enact community acts and to carry out the task of regulating a market of approximately 350 million consumers, in the framework of a huge diversity of national, sectorial and social interests and people affected by the harmonization process of the markets of the member States. The Council of Ministers (CM) and the European Parliament have adapted to this system and have both developed sophisticated rules that establish their internal organization to improve the examination, amendment and adoption of legislation, as well as various strategies to maximize the influence of each vis-à-vis the other in the various stages of bicameral interaction. Both institutions have become legislative houses that are highly organized and de-centralized. At present, the EU has a system similar to a bicameral legislature, in which the CM represents the States and the EP represents citizens. The uniqueness of this case is that the first is the dominant chamber. However, under the so-called co-decision process, both are real co-legislators (Hix, 1999; Quermonne, 1998).

Participation of Multiple Institutions in the European Political Process

We must discuss here the institutions that make up the so-called institutional triangle, the Commission, the CM and the EP, that are central elements of the decision-making process of the Union, as well as the unique role of the European Council, which, although not constituting an institution in itself, has a major political role in terms of defining the main orientation of policies at the European level.

The European Commission

The Commission is *the main driver of community policy* as it has the initiative power in the decision-making process. It is formed since 1995, when it was last enhanced, by twenty commissioners[1], with a five-year term in office, appointed by agreements between the governments of the member States: two for each one of the biggest countries and one for each of the smaller countries. Its make-up must be approved by Parliament, to which it is liable. It operates as a collegiate body and the decisions, which may be made by a simple majority of its members, are normally made by unanimity.

[1] The Treaty of Nice, that came into force on February 1, 2003, limits the composition of the Commission as from 2005 to a commissioner for each State. Once the Union has 27 members, a decision will be made to fix the final number of members of the body, which will be less than 27. In this hypothesis, a mechanism of rotation of countries would be scheduled. The Council must decide at that time, by unanimity, the exact number of commissioners.

It also discharges other equally important functions in the following areas: it is the guardian of treaties, i.e., it guarantees compliance with community law, it is the executive body of communities and finally, it represents the Community at the international level. Its execution powers may be grouped into five major categories: it adopts the texts for the application of some provisions of the Treaty or of the acts of the CM, it applies the rules of the Treaties to special cases, it administers the safeguard clauses, it manages community funds; and carries out the mandates entrusted by the Council in the negotiation of agreements with third countries.

The stability of the Commission during its mandate, in contrast to the possible changing coalitions of Governments in the CM, would maintain a given continuity in community policy.

The Council of the European Union or Council of Ministers

The CM, a clearly intergovernmental institution, is made up by a representative of each one of the member states. It has a dual role as it is simultaneously the *main component of the community legislative sphere* and one of the components of its executive branch. The legislative function is progressively shared with the EP, which turns the legislative process into an even more complex process. But, in turn, the CM participates in other ways: in its role as executive branch, it adopts the regulations and directives, the main elements of community law, it establishes the projected budget and participates, together with the EP, on its adoption; and; finally; it is the community representative in the international stage. It is the CM which authorizes the start of negotiations and grants the Commission a mandate to establish commercial and association agreements as it is the only body empowered to carry them out.

At present, in accordance with the nature of the issues to be dealt with, the Council makes its decisions based on three voting modalities: simple majority, qualified majority or unanimity.

The last two forms of voting are used for the issues that are not merely procedural. Now, in the case of the unanimity abstentions do not preclude the adoption of a decision. This way, an abstention is equivalent to the support of the proposal. In the framework of voting by qualified majority abstention implies voting against the proposal as 62 votes more are necessary for the law to be approved. A paradoxical situation arises then in which a decision that cannot be reached by a qualified majority is most easily made by unanimity. In a vote of this type, each member has the same opportunity of being pivotal, i.e., of determining when a coalition is considered to be a winner or a loser. In the case of voting by qualified majority, although the bigger member States have more votes, the system leads to over-representation of citizens in the smaller member States. However, and in spite of this, bigger member States have more than twice as much possibilities of taking part in a winner coalition than their smaller counterparts. Now, as Simon Hix has affirmed, calculation of relative power based on the absolute number of votes of each Member State is based on the assumption that all types of coalitions are equally probable, but this is not the case. First, he indicates that there are bilateral or multilateral informal alliances between governments with similar interests. For instance, the French and German coalition, (the so-called Paris-Bonn axis) has been at the core of the Council's decision-making process since

the 50s. The BENELUX states are more integrated from the economic and political point of view than any other group in the EU, and the less prosperous member States (Spain, Greece, Ireland and Portugal) frequently vote together to protect their interests in the single market and in relation to structural funds, which has earned them the designation of 'cohesion bloc'. Finally, Denmark, Sweden and Finland have strong economic and political relations and similar cultural and economic structures. Hix has affirmed that a French-German coalition and a 'cohesion bloc' are pivotal in 14.5% of the cases and a 'Nordic bloc' in 11.2% of them.

In the second place, it is more likely that there will be coalitions between governments with similar policy objectives. However, there is an underlying "consensus culture" in the CM that ensures that the Council uses the qualified majority only on occasion.

The European Parliament

The Parliamentary Assembly was created in 1958 by the Treaty of Rome and was originally made up by the delegations of the national parliaments of the member countries. Starting in June 1979, with the first direct elections by universal suffrage, it adopted the designation of EP. This is the body of democratic expression and political control of European Communities. European elections are held every five years. At present the EP has 626 members. The seats are distributed as follows:

Germany	99
France, Great Britain, Italy	87
Spain	64
The Netherlands	31
Belgium, Greece, Portugal	25
Sweden	22
Austria	21
Denmark, Finland	16
Ireland	15
Luxembourg	6

Pursuant to the provisions of the Masstricht and Amsterdam Treaties, the EP became a real actor in the decision-making process and therefore, in the guidance and election of policies at the European level. The Maastricht Treaty brought about a certain re-balancing between institutions strengthening the role of the EP thanks to the creation of new procedures (especially the co-decision procedure) and to the extension of existing procedures to new fields (cooperation, consultation), as well as the enhancement of its control powers. In accordance with the Single European Act, in the framework of the cooperation procedure the Commission was free to accept or reject the decisions made by the EP in whole or in part. With the Treaty on EU, Parliament has received not only the right to make joint decisions with the CM but a right to take initiatives. For the sake of clarity, I will divide the powers of this Assembly into: control, budget and legislation.

Control powers

With respect to the issue of political control, it is of major importance for us to point out that starting with the Treaty on EU, the make-up of the Commission must be approved by Parliament, to whom it reports. The Paris Treaty and, subsequently, the Treaties of Rome, established the responsibility of the Commission to the Assembly. However, starting with the Treaty on EU, Parliament has a direct involvement in the designation of the Commission and of its President and both terms in office coincide. The EP is consulted before governments designate the future President of the Commission and the whole Commission must be subject to an approval vote by Parliament before it is designated by common consent by the Governments. I must add that EP members often resort to summoning the Commission and the CM to oral questioning as a control instrument. On several occasions, the EP has created temporary committees responsible for enquiring into situations of alleged breaches or improper management in the Community. It also recognizes the right of all citizens or legal entities to file petitions, which one of the standing committees will study. These initiatives have been confirmed by the Treaty on EU, which also provides that the EP shall appoint an Ombudsman empowered to receive the demands of any community citizen (or of any residing individual or legal entity) resulting from misconduct on the part of institutions, except for the European Court of Justice.

Budgetary powers

With respect to the Community's budget, prepared by the Commission, it comes and goes between the CM and the EP, the two institutions that exercise budgetary authority. The latter has the last word with respect to non-mandatory expenses: expenses incurred by the functioning of institutions and, above all, 'operational' expenses (credits for structural funds, for investment, etc.). The latter represent a major percentage of the budget and determine the development possibilities of the Community through deeper community policies (regional, research, etc.). The EP, with the limits imposed by treaties, may modify the distribution of these appropriations and even increase them. On mandatory expenses, the CM has the last word. They are mainly related to the expenses of Common Agricultural Policy and, above all, of the guarantee of agricultural markets. The EP may propose changes to these appropriations, which, provided they do not increase the total volume of the budget, are approved unless the CM rejects them by qualified majority. It is also empowered to globally reject the budget due to major reasons, which it has exercised on several occasions. In that case, the budgetary procedure must start again. The Parliament's President is empowered to declare the final approval of the budget once the procedure is over. Lastly, the EP approves, subject to the recommendation of the CM, the implementation of the budget by the Commission the prior year.

Legislative powers

These powers are exercised through various procedures, mainly: consultation, cooperation and co-decision. The consultative function of the EP in the legislative process, which is not a legislative branch proper in that it does not bind neither the Commission nor the Council, established by the Treaty of the European Community, is confirmed by the Treaty on EU. It has been enhanced to cooperation on common foreign and security policy and to justice and home affairs. In addition to this power, established by the treaties, an optional consultation procedure has been established, at the initiative of the CM. The Commission has an almost quasi-monopoly of the power

to make proposals. The project adopted by the Commission is communicated to Parliament for it to prepare a non-binding opinion. The CM is free to take it into account and the Commission undertakes to do that, modifying its initial position as long as Parliament has not taken a resolution. The CM is responsible for declaring the final approval of the decision by simple majority, qualified majority or by unanimity, with unanimity being always necessary to modify the proposals arising from the Commission.

The cooperation procedure has been established by the Single European Act, together with the extension of the qualified majority vote in the Council to start up the interior market. This has been a major landmark prior to moving forward to the co-decision procedure established by the Treaty on EU. This Treaty extends the scope of application of cooperation, particularly to social policy, education and professional training, the environment and various measures related to the economic and monetary union and some related to the application and management of the interior market, which until then had been one of the main fields of cooperation, now included in the co-decision field. This procedure has been subsequently applied by the Amsterdam Treaty even to the new fields to which Masstricht had extended cooperation, in such a way that a limitation on its scope is expected in the future, to the field of the economic and monetary unit. The cooperation procedure may be summarized as follows: the CM, at the proposal of the Commission and after the opinion of the EP, establishes a common position. This is subject to the EP which, in a three-month period may, either accept it (by express or implied acceptance), reject or amend it. In a month's time, the Commission decides whether to take the Parliament's amendments into account or not. Subsequently, the CM proceeds to a second reading. In the event of rejection by the EP, the Council must make a decision by unanimity. If the European Council has introduced amendments, it must vote by qualified majority in the event the Commission has taken them into account and by unanimity if the Commission has not. In the absence of a decision by the CM, which should be rendered in a three-month period, the Commission's proposal is considered to be rejected. The EP's experience with this procedure has been positive as a number of its amendments have been adopted by the Commission and the Council during the second reading. Besides, this has strengthened the direct links between the EP and the CM.

The co-decision procedure has been established by the Treaty on EU for the benefit of the EP in its relationship to the CM to exercise ruling powers in some fields, limited but important, as in the regulation of domestic markets, the free circulation of workers and the establishment and preparation of framework-programs in various sectors (research, the environment, trans-European networks, public health, consumer protection, etc.). As it was highly complex, the Amsterdam Treaty has simplified it and enhanced its application to new fields. There has also been a major enhancement in the field of its application with the Treaty of Nice, in force since February 1, 2003.

The version of this procedure simplified by the Amsterdam Treaty may be summarized as follows: the CM, at the proposal of the Commission and subject to an opinion by the EP, prepares a "common position". This position is subject to the EP, which may accept it, and if that were the case, it would be finally approved and the process would be favorably closed, or either reject it with the majority of its members and the text is not considered to have been adopted, which constitutes an absolute veto, or adopt amendments with the same majority and, if the Council in turn approves them,

the act may be finally adopted. If the CM does not approve all the reforms voted by the EP, the President of the Council, in agreement with the President of the EP, summons a Conciliation Committee that brings together all the members of the Council and the representatives of the EP, while the Commission takes part in their work in order to bring positions closer. If in a six-week period subsequent to the summons the committee does not approve a common project, both institutions have an equal term to approve the conformity minutes with the Committee. If none of the parties grants its approval, it is considered as not approved. Approval requires the absolute majority of votes expressed in the EP and the qualified majority in the Council.

In accordance with Jean-Louis Quermone (1998) and Simon Hix (1999), this procedure would tend to establish an almost perfect bicameralism. Regarding the issue of strategies for coalition formation in this framework, contrary to the situation in parliamentarism, the EP is not supposed to form a majority coalition to support a given government. Therefore, coalitions are formed on the basis of the individual votes of legislators. However, on many an occasion the EP behaves as the only actor, with a high level of cohesion, evidencing a common interest (promote higher integration) in opposition to the interest of the CM (in relation to the legislative chamber that represents all States) or of the CM and the Commission (as institutions with executive powers) (Abeles, 1992; Garret and Tsebelis, 2000; and Hix, 1999). Even in the absence of this common parliamentary interest, the rules of the legislative process in the EU facilitate and encourage the formation of a "great coalition… The oligopoly-like relationship between the two biggest groups is strengthened by the requirement of an absolute majority, the current relation of forces between the parties and the political positioning of the former in the left-right dimensions and in pro-anti Europe. The SEP and the PPE must cooperate to ensure a given legislative consistency and to protect their partisan interests and their policy objectives" (Hix 1999: 84). The policy to create coalitions varies in accordance with the majority required, whether simple or absolute. During the first stages of voting a simple majority is required, but in accordance with community law, resolutions related to EU legislation require an absolute majority of all the members of the EP. This causes problems to the institution because the average attendance is 75%. Therefore, a coalition of 67% of those in attendance (i.e., two thirds) is required for the approval. This is how cooperation between the two most numerous groups is encouraged. This coalition is additionally promoted by the policy options that the two have in the key policy dimension at stake in the interaction between the EP and the CM. For instance, in the pro/anti Europe dimension, both political groups are moderately pro-Europe. However, Simon Hix affirms that contrary to expectations, with the requirement of a simple majority and a deeper consolidation of the SEP and the EPP, the possibility exists for alternative coalitions.

The European Council

The European Council has a peculiar position in the decision-making process as, although this is not an institution proper, it has a key role in terms of the definition of political choices at the European level. It is made up by the heads of state and/or government of the member states. The presidency of the Commission, exercised by shifts, has six-month duration. Its creation, in the framework of the Paris Summit of 1974, arose from the need to find a way out of the uncertainties of the European construction and of the inability of the main institutions to lead the process (Morata, 1998: 175). From then onwards, its involvement is a determining element in major

issues: Parliament's direct elections, the creation of the European monetary system, the reforms of the Common Agricultural Policy, the adhesion of new States, the organization of the internal market and of the economic and monetary union, etc.

The European Council has become, especially since the mid-80s an axis for a re-launch of integration. *Its decisions are of a political nature and have no legal effects*; the translation of its decisions into legal rules is the duty of the CM. Its role has been delineated in the Declaration about the EU adopted in 1983 by the Stuttgart Summit, which sets forth that the European Council must take care of the following issues: supply the European construction with general political momentum; define the general guidelines so as to favor European construction and lay down the guidelines of the political order for European communities and political cooperation; hold debates about relevant issues related to the various aspects of the EU, safeguarding their consistency; include new activity sectors in cooperation and express a common position in foreign relations. In accordance with the Treaty on EU, the European Council, of intergovernmental nature, is only involved in the establishment of major guidelines in areas related to community issues and in the framework of common foreign and security policy (CFSP), of cooperation in justice and home affairs (CJHA) and of the economic and monetary union (EMU). Morata notes that, based on the analysis of the work performed by the European Council, four major focuses of attention may be found: institutional affairs, economic, financial and monetary issues, foreign relations and the initiation of internal policies.

The institutionalization of the European Council has strengthened the role of the States, particularly of their governments (in the narrow sense of executive powers) in the decision-making process of the EU. Its decisions are not subject to the control of the EP nor of the Court. There is competition in the legitimacy of the European Council, arising from the governments, and the legitimacy of the EP, elected by the direct universal vote of the citizens of the Union (Bertrand, 1998: 29).

The parliamentary dimension of MERCOSUR

A unique combination of presidential diplomacy and an intergovernmental institutional architecture

In the more than ten years that have elapsed since its inception, MERCOSUR has not had a significant institutional structure. Its institutional design is strictly intergovernmental. In the first place, these are institutions whose members are designated by the member States, with respect to which they do not have any autonomy. In the second place, decision-making is by consensus and with the presence of all member States, which grants them all the same veto power. The intergovernmental nature of the type of integration is also seen in its legal structure as the rules established by its parts, in contrast to the European case, are not directly applicable.

In MERCOSUR's brief history, there has been a consistent rejection of the establishment of any type of institutional arrangement that may restrict the sovereignty of the state. This issue has not been alien to constant debates that have arisen both within the countries, between the supporters of the system chosen and those who support the supra-national option, either with respect to one or both of the spheres considered: on the one hand, the institutional design and the decision-making procedure and on the other, the judicial structure. These demands have been far more unanimous

in terms of the creation of a Court of Justice than in terms of the modification of its decision-making system and have tended to show a stronger presence with the emergence of major differences of opinion between the parties (Lavagna, 1998: 288). In any case, criticism to the current intergovernmental system has focused mainly on two issues. On one hand, on its relative inability to contribute to dispute resolution and to favor political cooperation and on the other hand, on the democratic deficit supposedly derived from the intergovernmental system.

Given this institutionalization focused on intergovernmental bodies, the leading role of presidents has been emphasized, as it is especially crucial in the origins of the process and in times of crisis or conflict between the member States. If we take this picture into account, it has even been said that the main traits of the integration process in the framework of MERCOSUR would represent an extreme type of inter-governmentalism, known as inter-presidentialism (Malamud, 2003). Therefore, we are not merely speaking about an institutional intergovernmental system, but about a decision-making process focused on the executive powers, which would strengthen the main traits in the type of government that prevails in the region. The only MERCOSUR bodies with decision-making ability are the Common Market Council (CMC), the Common Market Group (CMG) and the Commission of Commerce (CC), all of them made up by members of the national executive powers.

Involvement of the Various Institutions in the MERCOSUR Decision-Making Process.

The Common Market Council

The CMC is MERCOSUR's highest body and is entrusted with its "political leadership and decision-making ability to ensure compliance with the objectives and terms established for the final formation of the Common Market". It is made up by the foreign affairs and economy ministers of the member States and meets as many times as it deems proper, at least once a year, with the attendance of the presidents. Its presidency, six-month terms in office, is exercised by the States in alphabetical order. Its meetings are coordinated by the ministers of foreign affairs and other ministers or authorities with ministerial rank may be invited. The CMC makes its decisions by consensus and with attendance of all member States. Its pronouncements are decisions binding on the member States. Its functions and attributes have been laid down in the Ouro Preto Protocol (OPP). The most important of these functions are: the oversight of compliance with the Asunción Treaty (AT), its protocols and the agreements entered into in the framework of the treaty; the design of policies and the promotion of actions necessary to form the common market, the legal representation of MERCOSUR, the negotiation and execution of agreements on behalf of MERCOSUR with third countries and international organizations [functions that may be delegated by an express mandate to the CMG], pronouncements on the proposals submitted by the CMG, the organization of meetings of ministers and pronouncements on the agreements submitted the CMG, as well as their modification or suppression and the adoption of decisions in financial and budgetary issues.

The Common Market Group

The CMG is MERCOSUR's executive body. It is coordinated by the foreign relations ministers and made up by four regular and four alternate members for each country, who represent the following governmental organizations: the ministries of foreign relations, the ministries of economy or their equivalent and the central banks. Also in this case decisions are made by consensus and with the attendance of all member states. The CMG is empowered to present initiatives and the following functions: oversee compliance with the Treaty, its protocols and the agreements signed in its framework, take the measures necessary for compliance with the decisions adopted by the Council; propose specific measures for the application of the free trade program, coordinate macroeconomic measures and negotiate agreements with third parties, establish working programs to ensure steps towards the formation of the common market, create, change or suppress bodies such as task forces and specialized meetings for the achievement of its objectives; issue a pronouncement on the proposals or recommendations submitted by the other MERCOSUR bodies in their jurisdictions; negotiate, with the involvement of representatives of all member States and by express delegation of the CMC and within the limits established in specific mandates, granted for that purpose, agreements on behalf of MERCOSUR with third countries, groups of countries and international organizations. The CMG, when sufficiently empowered for such purpose, will proceed to the execution of such agreements. In addition, when authorized by the CMC, it may delegate the powers described to MERCOSUR's CC. Some of its functions are also: to adopt resolutions of a financial and budgetary nature based on the guidance laid down by the Council, organize the CMC meetings and prepare the reports requested by the CMC. Finally, it has been decided that CMG is to issue its pronouncements through resolutions, mandatory for member States.

The Commission of Commerce

MERCOSUR's CC has been created pursuant to Decision 13/93, completed by decision 9/94. The OPP subsequently established that the Commission was to discharge the following functions: the oversight of the application of common trade policy tools within MERCOSUR and with third parties, international organizations and trade agreements; consideration and pronouncements about the applications submitted by member States with respect to the application of the common external tariff and its application and other tools of common trade policy; the follow-up of the application of common trade policy for the operation of the customs union and the design of proposals in this respect to be subsequently submitted to the CMG; the decisions related to the administration and application of the common external tariff and the tools of common trade policy agreed upon by member States; reports to the CMG about the evolution and application of common trade policy tools with respect to the treatment of the applications received and about the decisions adopted with respect to such applications; proposals to review tariff quotas for specific items subject to the common external tariff, even the consideration of cases related to new productive activities within the reach of MERCOSUR; the establishment of the technical committees necessary for the discharge of such functions as well as the leadership and oversight of their activities; and the discharge of tasks related to the common trade policy requested by the CMG. The CC issues its pronouncements by consensus through directives or proposals. Directives are binding.

The Joint Parliamentary Commission

The AT that gave birth to MERCOSUR, hardly mentioned the formation of a Joint Parliamentary Commission (JPC) in the last paragraph, which establishes that for the purpose of "facilitating progress toward the formation of the Common Market, a JPC was to be formed", and that the executive powers of the member States were to keep the respective Legislative Powers informed about the evolution of the Common Market".

With this document as a starting point, the parliament members of the member countries took the initiative to create it, establishing their first internal bylaws in the course of the same year in which the document was signed. In fact, the first time that the parliament members expressed their concern for advancing with the integration process was prior to the ratification of the AT, in the framework of a meeting that was to take place in May 1991. At a second meeting, which took place in September 1991, a resolution was approved to create the JPC pursuant the AT. That resolution had been accompanied by a statement that reflected "the need to institutionalize the political intent of the parliaments of the four countries to take an active role in MERCOSUR's integration process". Finally, at a third meeting in December that year, its first internal by-laws were approved, which allowed their meetings to be formalized. But, the most significant issue in this respect is that those by-laws defined certain attributes of the JPC that had not been set forth in the AT. First, the commission had been assigned a consultative, deliberative nature, with the ability to formulate proposals and such attributes were specified in more detail. It was established that it was to issue resolutions related to the following issues: the status of the regional integration process, the development of the actions necessary to facilitate the future organization of MERCOSUR's parliament, requirements to MERCOSUR's institutional bodies for information on the evolution of the integration process and the establishment of sub-commissions. It will also issue recommendations on the progress of the integration process and on studies about legislative harmonization and, additionally, it was to propose community law rules with respect to integration.

The OPP incorporated this brief but nevertheless interesting background of the JPC and defined a new context for its performance, although its place in the institutional design is still very poor. This body that represents the parliaments of MERCOSUR's member states is recognized as another institution although with *no decision-making attributes*. The JPC is made up by the same number of parliament members for each country, who are designated by the respective national parliaments in accordance with their domestic procedures. The OPP establishes that the JPC "shall seek to accelerate the domestic procedures of the member States for the expeditious enforcement of the rules issued by MERCOSUR bodies (…). Likewise, it shall contribute to the harmonization of legislations, as required by the evolution of the integration process. Whenever necessary, the Council shall request the JPC to examine priority issues."

Based on this protocol, new by-laws were prepared, which were approved during the Asunción meeting of June 1995. These by-laws endowed the JPC with the following functions and attributes: to accompany the evolution of the regional integration process expressed in the formation of MERCOSUR and report to the National Congresses in that respect; implement the actions necessary for the future organization of the MERCOSUR Parliament, request MERCOSUR's institutional bodies information about the evolution of the integration process, especially with respect to political, economic, social and cultural plans; create sub-commissions to analyze issues related to the current

integration process; issue recommendations and opinions with respect to the leadership of the process and the formation of the common market and about decisions, resolutions, directives and proposals that must be issued by the applicable MERCOSUR institutions; prepare legislative policies for integration and make all the necessary studies for the harmonization of the legislation of all member States, approve the applicable projects and other community law rules that will be submitted to the consideration of national parliaments, accelerate the applicable domestic procedures in the member states for the expeditious enforcement of the rules issued by MERCOSUR institutions; agree on cooperation relations with third-party countries and with other entities in the field of other regional integration schemes; establish relations and sign agreements on cooperation and technical assistance with public and private organizations, either national, regional, supra-national and international and, finally, and irrespective of the preceding list, the Commission may establish other attributes in the framework of the AT and the OPP. The JPC sends its recommendations to the CMC through the CMG and its decisions are to be adopted with the consensus of the delegations of all member states. This consensus is expressed by the vote of the majority of its members.

By including the JPC in MERCOSUR's institutional structure, the Protocol endows it with legal legitimacy as an institution for integration. And by becoming a domestic law, the protocol allows and legitimates the insertion of the parliamentary arm of integration in the core of the national parliament of the member states (Drummond, 1998). Therefore, two dimensions of the JPC's activities may be identified. On one hand, it has an external dimension with two forms: four-party meetings that give rise to the recommendations to the CMC and the links to other regional parliamentary institutions (the EP being the most significant) or national (the visit of the JPC to the US Congress is an interesting point). And on the other hand, an internal dimension that relates to the importance of its role towards the inside of national parliaments and to its links with it. This internal dimension, related to the role of national sections in the JPC, also adopts many forms, from a properly legislative form to a consultative or advisory nature for the remaining commissions of each one of the States, as well as compilation of information. "Therefore, it may be said that MERCOSUR's specific features from the standpoint of its parliamentary dimension are, on one hand, the incorporation since its inception of a parliamentary arm, and on the other hand, given its nature as a process of integration in the intergovernmental field, its capacity to allow for a double role of the JPC, thereby bridging the gap currently existing in the European case, between the regional Parliament and national Parliaments" (Drummond 1998).

The JPC has shown an interest for a great variety of issues, which may be grouped along three axes: MERCOSUR's institutionalization, general political and social issues and issues related to the evolution of the integration process, either in its general or sectorial dimension. Given this growing interest, with an increasing level of proposal preparation, the response on the part of the CMC has been of almost indifference, which has led the Commission to consider and demand a higher status in each one of its meetings. In spite of that, the JPC has enhanced the range of issues debated and has started to reinforce the already rich mesh of relationships established both between the parliament members of the member states and with other parliamentary institutions. It has also produced major political definitions that imply a position taken in the face of events taking place in the member states or at a worldwide level and that, directly or indirectly, aim at having an influence on the direction of the

integration process. Its presence has been strengthened "in the framework of an invisible mesh that has facilitated (though with some exceptions) a transition from the exclusive national vision to a progressive expression of community behavior" (Drummond 1998). This process clearly shows some tension between the quantitative and qualitative increase in the work of the commission and the limits imposed by the treaties on its action. The OPP has allowed it to have a more important place, in comparison with the AT, but its position is still consultative, deliberative and for the design of proposals, with no power to impose legislation.

A Brief Comparison of the Parliamentary Dimension in the European Union and MERCOSUR

I have considered the EU and MERCOSUR on the basis of the political and institutional construction adopted by each process. In the European case we are faced with a political system proper, which provides European institutions with increasingly executive, legislative and judicial powers, that is, government powers. As a result, and given the reach of community law as from the establishment of the primacy and direct effect and applicability, the impact of the decisions taken at that level on the fifteen societies is highly important. The EU's political process is therefore a permanent trait in Europe's political life. In the analysis of the rich and complex labyrinth of the community mesh there is a constant tension between supranational and intergovernmental issues that leads, among other things, to a situation in which, according to the issue at stake, the decision-making powers are distributed among the Union's differently. This peculiarity is central because, as we will see, the form in which such tension is resolved in each instance, leads to a re-definition in the executive-legislative relationship both at the regional and national level. MERCOSUR case is in this respect different: this is a particular combination of presidential diplomacy and an intergovernmental institutional and legal architecture.

In the second place, I will try to respond to the question about whether the regional integration processes analyzed have led to a higher concentration of power in the executive powers, national and/or communitarian if there are supranational institutions endowed with such functions. In the EU, references to a concentration of power in the executive powers in a classical sense are difficult and a bit forced. The response to the question then leads us to establish two levels of analysis closely related but subject to be studied with differences. If we consider the state-national field, while some authors have affirmed that Europeanization has implied a transfer of power of the field to the European system of governance, (Wallace, 1999), others have held that Europeanization has rather strengthened national states (Milward, 1992). However, the biggest part of literature agrees with respect to the fact that there has been a tendency to remove the domestic issues of domestic controversy towards the arena of executive control (Moravcsik, 1998; Risse-Kappen, 1996). These allegations are strengthened by the creation of the European Council. In this transfer of competencies, there is a strong and clear weakening of national parliaments as the national institution that obtains representation *par excellence* in the community field is the executive power. In this respect, the situation that I defined as a concentration situation is related not only and especially to the tension-relationship between the national executive and legislative powers but also with tension between the supra-national and intergovernmental tendencies that the integration process is going through. This way, the concentration of power in the executive powers is, above all, a concentration of power in the states,

through their governments, with the latter concept in a restricted sense, that is, the executive powers. As we will see, this process of concentration limits the power of the supranational government institutions: the European Commission and Parliament. The preceding allegation leads us to the field of the European system, in which the issue becomes all the more complex. On the one hand, it is due to the fact that the division between executive and legislative power is diffuse (Quermonne, 1998): the Commission is the executive institution *par excellence*, but also the CM discharges this type of functions, with it being the main element in the community legislative power. On the other hand, as already pointed out, the distribution of power between the institutions depends on this issue. However, the weakness of the parliamentary dimension of the process is still important.

In MERCOSUR, the influence of the central traits of the predominant form of government is even heavier as it is a type of integration that is strictly inter-governmental. It is important to mention that the only bodies with decision making ability are the CMC, the CMG and the CC, all of them made up by members of the national executive branches. The picture becomes even clearer when we analyze the place given to the JPC in the institutional design, as well as the limits imposed by the treaties on its performance, an issue to which I will come back later. I should only emphasize for the time being that the integration process shows, not yet as deeply as it will be as it moves forward, a transfer and a loss of competencies on the part of national parliaments as the integration bodies have the ability to create binding rules for member States. This means that representation is restricted to executive issues. It is important to indicate that this concentration increases when the process moves towards the regional level.

Third, the last part of the comparison focuses specifically on the parliamentary dimension of both integration processes[2]. Any referral to the parliamentary dimension implies an enquiry into the extent to which there is a real involvement of regional parliamentary constructions in the political process, that is to say, in the preparation of political decisions for the purpose of ensuring that they correspond to the will of the people. Differences in this respect are even more remarkable. In the first place because, as already pointed out, in the case of the EU, we are in the presence of a political system proper although this does not yet have a final form. However, in the second place, and mainly due to the fact that the parliamentary dimension of the integration process in Europe has two clearly distinguishable levels: the domestic level and the community level. Focusing our attention on the comparison of regional parliamentary construction of both processes, in the European case we must consider the unique relationship between the CM and the EP, with the first being intergovernmental and the second supranational, which varies in accordance with the issue at stake and therefore, in accordance with the decision making process at stake. The complex European legislative process has evolved, especially in relation to the extension of the legislative powers of the EP when applied to the co-decision procedure, to a classical bicameral legislature in which the CM represents the States and the EP represents the citizens. Its most characteristic trait has to do with the current dominance of the latter and with the existence of political and institutional incentives for the formation of a "big coalition" in

[2] We need to understand the parliamentary dimension of integration processes in the broader framework of the political system (European Union) or construction (MERCOSUR) and in turn study the latter in the space-time context of the historical process of its institutional formation. We cannot develop these issues here.

the latter. This peculiarity, which is not necessarily final (Hix, 1998), can be seen in the dilution in this assembly of the dialectic majority-minority[3], that is either not clearly evidenced or has very peculiar characteristics. This has an influence, as we will see, on the form of political representation in such framework and is mainly explained by the specific place taken by the EP in the institutional design of the community.

In the case of MERCOSUR, the absence of supra-nationality leads us to a two-level analysis of its parliamentary dimension, and they are: the regional level (JPC) and the domestic level (national parliaments). The location in the process of national parliaments, and in an inter-governmental framework, its representative institution in MERCOSUR, is not encouraging. The decision-making power is concentrated in institutions formed by members who belong to the executive powers of the States. The analysis of the political and institutional background of the JPC shows a clear tension between the quantitative and qualitative increase of its labor and the limits imposed on its action by the treaties. The OPP has endowed it with a more important position compared to the AT, but its nature is still consultative, deliberative and for the design of proposals.

To sum up, we must ask a fundamental question about the extent to which these parliamentary constructions of integration processes effectively discharge the functions historically discharged by Parliaments and Congresses. This is an unavoidable question. The representative function, related to the ability of the parliamentary assembly to incorporate the demands of society is critical as it conditions, as seen in the first part of this work, the manner in which Parliaments and Congresses discharge their other functions. In the case of the EU, we must highlight several issues. In the first place, if we analyze the decision-making process, overall, we might refer to the relative weakness of the house that represents popular sovereignty, the EP. This allegation must be attenuated by considering the instances in which such institution and the CM work as a bicameral assembly. However, even in those cases, the issue of the exercise of the representative function is complex and problematic if we take into account that they have been historically constituted by the partisan variable and the majority-minority variable, that are diluted when the EP behaves as the only player, even if its position is opposed to the CM. When the ability to exercise the representative function decreases, so does the ability of the regional parliamentary construction to discharge its other functions, and, above all, its function of legitimator of the political process. However, we must analyze what will happen if we assume that the involvement of all assemblies becomes operative mainly on the basis of the discharge of legislative and supervision government functions. With respect to the former, the ability to exercise such function is important in the European case, albeit distributed, in accordance with the legislative procedure involved, unevenly between the CM and the EP. We are again faced with the relative weakness of the house that represents popular will. Therefore, in the case of the EP, the exercise of its control function is important and should be emphasized.

In both cases, but to a larger extent in the case of MERCOSUR, a poor representation of the popular will is important in frameworks, for the time being especially in the European case, in which an increasing number of decisions are made at

[3] This is reinforced by the fact that the Assembly, as already pointed out, is not in a position to support any government. Neither do we see the situation, present both in parliamentary and presidential regimes in which the relative power of the executive branch is conditioned both by its degree of control over the parliamentary majority and by the institutional weight of opposition.

the regional level. In the South American case, there is no instance of representation of the popular will at the regional level. Besides, the institution that represents the will of the parliaments of member States, the JPC, does not have control, legislative, creative or co-decision attributes either. Here we come across another problem related to the main role of all assemblies of acting as a mirror to the diversity of opinions: the search for consensus in the JPC relies on the only vote, a majority one, of each one of its delegations. This national character of opinion issuance prevents the expression of the internal divergences of each delegation, as well as a potential strategy of alliances that relies on interests that converge beyond national frontiers.

The comparison of the parliamentary dimension of regional integration in the EU and MERCOSUR has shown trends that seem to be shared. The risks they imply is that of a decrease or dilution in the power of parliamentary assemblies, expressed in the loss of the ability to exercise the traditional functions of national parliaments and Congresses and the design of national constructions that do not succeed in fully assuming such functions. The correlation is the concentration of decision-making power in executive powers, both at the domestic and regional levels, which do not reflect the diversity of opinions, interests and wills that are present in the societies joined in the integrationist process, a function that has been historically assumed by parliamentary assemblies. These assertions, that are relative in the European case, apply fully to MERCOSUR. The regional space is, maybe, a mirror that stresses domestic trends, strongly executive. The election in favor of the intergovernmental option makes this situation even more severe.

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