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Limits to Regional Integration

9 Interdependence, Leadership and Institutionalization: The Triple Deficit and Fading Prospects of Mercosur
  Andrés Malamud

10 Is North America Unravelling? Transformations of Regionalism in North America
  Jeffrey Ayres and Laura Macdonald

11 Spill-back: The Faroe Islands’ Zigzag towards Independence
  Søren Dosenbrock

12 No Limits to European Integration? Institutional Change in Response to the Financial Crisis
  Wolfgang Zank

13 Limits to Regional Integration: Equilibrium and Spill-back
  Søren Dosenbrock

Index

List of Figures

4.1 Inter-industrial and intra-industrial trade ratio in East Asia 63
4.2 Importance of economic relations 67
4.3 Influence of Chinese culture 67
4.4 China as the leader of Asia 68
4.5 The influence of the United States 72

9.1 Mercosur trade (within Mercosur and with rest of the world) as percentage of GDP, 1990-2012 167
9.2 Regional interdependence: Mercosur as a percentage of total trade, 1991-2012 167
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Preface
Søren Dosenrode

Regional integration has been on the academic and philosophical agenda for centuries and the long list of projects promoting it includes inter alia: Pierre du Bois (1250–1320) Summario brevis; Duc de Sully (1559–1641) Mémoires (Grand Design); Abbe de Saint-Pierre (1658–1743) Project pour rendre la paix perpétuelle en Europe; Claude de Saint-Simon (1760–1825) De la réorganisation de la société européenne; Richard Coudenhove-Kalergi (1894–1972) Pan-Europe; Aristide Briand (1862–1932) Mémorandum sur l’organisation d’un régime d’union fédérale européenne. In some cases regional integration as concept has moved from the studies of thinkers to the offices of statesmen and has been implemented in the form of federations, e.g. Australia, Brazil, Canada, the European Union, India and the United States of America. In other words, the concept has been developed, and in some cases it works but not in all like in the cases of e.g. the failed federations of the West Indies and Yugoslavia or the failed Central American Common Market (CACM). If one looks through speeches by statesmen of the twenty-first century, regional integration is often touched upon as a means to solve various problems, be they political or economic (cf. Joska Fischer 2000; Raul Castro 2008; Jerry John Rawlings 2014; Rosen Plevneliev 2014). Rhetorically regional integration is a popular remedy, but in reality it is not a straightforward process. This volume sets out to investigate regional integration as a sub-form of regionalisms in general focusing on limits to regional integration in particular.

The editor is very happy that this book is published by Ashgate in the International Political Economy of New Regionalism Series edited by Prof. Timothy Shaw and wishes to thank him for his encouragement. I also wish to thank Ms Annette Andersen for her professional help in editing this volume as well as the staff of Ashgate for their excellent handling of the manuscript.

Works Cited

Limits to Regional Integration


Chapter 9

Interdependence, Leadership and Institutionalization: The Triple Deficit and Fading Prospects of Mercosur

Andrés Malamud

The Common Market of the South (Mercosur) is a trading bloc founded in 1991 by Argentina, Brazil, Paraguay and Uruguay. It attained early success by tripling intra-regional trade flows during its first seven years, as well as increasing extra-regional trade and attracting larger shares of direct foreign investment. Thereafter, however, its performance declined, its operation stalled and its very survival was questioned by periodical domestic and regional crises (Bouzas 2003; Carranza 2003; Gomez Mera 2005).

Whether the focus of analysis is on success or failure, the experience of Mercosur does not fit mainstream theories of regional integration. The two major contemporary approaches, namely liberal intergovernmentalism (Moravcsik 1998) and supranational governance (Sandholtz and Stone Sweet 1998), regard society as the point of departure: transnational transactors increase their exchanges and subsequently call on national or transnational authorities to adjust regulations and policies to the new situation. These approaches draw on evidence collected mostly from one single case, the European Union (EU). Mercosur, however, was established as a result of the political will of national governments, and only thereafter generated public demand for further integration (Malamud 2003). This path is more consistent with a supply-side approach to integration, which is best conveyed by the work of Mattli (1999; cf. also Perales 2003). He advanced two sets of conditions for a process of regional integration to develop: demand and supply. I will add a third to account for inertial factors such as path dependency and sunk costs: institutions.

Let us first define regional integration as the process of ‘how and why (national states) voluntarily mingle, merge and mix with their neighbours so as to lose the factual attributes of sovereignty while acquiring new techniques for resolving conflicts among themselves’ (Haas 1971, 6), provided that ‘they do so by creating common and permanent institutions capable of making decisions binding on all members’ (Malamud and Schmitter 2011, 143).

Demand conditions for integration emerge from the potential for economic gains that arise from higher levels of regional interdependence: as transnational transactors perceive that cross-border activities are too costly, they call on national
or supranational authorities to lower transactions costs through cooperation, coordination and, eventually, integration. Supply conditions refer to regional leadership, understood as the capacity and will of one or more actors (usually member states) either to pay a disproportionate share of the costs required by the regional undertaking (or usually supranational agencies) to play brokering and coordination roles. Inertial conditions take the form of demand or supply conditions that become institutionalized, locking in previous agreements and creating path dependence effects. So-called 'commitment institutions' play monitoring and enforcement roles. They can protect the integration process in times of declining demand or supply conditions, but may also make it too rigid.

In Mercosur, demand conditions are low, supply conditions are mostly inactive, and only ineffective inertial conditions have been created. However, both conventional political discourse and mainstream scholarly work uncritically depict it as a success story, which was true only during its first decade. This has been called 'a case of cognitive dissonance' (Malanud 2005b, 422), in which discourse reflects the expectations or the interests of its speakers rather than real conditions. An advocacy group consisting of politicians, diplomats, scholars and civil society activists has emerged which makes a living out of Mercosur and for whom justifying the bloc's existence is fully rational, while questioning it can be self-damaging. The fact that this group is both the main producer and consumer of Mercosur's image speaks to its biased position and makes it vital to regain analytical distance. Hence, to avoid 'erroneous analysis and bad policy' as a result of 'applying the wrong image and the wrong rhetoric to problems' (Keohane and Nye 2001, 7), I am set to scrutinize the current state of affairs and prospects of the bloc by singling out the areas in which the referred conditions for integration are more likely to evolve, whether positively or negatively. A caveat is in order: I deal exclusively with Mercosur's internal agenda. For that reason, issues pertaining to the external agenda such as interregional negotiations or political articulation with other South American blocs such as UNASUR are not explored. In the conclusion, I stress the role of direct presidential involvement in deepening, enlarging and institutionalizing Mercosur - or failing to do so - and call attention to the changing balance between fostering and administering interdependence.

Demand Conditions (Interdependence)

Formal trade arrangements are neither a necessary nor a sufficient condition for fostering interdependence: although removing barriers to trade is ceteris paribus bound to have a positive effect on trade, this may be offset by other factors generating even more trade in different directions (complementarities, economies of scale and scope, comparative advantages, creation of infrastructure, changes in tastes, demographics, income and so on). For instance, the Mercosur countries experienced an increase in interdependence, both absolute and relative, in the years prior to 1999, and a decrease or stagnation of relative interdependence since then. At the same time, their interdependence with China has grown: this country represented about 2 per cent of the external trade of Mercosur by 1993, a proportion that increased to 7 per cent during 2005, in spite of the absence of trade agreements between China and Mercosur.

Latin American countries export similar products that are in demand mostly elsewhere in the world, most notably raw materials: two-thirds of all South and Central American exports are either agricultural or fuel and mining products. Although host to roughly 7 per cent of the world population and representing 5.4 per cent of the world economy, the region only accounted for 3.1 per cent of world exports and 2.9 per cent of global imports until recently (WTO 2006). Therefore, the prospects for further regional integration are very limited by the relatively small size of the market and a relatively narrow export base (Burges 2005).

Trade interdependence with the United States and other North American Free Trade Agreement (NAFTA) countries is high for several South American countries, especially the Andean Community ones (Venezuela included). In spite of the inflamed rhetoric against the US and the (now stillborn) Free Trade Agreement of the Americas (FTAA) process, both Bolivia and Venezuela rely on hemispheric rather than intra-bloc trade. This is also the case for Peru, Ecuador and Colombia. Western hemisphere countries are important for Brazil and Argentina as trade partners, as well as for the smaller members of Mercosur (see Table 9.1). Significantly, the weight of trade with the US accounts for the bulk of intra-hemispheric trade.

<table>
<thead>
<tr>
<th>Regional bloc</th>
<th>Country</th>
<th>Trade with regional bloc as percentage of total trade, 2004</th>
<th>Trade with FTAA countries as percentage of total trade, 2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mercosur</td>
<td>Brazil</td>
<td>9.6</td>
<td>29.9</td>
</tr>
<tr>
<td></td>
<td>Argentina</td>
<td>26.0</td>
<td>53.0</td>
</tr>
<tr>
<td></td>
<td>Uruguay</td>
<td>35.6</td>
<td>56.7</td>
</tr>
<tr>
<td></td>
<td>Paraguay</td>
<td>55.3</td>
<td>62.8</td>
</tr>
<tr>
<td></td>
<td>Bolivia</td>
<td>79.0</td>
<td>79.0</td>
</tr>
<tr>
<td></td>
<td>Peru</td>
<td>13.5</td>
<td>53.4</td>
</tr>
<tr>
<td></td>
<td>Ecuador</td>
<td>18.8</td>
<td>61.0</td>
</tr>
<tr>
<td></td>
<td>Venezuela</td>
<td>7.8</td>
<td>59.4</td>
</tr>
<tr>
<td></td>
<td>Colombia</td>
<td>15.4</td>
<td>61.2</td>
</tr>
</tbody>
</table>

Note: Data of 2004 are used because it was the height of FTAA negotiations. Source: CEI/IMF data.

1 This section contains fragments drawn from Malanud and Castro (2007).
Chile’s positive economic performance under its social democratic government has contributed to the belief among broad sectors of Latin American elites that pragmatism rather than ideology should be the starting point when negotiating trade arrangements. The rationale of signing a free trade agreement for the countries of Latin America was to increase market access for their producers to wealthy North American consumers. After the collapse of the FTAA negotiations, Colombia and Peru signed free trade agreements with the US, following the path of Chile and the Central American countries. Greater interdependence with the rest of the world is also likely to come about as a result of new trade agreements with countries outside the western hemisphere, particularly the European Union and several in Asia. Chile has already signed treaties with South Korea, China, Japan and other Asian countries, and other governments in the region have expressed an interest in following the Chilean example. The signing of ever increasing numbers of bilateral arrangements with the rest of the world is expected to lead to greater trade interdependence with extra-regional partners, and therefore to weaken the prospects for greater relative regional interdependence.

Mercosur is a comparatively closed economic bloc, although it is becoming less so. Still, trade as share of the economy is very small. In hindsight, the period 1991–98 may be called the ‘Golden Age’ of Mercosur. Total trade of member countries grew from 7 per cent of GDP to more than 11 per cent (see Figure 9.1). Mercosur underpinned this increasing openness of its members’ economies: trade between Mercosur and the rest of the world was about eight times higher than that between the bloc’s members in 1990. By 1998, this ratio had dropped to 3.3. With the advent of economic crisis, first in Brazil and later in Argentina and Uruguay, the levels of both openness and interdependence fell between 1998 and 2002. Between 2002 and 2006, an unusually benign international environment—with record cheap credit for emerging markets and record high prices for the commodities they export—enabled Mercosur economies to grow again. By 2006, openness had increased and reached new heights, but this time it was the rest of the world that underpinned the trend: extra-regional trade grew to 5.5 times intra-bloc trade during 2005. The 2008 financial crisis, although it affected total trade, did not significantly change the global/regional trade ratio, but the ensuing recovery raised it up to 6.6 to 1—the highest mark since the bloc’s foundation.

As already noted, after two decades the trend for interdependence is no longer positive, at least in the commercial realm. At the national level the picture is also discouraging. For Uruguay, trade interdependence with its Mercosur partners peaked in 1998 and then fell consistently until 2005, when it slightly recovered and stabilized. No wonder then that this country toyed with signing agreements with the US and other states outside the region. Just like for Uruguay, in the case of Brazil the proportion of trade with the Mercosur countries is similar to when the founding treaty was signed. Mercosur has become a more important trade partner for Paraguay and Argentina since its inception, but as shown in Figure 9.2, the tendency seems quite unstable in the former case.

Figure 9.1  Mercosur trade (within Mercosur and with rest of the world) as percentage of GDP, 1990–2012
Source: CEI (http://cei.mrecic.gov.ar/) and IMF data.

Figure 9.2  Regional interdependence: Mercosur as a percentage of total trade, 1991–2012
Source: CEI (http://cei.mrecic.gov.ar/).
Demand for further integration increases as higher levels of regional interdependence are reached. As already mentioned, as transnational transactors perceive that growing cross-border activities have significant costs, they call on national or regional authorities to lower them by harmonizing domestic rules and establishing shared regulations. By the same token, stagnating or even decreasing interdependence does not bode well for further integration.

Supply Conditions (Leadership)

The literature on regional integration analyses supply conditions from two different perspectives. Some authors underline brokering, understood as the capacity of some actors – usually supranational agencies or entrepreneurs – to strike deals among governments that would otherwise not have been made, as a way to overcome lack of trust and inter-temporal inconsistencies. The most comprehensive approach of this kind is supranational bargaining theory (Sandholtz and Stone Sweet 1998). Other authors stress pay-mastering, understood as the capacity and will of one or more actors – usually member states – to pay a disproportionate share of the costs required by the regional undertaking, as key to providing regional public goods. Mattli’s (1999) political economy approach emphasizes this mechanism. I will argue that brokering and pay-mastering are only two of four possible subtypes of leadership, understood as the capacity to recruit and influence followers. By disaggregating these components, leadership roles can be classified according to two dimensions: the main resource at work (institutional or monetary), and where leaders are grounded (at the domestic or regional level). From the combination of these dimensions four types of leadership emerge, which are schematized in Table 9.2. The ‘Broker’ cell refers to institutional means to enhance communication, negotiate agreements, and provide monitoring at the regional level; institutions such as an executive commission and a parliament may perform this role, as the European experience demonstrates. In the opposite cell, ‘Paymaster’ refers to a state that pays a disproportionate share of integration costs. This is the well-known case of Germany in the European Union, but also of an extra-regional power such as the United States in the early years of Central American integration.

2 Laursen (2007) has insightfully attempted an analogous distinction, though his contrast between leadership and institutions fails to clarify the relation of these concepts with Mattli’s paymaster.
3 Beach and Mazzucelli (2007, 10) distinguish between structural leadership (based on material resources) and instrumental leadership (based on information and expertise) in a similar vein to what I propose here; however, their scheme does not consider my second dimension, i.e. the locus of leadership. To a certain extent, the instrumental/institutional forms of leadership may be thought of as encompassing the ‘intellectual and moral’ kind of leadership that, drawing on Antonio Gramsci, Robert W. Cox (1986) has skillfully applied to international relations.

<table>
<thead>
<tr>
<th>Level of leadership</th>
<th>Resource of leadership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic</td>
<td>Intergovernmental diplomacy (i.e. inter-presidentialism), Paymaster (hegemon)</td>
</tr>
<tr>
<td>Regional</td>
<td>Broker (supranational entrepreneurship), Regional budget authority (EU CAP)</td>
</tr>
</tbody>
</table>

The ‘Regional budget authority’ cell refers to budgetary means of redistributing wealth among member countries. Although this mechanism may be based on the presence of one or more paymasters, it works at the regional rather than the national level, thus allowing strategies and goals to be defined and pursued collectively. Finally, the ‘Intergovernmental diplomacy’ cell refers mostly to informal institutions, consisting of direct negotiations by top national officials (notably chief executives) to make decisions and settle conflicts.

Let us now analyse the prospects for each type of leadership in Mercosur. Brazil, the largest economy in the bloc and accounting for 80 per cent of its population, appears as the only possible regional paymaster. But the situation is more complicated than in Europe; as total wealth and wealth per capita do not overlap but intersect across countries. Thus, Brazil’s GDP per capita is lower than Argentina’s and Uruguay’s, and its poverty and inequality rates are much higher. It is consequently difficult for the Brazilian authorities to legitimize domestically what could be seen as a subsidy to richer countries. Compare the net US$60 million that Brazil contributed to Mercosur Fund for Structural Convergence (FONCEN) in 2008 with the $8,000 million that Germany contributes to EU redistributive funds in its annual budget: while the former represents 0.007 per cent of Brazilian GDP, the latter accounts for 0.39 per cent of Germany’s. Such a shortage of positive incentives for integration is matched by an equivalent lack of negative incentives, as Brazil’s soft power stance inhibits it from pursuing its goals ‘coercively’. This state of affairs has been referred to as operating ‘without sticks or carrots’ (Burges 2004), and it limits the scope for paymaster-style leadership.

External paymasters may further hinder integration as their contribution goes to member countries – rather than to the bloc – which therefore remain indebted to extra-regional powers. This is the case of Uruguay, which received large amounts of money from the US after the 2002 crisis, and Paraguay, a recipient of significant Taiwanese funds. It may also be argued that Venezuela’s petro-politics played a role in the crisis that led to the suspension of Paraguay’s membership in 2012.

As regards regional funds, the difference between both regions is even greater. The EU annual budget surpasses €100,000 million, while Mercosur has no budget (its secretariat operates with less than US$1 million a year, which is provided for
by the four members on an equal basis). True, it has recently created the FOCEM in 2008, a regional endowment of US$100 million per year. But it is striking to compare FOCEM’s modest figures with the redistributive funds of the EU budget (including both structural and cohesion funds and the subsidies provided by the Common Agricultural Policy), which reached about €86,000 million in 2006. The magnitude gap eloquently illustrates how regional payoffs in Mercosur are underplaying as an engine for integration.

Having examined the two types of leadership based on economic resources, let us now turn to the institutional subtypes. Supranational entrepreneurship, as defined by supranational governance theory, emphasizes personal charisma and negotiating skills, albeit within an institutional context. On this view, the Single European Act (SEA) was largely a product of Jacques Delors’s enlightened activism, although Delors was not a personal filibuster but the head of a formal organization that provided him with abundant material and symbolic resources to pursue his vision. Likewise, deeper integration through judicial activism has been a result of the merits of individual judges, but the latter occupied institutional positions and were backed by formal procedures and bolstered by the broad legitimacy of rule of law governance. The institutions which allowed these individuals to change the course of European integration were the Commission and the Court; however, they are each of a different kind. The former is a political body that is able to provide leadership through its steering capacities and decision-making authority, whereas the latter is a juridical organ that interprets and enforces rules rather than making them. Institutional leadership involves bodies of the first kind, including political ones such as parliaments, but not jurisdictional and bureaucratic institutions that enforce (but do not design) commitments. Courts and civil service institutions perform maintenance rather than steering functions, and are thus dealt with in the next section regarding inertial conditions.

By resembling the European Commission or the European Parliament exists in Mercosur. Instead, executive authority has always been intergovernmental. An Administrative Secretariat was established in Montevideo in 1991 and became a Technical Secretariat in 2003, but with no steering autonomy or political leverage. The Common Market Council, the supreme authority and functional equivalent to the EU Council of Ministers, is made up of the foreign and economy ministers of the member countries. Its decisions are adopted by unanimity, so there is no ‘guardian of community interests’. In presidential systems such as those in place in all the countries of Mercosur, ministers are not members of a collective body – as they are in parliamentary systems – but assistants to the president. For that reason, political goals are routinely set at presidential summits, which take place twice a year alongside the Council meetings.

As regards legislative authority, the Joint Parliamentary Commission (JPC) established in 1991 was superseded in 2006 by what is called a parliament. This was established with the aim of enhancing legitimacy and in order to address a perceived ‘democratic deficit’, and it is expected to foster popular participation and citizen representation. However, it is still in an embryonic stage and it faces daunting challenges. It is to be installed following two transitional periods. During the first, a body similar to the JPC (the only difference being that every country would send 18 instead of 16 legislative representatives) replaced its institutional ancestor. For the second period, direct elections were mandated to take place in 2011, but only Paraguay complied. The first elections after the two-stage transition period should be held simultaneously in all member countries in 2014.

The decision regarding the final composition of the body was left pending, as sharp population asymmetries make this a difficult puzzle to solve. Brazil has roughly 80 per cent of the bloc’s population, so any distribution that allocates it less than 50 per cent of the seats could be charged as undemocratic. However, giving Brazil more than 50 per cent of the seats would confer it a permanent majority, an unacceptable formula for the remaining member states. However, the final compromise granted Brazil just below 49 per cent of the seats (Malamud and Dri 2013). This may not become conflictive unless the Parliament threatens to encroach upon national sovereignty, in which case it is hard to see which democratic criteria will prevail – population or seats? Whatever the case, power politics will certainly get the upper hand.

Mercosur’s decision did, however, determine the competences of the Parliament. They are nominally extensive: to monitor progress, elaborate reports, and request information, to propose and host meetings; to examine, convey, and issue declarations and recommendations; to propose studies and projects and develop actions; to maintain institutional relations; to celebrate agreements and to foment a series of values. Surprisingly (or not), setting rules is not among its competences. As a result, the most likely outcome will be a toothless parliament, a deliberative forum rather than a decision-making body. Previous Latin American experiences with the parliamentarization of regional blocs do not suggest that things should be different this time: the Andean Community and the Central American Integration System have both established supranational parliaments but comparative studies show that their performance has been disappointing – indeed, even to the point of irrelevance (Malamud and Sousa 2007). Neither regional precedent nor Mercosur track record give reasons to believe that this parliament will be a powerhouse for integration.

The fourth type of leadership is intergovernmental diplomacy. Since Mercosur is a power-oriented rather than rule-oriented organization, decision-making and dispute-settlement have been undertaken through two-party diplomacy rather than three-party juridical procedures. To be sure, diplomacy also plays a significant role in the operation of the EU; however, in Mercosur diplomacy is the stuff of

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4 The democratic deficit argument has been questioned elsewhere from two different perspectives (see Dahl 1999; Monsseviki 2002, 2006). In addition, as Morvskis (2006, 221) argues, “there is simply no empirical reason to believe [...] that opportunities to participate generate greater participation and deliberation, or that participation and deliberation generate political legitimacy”.

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day to day management and not just of intergovernmental conferences or critical
junctures. In addition, more frequently than not, it involves summit rather than
professional diplomacy.

State-led, presidential-driven integration has become a persistent and
pervasive feature of the dynamics of Mercosur, a feature that has been called
"inter-presidentialism" (Malamud 2003). Indeed, direct 'presidential intervention
boosted the process of integration and shaped its outcome, with presidents
acting not only as decision-makers but also as dispute-settlers and guarantors
of commitments. The presidents were perceived to be efficient problem solvers
because they had popular legitimacy and the determination to intervene. However,
the tasks they performed were not merely based on charismatic leadership but also
on [national] institutional capabilities' (Malamud 2005a, 158). The bad news is
that inter-presidentialism went into crisis after the Brazilian devaluation of 1999
and virtually collapsed in the wake of the Argentine crisis of 2001. Presidential
rhetoric never ceased to support regional integration in general and Mercosur in
particular, but after 2001 presidential action did not follow suit.

To sum up, in the EU, transnational transactors and national governments
have demanded institutions and rules, which have been supplied by national
governments, the European Commission, and the European Court. In Mercosur,
transnational transactors are few and weaker, and there is no equivalent to the
Commission or the Court in place. National governments are the only actors left to
support integration, and they did so until adverse conditions dramatically limited
their room for manoeuvre. Given the shortage of demand and supply conditions
for integration, the only driving force that could have kept the process ticking over
has been inertia, created by previous action and freezing them through institutions,
to which I shall now turn.

Inertial Conditions (Institutions)

Mercosur has never developed any kind of autonomous regional bureaucracy.
Instead, it depends exclusively on national governments for legal incorporation,
enforcement, compliance and, in most cases, adjudication. On paper, however,
Mercosur has partially replicated the institutions of the European Union: it
features a Committee of Permanent Representatives resembling the COREPER,
a judicial structure that includes a recently created court of appeals, and an acquis
communautaire made up of the whole body of regional regulations. Arguably, in
times of turmoil or stagnation these institutions could have worked as a reservoir
of integrative momentum. But they have not.

The Committee of Permanent Representatives is made up of one diplomatic
representative from each member country, but its president is nominated by
unanimity of the governments and does not represent the state of which he or
she is a citizen. The position was created in 2003 as a golden parachute for
former Argentine president Eduardo Duhalde, and has never had decision-making
or implementation powers. Its three competences were to assist the Council of
Ministers, submit initiatives, and strengthen economic, social and parliamentary
relations within Mercosur. The president may also be asked by the Council to
represent the bloc in relations with external actors. Carlos Álvarez succeeded
Duhalde in 2005 and operated under the same constraints: his budget and room
for manoeuvre depended, more or less informally but effectively, on the discretion
of his nominator, the Argentine president. After Álvarez's period expired, the
vacancy was not filled nor was the post formally extinguished, but a new position
was created: Mercosur High Representative; to which Brazilian veteran diplomat
Samuel Pinheiro Guimarães was appointed – and later opacity substituted by
another Brazilian citizen. As its antecedor, this office lacks decision-making power.

As regards judicial procedures, Mercosur has had an ad hoc dispute-settlement
mechanism since its inception. It provides for a three-stage process of direct
negotiation, mediation by an intergovernmental organ (the Common Market
Group), and arbitration by an ad hoc tribunal. Its main limitation is that, unlike
in the EU, only states can be parties to a dispute, so that the mechanism is more
akin to that of the World Trade Organization (WTO) than to that of the EU. The
net result is appalling: not only have citizens been denied direct access to regional
courts, but judicial activity – and therefore judicial activism – has been negligible.
Only rarely have Mercosur member states resorted to the dispute-settlement
mechanism; whereas the European Court has produced hundreds of rulings every
year since its creation, the Mercosur dispute-settlement mechanism has been used
only 10 times in 15 years. True, a permanent appeals court (Permanent Tribunal
of Review) was set up in Asunción and started functioning in 2005. However, it
cannot adjudicate in a conflict when one of the parties opts to appeal to the WTO;
its services are optional, and in its first six years of existence it has issued only
two full rulings. To make matters worse, even if a supreme tribunal were to be
established, any increase in judicial activism would be inconsequential since there
is no Mercosur 'community law', given that regional norms must be transposed
into national legislation by all four members to enter into force.

As regards Mercosur's acquis communautaire, it is illuminating to analyse
how regional law is adjudicated and its scant penetration (the actual enforcement
of approved regulations, and their effectiveness). As regional legislation must
be internalized by all four members, a bizarre situation has emerged in which
regulations passed by the Council only comes into force once the last national
parliament has ratified it – thus remaining ineffective even in the countries that
have already ratified it. As a result, half of Mercosur regulations that require
transposition are not in force (for example in March 2006 they were 556
of 1,119; see Table 9.3 for details). Another striking occurrence is that more than
half of Mercosur acts contain confidential annexes (235 of 382 between 2003
and 2005), so that its proceedings are not only cumbersome but also opaque.

5 The source of these data is a confidential minute addressed to the Mercosur
secretariat that, to the best of my knowledge, remains unpublished.
Table 9.3  Mercosur: Norm transposition and enforcement according to type, 1991–March 2006

<table>
<thead>
<tr>
<th>Approved norms (1)</th>
<th>Do not require transposition (2)</th>
<th>Require transposition</th>
<th>In force (6=2+4)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total (3=1–2)</td>
<td>Transposed (4=3–5)</td>
<td>Not transposed (5)</td>
</tr>
<tr>
<td>Decisions</td>
<td>426</td>
<td>209</td>
<td>217</td>
</tr>
<tr>
<td>Resolutions</td>
<td>1130</td>
<td>346</td>
<td>784</td>
</tr>
<tr>
<td>Directives</td>
<td>156</td>
<td>38</td>
<td>118</td>
</tr>
<tr>
<td>Four member states</td>
<td>1712</td>
<td>593</td>
<td>1119</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>34.60%</td>
<td>65.40%</td>
</tr>
</tbody>
</table>

Source: Informe Mercosur No. 11, Enero 2007, INTAL.

As regards effectiveness, the most thorough diagnosis of the Mercosur works to date points out that “the intensive use of diplomatic resources to move regional integration forward was accompanied by poor implementation mechanisms. Consequently, even in those areas with agreed regional rules, implementation weaknesses proved functional to the subsistence of national discretion” (Bouzas, Motta Veiga and Torrent 2002, 147).

Given the questionable status of Mercosur community law in the absence of direct effect and mutual recognition (Bouzas, Da Motta Veiga and Torrent 2002), it is not possible to ensure the primacy of regional regulations over domestic regulations, so regional institutions are unable to advance integration autonomously. In sum, past investment in Mercosur bodies has been insufficient to create inertial conditions that push the project forward when demand and supply conditions are weak.

Conclusions

The main driving forces of European integration have been transnational transactors, the national governments, the European Commission, and the European Court of Justice (Sandholz and Stone Sweet 1998), some of which are both an engine as well as a product of integration. In Mercosur, transnational transactors are weak because interdependence is low, and there are no supranational actors such as the European Commission or the Court, so national governments are the only driving force left. In this context, demand for and supply of further integration has only emerged from the national chief executives, and even this has been sporadic. The consequence is that there has been no spill over in crucial areas, nor the delegation or pooling of decision-making that may have broadened the scope or increased the level of mutual commitments. In the absence of spill over, the joint political will of the national presidents kept Mercosur going during its early years, but that thrust has declined. Political will was functional while interdependence was at its lowest level and needed to be fostered, but it has proved to be less versatile after interdependence increased and needed to be administered. In the end, the mixture of norm inflation and implementation gaps exposed the limits of inter-presidentialism for handling an increasingly complex regional organization beyond the phase of “negative integration” (Schump 1996). If Mercosur officially – though not effectively – dismantled national barriers in order to create a regional market, it failed to build common policies to administer it.

As just pointed out, a critical weakness of Mercosur is effective implementation. A widespread view is that more participation and representation of social interests could be a positive asset. But the creation of a regional parliament is not the right way to foster this goal, at least at this stage. The democratic deficit is not a real weakness of Mercosur; it is the implementation gap that is a key liability: lack of compliance, together with the transposition lag, makes Mercosur an association in which rules rarely leave the realm of written intention. One reason is the absence of a bureaucracy that can monitor and enforce regional norms. It is up to the national bureaucracies to play this role, but they lack incentives to do so. One prudent piece of advice, then, would be not to let form trump function: as appealing as it may be, setting up new institutions does not guarantee that the job gets done. There are tasks that need to be executed, but the way to go about it may vary across areas and over time. For example, monetary coordination may be desirable, but a common currency is not indispensable – and could even be counterproductive – if introduced before the common market or a common fiscal policy is in place – vide the EU crisis. A similar line of reasoning applies to an issue as sensitive as democratization: proposing that citizens should control electorally an intergovernmental – as opposed to a supranational – organization is unnecessary at its current stage if the states already elect the principals of the organization. Furthermore, empirical research has shown that civil society and organized interests are not keen to invest time and resources trying to influence the input processes of Mercosur, the outputs of which they deem inconsequential (Hochstetler 2007). For those who advocate deeper integration, transparency rather than representation is a more potentially rewarding first step. The rationale is that the integration process will be enhanced if the initial tasks and delegation of authority attract the attention of non-state interests, provide incentives for them to form transnational interest associations or social movements, and subsequently demand better access to regional deliberation and decision-making.

Mercosur was initially a realistic project that sought gradually to overcome the ‘integration fiction syndrome’ and the rhetoric that had hitherto predominated in Latin America (Campbell 1999). As interdependence increased and economic growth lubricated the process, a pragmatic approach prevailed. After the completion of the schedule of automatic tariff reduction, however, the onset of
economic crisis ignited intra-regional conflicts and national leaders opted to up
the rhetorical ante. Deepening, enlargement and institutional upgrading became
obcessive topics as trade controversies multiplied and temporary barriers were
erected and taken down time and again. The gap between those who defended
the bloc for existential or identity reasons and those who understood that it was
a means to other ends became increasingly wider. Elsewhere, these groups have
been termed existentialists and instrumentalisists (Malamud and Castro 2007).
Whereas the former talked about establishing supranational institutions, a single
currency and a common external policy, the latter advocated the liberalization of
services and government procurement, a more effective internalization of regional
rules, and the improvement of macroeconomic coordination without necessarily
‘going supranational’. Although there are areas of agreement between the two
camps (such as on the need to invest in physical integration), disagreements far
outweigh the points of consensus. Ideology has gradually overtaken interests as
the main fuel of integration, and so lip-service has skyrocketed while concrete
advances have faded. More mature processes of regional integration may also
experience setbacks, as the failed attempt to constitutionalize the EU shows.
In Latin America, however, it has been aggravated by a historical propensity to
engage in high rhetoric as a substitute for real action. Even though the founding
spirit of Mercosur was to mitigate this tendency, lately it has been reverting
to type.

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Chapter 10
Is North America Unravelling?
Transformations of Regionalism in North America
Jeffrey Ayres and Laura Macdonald

The North American Free Trade Agreement (NAFTA) between Canada, the United States and Mexico was signed in 1992 and came into force on 1 January 1994, early in what is now referred to as the new wave or era of ‘new regionalisms’ (Shaw, Grant and Cornelissen 2011). To be sure, NAFTA shared some aspects of older forms of regionalism, particularly with its character as a preferential trade and investment agreement. Moreover, similar to the European Union (EU), NAFTA was principally a state-led project, with its design, vision and construction largely spearheaded by state actors. And even if Canada and Mexico were the *demandeurs* of the project (in the Canada–US Free Trade Agreement [CUTFA] and NAFTA respectively), the regional hegemon, the United States, imposed much of the content and ideology of the agreement and was able to veto important proposals coming from the weaker powers, such as Mexico’s quest for liberalization of migration restrictions in the United States. Similarly, the United States during the Clinton administration was able to insist on the inclusion of labour and environmental side accords in response to its own domestic political pressures and doubts in the US Congress, and against the wishes of the other two state players.

Nevertheless, NAFTA’s introduction in the early 1990s departed from earlier models of regional integration in many ways as a result of the intertwining of forces that were shaping emerging forms of regionalism in this turbulent period: the end of the Cold War, accelerating globalization, emergent neo-liberal economic philosophies, evolving complex multilateralism including the exponential growth of non-state actors and transnational coalitions, the spread of new technologies and just-in-time corporate strategies, and, ultimately the terrorist attacks of September 11, 2001. These largely exogenous forces shaped multifaceted and increasingly non-state actor-driven patterns of regionalism more illustrative of the expectations of the ‘new regionalisms’ perspective. Theories of new regionalism(s) emerged in the 1990s to explain the emergence of a new wave of regionalization occurring outside of Europe and with seemingly quite different characteristics and dynamics than those of the European Union. While earlier theories like neo-functionalism and intergovernmentalism, focused primarily on