


CRITICAL ANALYSIS OF THE MODERNIZATION PROCESS OF THE SOUTHERN COMMON MARKET (MERCOSUR) INTEGRATION MODEL

 <https://doi.org/10.56238/arev7n2-310>

Submitted on: 28/01/2025

Publication date: 28/02/2025

Manoel Coracy Saboia Dias¹

ABSTRACT

This article aims to critically analyze the process of modernization of the integration model of the Southern Common Market (MERCOSUR). The accumulated literature on MERCOSUR has addressed the different facets of this integration process – economic, political, social and legal – and has contributed to a reasonable understanding of what the bloc was in its origin, how it evolved over the first two decades and what are its main problems and paradigm shifts in Brazil's foreign policy. As for the theoretical options (reference and conceptual framework), methodological and excerpts, this work, being eminently bibliographic, has as its fulcrum the explanatory studies, which can be used to investigate some themes based on new perspectives and expand the existing studies, as well as the legal diplomas of MERCOSUR, which help the theoretical construction and at the same time the critical reconstruction of its foundations. From these options it is inferred the reference and conceptual framework, in which there are at least five interpretations with strong explanatory power of the causes of the crisis, with a view to the formulation and implementation of a set of measures of various orders to accelerate the process of modernization of the MERCOSUR integration model. The results of this article corroborate the hypothesis according to which MERCOSUR is in the stage of a (imperfect) Customs Union, and there is a need for adjustments to the reality in which it lives, with a view to rescuing the initial project and encouraging agreements with other states and blocs.

Keywords: MERCOSUR. Modernization Process. Critical Analysis.

¹ Doctor of Philosophy (USP)
Associate Professor II at the Federal University of Acre
E-mail: manoel.coracy.saboia.dias@gmail.com
LATTES: <http://lattes.cnpq.br/9920141504285314>
ORCID: <https://orcid.org/0000-0001-5588-5676>

INTRODUCTION

The current political composition of America was the result of political and economic changes that occurred in the five hundred years: 35 (thirty-five) independent states, 19 (nineteen) territories dependent on European and/or American states and eight (eight) territories fully integrated into countries that are not located in America (but in Europe), and that, therefore, are not considered dependent territories.

These political units have historically experienced a disparity both in economic development processes, understood as very varied, and in political integration processes, among themselves, the latter of an eminently geographical and political-cultural nature. Some are purely American (OAS), North American (North American FTA), South American (MERCOSUR, UNASUR), Latin American (ALADI, CELAC), hemispheric (FTAA), without abandoning the physical territory of the American continent (Cf. GARRABELLI, 2004; GARCIA JUNIOR, 2004, 2007; MACHADO, 2012; CUNHA, 2017; BOHLKE, 2006; LARRAÑAGA, 2002; MENEM, 1996; LABRANO, 1998; JARDEL; BARRAZA, 1998; GONZALEZ-OLDEKOP, 1997; DROMI; EKMEKDJIAN; RIVERA, 1996; LEAL et al. 2001; SEITENFUS, 2013; DOMINGUES; OLIVEIRA, 2017). Others transcend American borders and go further, as there are organizations that are Hispanic-American (ASALE), Ibero-American (Ibero-American Summit, OEI), while at the same time new terms are opened up that could give rise to forms of integration unknown today (Iberophony, Lusophony).

MERCOSUR, notably, is formed by Brazil, Argentina, Paraguay and Uruguay. Chile, Bolivia, Colombia, Ecuador, Peru, Guyana, and Suriname are associated states. In 2006, Venezuela applied to join the bloc as a State Party, which took place in 2012, but was suspended in December 2016. Observer states are: Mexico and New Zealand. The difference between Member States and MERCOSUR Associated States is in the adhesion to the Common External Tariff (CET). The CET is adopted only by the States Parties, because they are responsible for the main decisions, including the approval of the entry of new States Parties (Cf. MACHADO, 2012).

Integration processes can take various forms, which depend on the international situation and the regional context. In general, the following characteristics of the different levels of economic integration can be recorded (Cf. GARCIA JÚNIOR, 2004; DOMINGUES; OLIVEIRA, 2017):

- a) Tariff preference zone: two or more sovereign states negotiate among themselves a list of items that will enjoy reductions in the rates of import taxes levied. With this, they will enter the import market with lower prices;
- b) Free trade area or free trade area: elimination of tariff and non-tariff barriers to international trade practiced by the States involved (1). The participating States continue to freely engage in international trade with third States, setting their rates in customs tariffs. With the situation of privileged tariff relief that occurs in relation to the participating States – and not in relation to third States – it is necessary to create rules of origin to differentiate between intra and extra-zone products;
- c) Customs Union: (1) + adoption of a common external tariff in relation to third States (2). In this phase, the States seek to avoid tax disparities, at least with regard to import tax rates. Without the establishment of the CET, trade diversions would occur, with extra-zone products entering the territory of the participating State with a lower import tax rate and, through the process commonly called "makeup", would enter, in the territory of the other participating States, as "national", enjoying the tariff relief;
- d) Common Market: (1) + (2) + convergence policies between all the States involved (3) + free movement of the other factors of production (capital and labor/labor) (4);
- e) e) Political and economic union: (1) + (2) + (3) + (4) + adoption of a common monetary system (5);
- f) Confederation: (1) + (2) + (3) + (4) + confederative constitution + partially unified legislation (comprehensive spatial rules of incidence of all the independent states combined/confederate states) + common defence and foreign policy systems.

The choice of this theme is justified by the Southern Common Market (MERCOSUR), created by the Treaty of Asunción in March 1991 and which should have been established on December 31, 1994, implying the following terms: the free movement of goods, services and productive factors between countries, through, among other measures, the elimination of customs duties, non-tariff restrictions on market movement and any other measure having equivalent effect; the establishment of a common external tariff and the adoption of a common commercial policy in relation to third States or

groupings of States and the coordination of positions in regional and international economic-commercial forums; the coordination of macroeconomic and sectoral policies among the States Parties - foreign trade, agricultural, industrial, fiscal, monetary, exchange and capital, services, customs, transport and communications, and others that may be agreed upon - in order to ensure adequate conditions of competition among the States Parties; and the commitment of the States Parties to harmonize their legislation, in the relevant areas, in order to achieve the strengthening of the integration process (Art. 1); however, it is still in the stage of an imperfect customs union (GARCIA JUNIOR, 2004), that is, despite the name, the Southern Common Market is an imperfect customs union, in view of the successive negotiations of the list of exceptions (by the countries involved), whose items would be left out of the tariff relief program foreseen to reach the zero rate on December 30, 1994, whose original expiration dates were for Argentina and Brazil until December 31, 1994 and Paraguay and Uruguay until December 31, 1995 (Cf. GARCIA JUNIOR, 2004, p. 52-53). Consequently, "when there are no more excluded items, it can be said that MERCOSUR has reached its phase of perfect customs union. Obviously, the lifting of non-tariff barriers is also essential for the characterization of the space" (GARCIA JUNIOR, 2004, p. 53).

In view of this scenario, the present work, in its eagerness to critically analyze the modernization of regional integration models, notably the Southern Common Market (MERCOSUR), intends to answer a series of questions, namely: Why was MERCOSUR not consolidated in the nineties? In what sense do the institutions of economic cooperation in the Southern Cone not converge for the development of MERCOSUR? Would the implementation of the FTAA be an obstacle to the consolidation of MERCOSUR? Does the development, consolidation and modernization of MERCOSUR depend on the political strengthening, among other factors, of its States Parties?

Therefore, due to the problematization, justification and issues, the general objective of this work is to critically analyze the process of modernization of the integration model of the Southern Common Market (MERCOSUR). As specific objectives, to achieve the general objective, first, the formation of the ALALC and ALADI in the sixties will be evaluated. Next, it will be sought to identify the positive and negative characteristics of the Treaty of Asunción, the Protocol of Ouro Preto, the Protocol of Olivos and other legal diplomas and their effectiveness. Finally, the process of modernization of the MERCOSUR integration process will be analyzed.

The hypothesis that guides this work in order to achieve the objectives is the following: considering that MERCOSUR is in the stage of a (imperfect) Customs Union, there is a need to critically analyze its modernization process: adjustments to the reality in which we live, rescue of the initial project and incentive to agreements with other states and blocs.

Finally, the present work is structured in six parts, including this introduction, the conclusion and the references, namely: inter-regional integration processes: ALALC and ALADI; the Treaty of Asunción, the Protocol of Ouro Preto and the Protocol of Olivos: creation, structure and development of MERCOSUR; and the modernization of the MERCOSUR integration process.

METHODOLOGY

As for the methodological options and excerpts, this work, as it is eminently bibliographic, has as its fulcrum the explanatory studies (See References), which can be used to investigate some themes, based on new perspectives, and expand the existing studies, as well as the legal diplomas of MERCOSUR, which helps the theoretical construction and at the same time the critical reconstruction of its foundations.

From these options it is inferred the reference and conceptual framework, in which there are at least five interpretations with strong explanatory power of the causes of the crisis (but not exclusively), with a view to the formulation and implementation of a set of measures of various orders to accelerate the process of modernization of the MERCOSUR integration model.

RESULTS

INTERREGIONAL INTEGRATION PROCESSES: LATIN AMERICAN FREE TRADE ASSOCIATION (ALLAC) AND LATIN AMERICAN INTEGRATION ASSOCIATION (ALADI)

Currently, the decision to establish regional integration processes is motivated by the achievement of gains with free trade, within the scope of the countries' reach and in international cooperation between them (FERREIRA; MERCHER, 2015, p. 218). However, in Latin America, several regional integration processes have occurred, mainly derived from political and economic interests. The Latin American Free Trade Association (ALALC) was the first integration initiative to be implemented. Despite the conflicts, in the 1970s, the

ALALC expanded and new members joined it, such as Bolivia, Colombia, Ecuador and Venezuela,²

This expansion led to a new configuration of the association, which was renamed the Latin American Integration Association (ALADI) and is currently the largest association of countries with the largest number of members in Latin America, with 12 (twelve) member states. At the end of the 1970s, the Andean Pact, now the Andean Community of Nations (CAN), emerged. Following this model, in 1973, the Caribbean Community (CARICOM) was established. In the 1990s, in the post-Washington Consensus context, new regional integration initiatives of an economic nature emerged in the Americas. The North American Free Trade Agreement (NAFTA), formed by the United States, Mexico and Canada, and the Southern Common Market (MERCOSUR), with Argentina, Brazil, Paraguay, Uruguay and Venezuela, complete the regional integration scenario of the region (Cf. FERREIRA; MERCHER, 2015, p. 220-222). Argentina, Brazil, Chile and Uruguay and the Economic Commission for Latin America (ECLAC) have promoted the idea of instituting an agreement for the constitution of a free trade area of gradual and selective implementation, with the ultimate aim of constituting a Latin American Common Market (Cf. GARABELLI, 2004, p.83). After developing a series of negotiations, the governments of Argentina, Brazil, Chile, Mexico, Paraguay, Peru and Uruguay signed, in February 1960, a treaty establishing a free trade zone and establishing the Latin American Free Trade Association, whose headquarters are in the city of Montevideo. Subsequently, Bolivia, Colombia, Ecuador and Venezuela joined the agreement (Cf. GARABELLI, 2004, p. 83).

Situations of different nature made ALALC take a very slow pace in its degrading process. Even so, there was a great discouragement among the least developed countries in relation to the initial expectations. It is therefore agreed that the ALALC needs to be modified in order to make it more realistic and flexible. In 1978, the ALALC Conference, through Resolution 370, instructed the Permanent Executive Committee to carry out the preparatory work for the restructuring of the ALALC (Cf. GARABELLI, 2004, p. 84). As a consequence of this event, the Council of Ministers signed a new Treaty of Montevideo, on August 123, 1980 (TM80), which, according to its preamble, replaced the Treaty constituting the ALALC of 1960 (Cf. GARABELLI, 2004, p. 84). The Latin American Integration Association (ALADI) was born, a new intergovernmental organization that promotes the expansion of the region's integration, with the aim of ensuring its economic

² For a better understanding of the chronology of Brazil's international relations, Cf. GARCIA, 2005.

and social development, and with the ultimate goal of establishing a common market (cf. GARRABELLI, 2004, p. 84). Its original members were the same members of the ALALC: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela. Cuba, which had observer status since 1986, joined as a full member of the Association by unanimous agreement of the member states in 1998 (Cf. GARABELLI, 2004, p. 84-85).

Therefore, the ALALC and ALADI represent an important antecedent of MERCOSUR, but if we study the immediate actions that led directly to the formation of the bloc, we must admit that certain circumstances, linked to the installation of democratic processes in the countries of the Southern Cone and the relations between Argentina and Brazil, constitute two cements of this integration process (GARABELLI, 2004, p. 110).

THE TREATY OF ASUNCIÓN, THE OURO PRETO PROTOCOL AND THE OLIVOS PROTOCOL: CREATION, STRUCTURE AND DEVELOPMENT OF MERCOSUR

Treaty of Asunción

The Treaty of Asunción is a normative framework, signed by the governments of Argentina, Brazil, Paraguay and Uruguay, on March 26, 1991. By virtue of this Treaty, the States Parties decide to build a Common Market, which should have been formed on December 31, 1994, and which would be called the "Southern Common Market" (MERCOSUR).³ The signatories to the Treaty of Asunción, on behalf of the Government of the Argentine Republic, are President Carlos Saul Menem and Foreign Minister Guido Di Tella; on behalf of the Government of the Federative Republic of Brazil, President Fernando Collor de Melo and Foreign Minister Francisco Rezek; on behalf of the Government of the Republic of Paraguay, President Andrés Rodríguez and Foreign Minister Alexis Frutos Vaesken; and on behalf of the Government of the Oriental Republic of Uruguay; President Alberto Lacalle Herrera and Foreign Minister Héctor Gros Espiell.

The Treaty of Asunción was internalized in the Federative Republic of Brazil by Decree 350, of November 21, 1991, D.O.U., of September 22, 1991, approved by Legislative Decree 197, of September 25, 1991, D.O.U., of September 26, 1991, with a letter of ratification deposited by Brazil on October 30, 1991, already with the accession of Paraguay and Uruguay, it enters into force on November 29, 1991. The Argentine Republic

³ For a more in-depth analysis, Cf. GARCIA JÚNIOR, 1997, 2004; GARCIA, 2005; CUNHA, 2017; PEREIRA, 2001; MAZZUOLI, 2001; NASCIMENTO, 2004; SCHUELTER, 2003; PARAGUAY, 2006; GARABELLI, 2004.

ratified it by means of Law No. 23,981 of August 15, 1991, and the deposit was made on October 20, 1991. The Republic of Paraguay approved it by Law No. 9 of May 30, 1991, published in *the Official Court* on July 15, 1991, and the deposit was made on August 6, 1991. The Oriental Republic of Uruguay ratified it by Law No. 16,196 of July 22, 1991, published in the Official Gazette, on September 27, 1991; The deposit was made on August 6, 1991.

Currently, the enlarged MERCOSUR ⁴ is formed by the Republic of Bolivia ⁵ and the Republic of Chile, which are Associate States, through the Ushuaia Protocol on Democratic Commitment in MERCOSUR, in the City of Ushuaia, Argentine Republic, on July 24, 1998, signed by the Government of the Argentine Republic, President Carlos Saul Menem and Foreign Minister Guido Di Tella; Government of the Federative Republic of Brazil, President Fernando Henrique Cardoso and Chancellor Luiz Felipe Lampreia; Government of the Republic of Paraguay, President Juan Carlos Wasmosy and Foreign Minister Ruben Melgarejo Lanzoni; Government of the Oriental Republic of Uruguay, President Julio Maria Sanguinetti and Foreign Minister Didier Opertti Badan; Government of the Republic of Bolivia, President Hugo Banzer and Foreign Minister Javier Murillo de La Rocha, and Government of the Republic of Chile, President Eduardo Frei Ruiz and Foreign Minister Tagle José Miguel Insulza. Peru was incorporated as an Associate State by CMC Decision No. 39 of December 15, 2003. The decision was officially announced during the summit of presidents of the customs bloc held that same month in the Oriental Republic of Uruguay.

The Protocol of Accession of the Bolivarian Republic of Venezuela to MERCOSUR was signed in Caracas (Venezuela) on July 4, 2006 by President Nestor Kirchner of the Argentine Republic, President Luís Inácio Lula da Silva of the Federative Republic of Brazil; President Nicanor Duarte Frutos, of the Republic of Paraguay; President Tabaré Vázquez, of the Oriental Republic of Uruguay; and President Hugo Chavez Frias, of the Bolivarian Republic of Venezuela. The draft Legislative Decree was approved by the plenary of the Chamber of Deputies on December 17, 2008 and went to vote in the Brazilian Federal Senate. On December 15, 2009, the Brazilian Federal Senate approved,

⁴ That is: Associated States. The Associated States are those members of the ALADI with which MERCOSUR signs free trade agreements, and which subsequently request to be considered as such. The Associated States are authorized to participate in the meetings of MERCOSUR bodies that deal with issues of common interest. This is the current situation in Chile, Colombia, Ecuador and Peru (Available at: <https://www.mercosur.int/pt-br/quem-somos/paises-do-mercosul/>).

⁵ The Protocol of Accession of Bolivia to MERCOSUR was already signed by all the States Parties in 2015 and is now in the process of being incorporated by the congresses of the States Parties (Available at: <https://www.mercosur.int/pt-br/quem-somos/paises-do-mercosul/>).

after a close vote, by 35 (thirty-five) to 20 (twenty-seven) votes, the entry of Venezuela into MERCOSUR. In 2006, Venezuela applied to join the bloc as a State Party, which took place in 2012, but was suspended in December 2016, in accordance with the provisions of the second paragraph of Article 5 of the Ushuaia Protocol.

Associate States may also be those countries with which MERCOSUR enters into agreements under Article 25 of the 1980 Treaty of Montevideo (TM80) (agreements with other States or areas of economic integration in Latin America). Such is the case in Guyana and Suriname.⁶

Observer states are: Mexico and New Zealand.

The Treaty of Asunción will have an indefinite duration and its entry into force has been set for 30 days after the date of deposit of the third instrument of ratification. The Treaty entered into force on 29 November 1991. The Treaty of Asunción established two stages for integration: a provisional stage, which ended on December 31, 1994, which aimed to initiate and promote the formation of a common market; and a definitive stage, which began on January 1, 1995, with the consolidation of an imperfect customs union. In order to facilitate the establishment of the Common Market, the States Parties have signed four annexes to the Treaty of Asunción.

The States Parties consider that the expansion of the current dimensions of their markets is a fundamental condition for accelerating their economic development processes with social justice, and that it is an appropriate proposal for the international movement that tends to consolidate large economic blocs and the need to achieve an adequate international insertion of their countries. The Treaty should also be considered a new advance in the effort to progressively develop the integration of Latin America, in accordance with the objective of the 1980 Treaty of Montevideo.

The Treaty of Asunción will be open to the admission, through negotiation, of the other Member States of the Latin American Integration Association (ALADI), whose requests could be examined by the MERCOSUR Member States, after five (5) years of validity of said Treaty. However, applications for membership before that deadline may be submitted by ALADI Member States, provided that they are not part of another sub-regional integration process or an extra-regional association.

The MERCOSUR State Party that wishes to disassociate itself must expressly and formally communicate its intention to the other States and deliver the denunciation

⁶ Cf. <https://www.mercosur.int/pt-br/quem-somos/paises-do-mercosul/>.

document to the Ministry of Foreign Affairs of Paraguay within sixty (60) days, which will distribute it to the other States Parties.

The Additional Protocol to the Treaty of Asunción on the institutional structure of MERCOSUR, the Ouro Preto Protocol, was adopted in the framework of the VII Meeting of the MERCOSUR Council held in the Brazilian city of Ouro Preto on December 16 and 17, 1994 and signed by the President of the Argentine Republic, Carlos Saul Menem and Foreign Minister Guido Di Tella; the President of the Federative Republic of Brazil, Itamar Franco and Foreign Minister Celso Amorim; the President of the Republic of Paraguay, Juan Carlos Wasmosy, and Foreign Minister Luis María Ramírez Boettner; and the President of the Oriental Republic of Uruguay, Luis Alberto Lacalle Herrea and the Foreign Minister, Sergio Abreu.

Ouro Preto Protocol

The Protocol of Ouro Preto was approved by Legislative Decree No. 188, of December 15, 1991, published in the Official Gazette of December 18, 1991 and promulgated by Decree No. 1,901, of May 9, 1996 and published in the Official Gazette of November 22, 1996.

In this second transition period, which begins on January 1, 1005 until November 2006, where the Customs Union should be fully formed, the Protocol of Ouro Preto enshrines the definitive institutional structure of MERCOSUR in accordance with the provisions of Article 18 of the Treaty of Asunción, dictates the regulations that regulate the administrative bodies, the decision-making system and other fundamental issues for the institutional life of MERCOSUR.

The Ouro Preto Protocol consists of 53 (fifty-three) articles and an annex, the main parts of which concern the institutional structure of MERCOSUR. Annex I of the Ouro Preto Protocol deals with the general procedure for complaints to the MERCOSUR Trade Commission, the consultation mechanism in the Trade Committee.

After numerous discussions on the improvement of the Brasilia Protocol, a text was finally approved in accordance with the four (4) States Parties and was signed by the Presidents and Foreign Ministers of Argentina, Brazil, Paraguay and Uruguay at the presidential residence in Olivos, Argentine Republic, on February 18, 2002.

Olivos Protocol

The Olivos Protocol is just another legal diploma to improve the Protocol of Brasilia, widely debated and expected for several years. It is not the definitive system, which must be enshrined before the process of convergence of the common external tariff is completed, a situation that would only occur in 2006.

As is known, on December 17, 1991, the Protocol of Brasilia for the Settlement of Disputes was signed, by virtue of the provisions of the Treaty of Asunción. The document was signed by the Republic of Argentina Carlos Saul Menem and Guido Di Tella; for the Federative Republic of Brazil, Fernando Collor and Francisco Rezek; for the Republic of Paraguay, Andrés Rodríguez and Alexis Fritos Vaesken; and for the Oriental Republic of Uruguay, Luis Alberto Lacalle Herrea and Héctor Gros Espiell.

The document served as the basis for the settlement of new disputes that arose during its term and that reached the *Ad Hoc* Tribunals regulated by the Protocol. However, the Olivos Protocol, as well as the Brasilia Protocol, do not contemplate, within the dispute settlement system, the control of the legality of the acts adopted by the MERCOSUR bodies. By means of this legality control, the Courts would have the power to pronounce on the legality of the Decisions dictated by the MERCOSUR Council, the Resolutions issued by the Common Market Group or the Guidelines issued by the MERCOSUR Trade Commission.

It should not be forgotten that individuals, individuals or legal entities, who, according to MERCOSUR regulations themselves, may be parties to a controversy and who, being interested in the legality of MERCOSUR acts, could have active legitimacy to bring about the control of legality by the courts.

With the entry into force of the Olivos Protocol, signed on February 18, 2002, the Protocol of Brasilia was expressly repealed.

DISCUSSION

THE PROCESS OF MODERNIZATION OF THE MERCOSUR INTEGRATION MODEL

On May 12, 2016, the then Interim President of the Republic, Michel Temer, in his speech at the inauguration ceremony of the new Ministers of State, presented the Principles and objectives of the Brazilian Foreign Policy of his Government.

The seventh guideline of these principles provided the opportunity for the theme of the present work:

Seventh guideline: One of the main focuses of our diplomatic action in the short term will be the partnership with Argentina, with which we will share similar references for the reorganization of politics and the economy. Together with the other partners, we need to renew MERCOSUR, to correct what needs to be corrected, with the aim of strengthening it, first of all with regard to free trade between its member countries, which still leaves something to be desired, to promote shared prosperity and to continue to build bridges, instead of deepening differences, in relation to the Pacific Alliance. which involves three South American countries, Chile, Peru and Colombia, plus Mexico. As Enrique Iglesias said, very well observed, we cannot watch impassively the renewal of a kind of Treaty of Tordesillas, which would deepen the separation between the east and the west of the South American continent. With regard to Mexico, it will be a priority to take full advantage of the enormous potential for complementarity that exists between our economies and our international visions today.

in: <<http://www.funag.gov.br/ipri/index.php/noticias/55-repertorio-da-politica-externa/659-principios-e-objetivos-da-politica-externa-brasileira>>. Accessed on: 19 agos. 2017.

When we talk about modernization, we must think precisely about more and better commerce. There are two priorities: to rescue the original MERCOSUR project of being a free trade zone and, on the other hand, to encourage agreements with other countries and blocs (LIMA, 2015, p. 18).

In the first case, the fact is that MERCOSUR did not become the free trade area that was conceived at the time of its gestation. We still have problems such as non-tariff barriers, lack of harmonization of rules in several sectors and entire segments, such as automotive, excluded from free circulation. We also have to advance in common rules for topics such as government procurement, investments and services, for example. Overcoming the obstacles that still exist and developing stable and common standards are our two central priorities (LIMA.2015, p.18)

In the case of external negotiations, there is a shared perception among the founding partners that the determination to negotiate together cannot and should not hinder the execution of new agreements. This is a topic whose discussion should be deepened (LIMA, 2015, p.18-19).

The accumulated literature on MERCOSUR,⁷ in Brazil and in neighboring countries, has addressed the different facets of this integration process – economic, political, social and legal – and has contributed to a reasonable understanding of what MERCOSUR was

⁷ Cf. AQUINO, 2001; DIAS, 2010; GARABELLI, 2004; LABRANO, 1998; GONZALES-OLDEKP, 1997; JARDEL; BARRAZA, 1998; MENEM, 1996; ALMEIDA, 1993, 2000, 1998. 1999, 1995, 1996; BOSCOVICH, 1999; CANTERO, 1999; SILVA; RIEDIGER, 2016; LARRAÑAGA, 2002; DESIDERÁ NETO; TEIXEIRA, 2012; GUIMARÃES, 2005; FONSECA JÚNIOR; LEÃO, 1989; PRIETO, 2007; VENTURA, 2013; SILVA; RIEDIGER, 2016; OLIC, 2004; BANDEIRA, 1993.

in its origin, how it evolved over the first two decades and what its main problems are. It is also worth noting the change of paradigms in Brazil's foreign policy.

Latin America has tried several times, throughout its history, from Simón Bolívar (at the Congress of Panama in 1826) to the present day, to integrate itself in order to grow. However, the result of these numerous attempts was, in general, weak. In 1960, the Latin American Free Trade Association (ALALC) was an effort that also represented relatively little in the direction of growth and economic development in the region. In 1980, the ALADI (Latin American Integration Association) went a little further, but also without achieving the planned objectives (LARRAÑAGA, 2002, p. 14).

MERCOSUR (Southern Common Market), created in 1991, within the framework of the ALADI, removed customs and non-customs barriers and allowed a dramatic growth in business and in the volume of goods shipped through the infrastructure available in the States Parties, Argentina, Brazil, Paraguay and Uruguay (LARRAÑAGA, 2002, p. 14).

Latin America, in general, and MERCOSUR, in particular, must make a complete operational rationalization in the medium and long term, following the example of the European Union (LARRAÑAGA, 2002, p. 15).

Argentina will probably continue to consider MERCOSUR as a market of the utmost importance, without committing itself too much to it until Brazil defines what it intends to do with the bloc, given its condition as the main partner and natural leader (LARRAÑAGA, 2002, p. 63).

In these terms:

Brazil, whose intentions for regional leadership are known, and which also wishes to be a middle power for the international community, must clearly define its role, to avoid the disarticulation of the group, something that has already been manifested in the attitudes of Argentina, Chile and Uruguay to negotiate free trade agreements on an individual basis. Regional leadership obliges Brazil to keep the bloc united and at peace, in order to be recognized and accepted as a valid interlocutor on the world stage (LARRAÑAGA, 2002, p. 63-64).

Nevertheless, there are risks to the integration process, which, once again, seems to follow the historical trend, which indicates that every time a Latin American project is well underway, others appear that are more dynamic and empty it, as has happened with the ALALC, ALADI, the Amazon Pact and the La Plata Basin, in the face of projects such as the Alliance for Progress, for example, by making the FTAA absorb MERCOSUR, leaving it as a sub-regional trade agreement of secondary importance (LARRAÑAGA, 2002, p. 66).

According to Paulo Roberto de Almeida (2013):

Mercosur, whose original project of establishing a common market in a relatively short period of time was never implemented, went through several crises, some externally induced, others caused by internal imbalances. Its main problems, however, are linked to the macroeconomic and sectoral policies of its two largest members, Brazil and Argentina, and to their erratic character. To the conjunctural problems registered in its itinerary, new political orientations were added from 2003 onwards, bringing a deviation from the main focus on trade liberalization to political diversification, several new components of a social nature, as well as a general lack of commitment to the bloc's priority objectives. Due to the accumulated imbalances and contradictions, it is not likely that the problems will be corrected in the foreseeable future. There remains, therefore, an uncertainty as to its future, which depends, as it has always depended, on political leaders (ALMEIDA, 2013, p. 43).

Nevertheless:

If Mercosur wants to be successful, it has to go back to basics and comply with what is agreed in Article 1 of the TA, or else start by assuming responsibility for carrying out a profound reform of its constitutive instruments. The mimetic reproduction of a European-type scheme has always been a chimera from a practical point of view, and there are no painless institutional solutions that can make Mercosur an integrationist edifice – for which it lacks appropriate foundations (ALMEIDA, 2013, p.55).

For Samuel Pinheiro Guimarães (2005):

Mercosur (and Argentina and Brazil) face three short-term challenges in the process of articulating an autonomous political role in the multipolar world system in gestation:

- resist absorption into the U.S. economy and political bloc that has been advancing rapidly, through the FTAA negotiations, the TLSs and gradual dollarization;
- Avoid and politically confront a possible external military intervention in Colombia and eventually in the entire Amazon region;
- regain control over its economic policies, domestic and foreign, currently under the direct or indirect influence of the IMF (and the WTO) (GUIMARÃES, 2005, p. 424-425).

Since its creation with the 1991 Treaty of Asunción, Mercosur has emerged as an economic-commercial and political-strategic project: to expand and consolidate Brazil's regional and international influence, through commercial exchange and political-strategic coordination at the regional level. At that time, it also aimed to increase Brazil's bargaining power in the face of the Hemispheric Free Trade Area (ZHLC), which would later evolve into the Free Trade Area of the Americas (FTAA). The rapprochement with the European Union was also pursued from the beginning, both as a source of inspiration for integration and because it represents a counterweight to the ZHLC and the FTAA (FLORÊNCIO, 2015, p. 8).

But what are the symptoms of the MERCOSUR crisis in the last four years? According to Abreu and Lima Florêncio (2015), they are the following: the loss of priority in

the context of Brazilian foreign policy (PEB); modest business results; drilling of the common external tariff (TEC); low internalization of MERCOSUR decisions in domestic legal systems; and inability to negotiate trade preference agreements/Free Trade Agreements (FTAs) with large economies. The crisis is examined using as parameters the changes in paradigms and positions of the Brazilian Foreign Policy (PEB) and its effects on the priority of MERCOSUR for Brazil.

Let us see the following five interpretations aimed at explaining the causes of the crisis are studied, having this theoretical (paradigms) and empirical (political positions) framework:

First interpretation:

Adoption of the intergovernmental model instead of supranationality:

The Mercosur crisis results from the adoption of the intergovernmental model (as opposed to the supranational model), which tends to favor the "expansion" of the bloc and prevent its "deepening". The intergovernmental model is inherent to the principle of autonomy in Brazilian foreign policy (PEB) (FLORÊNCIO, 1990, p. 16).

Second interpretation:

Change from the pragmatic Americanist/institutionalist paradigm (FHC) to the globalist/autonomist (Lula/Dilma):

The Mercosur crisis is explained by the passage from the pragmatic Americanist/institutionalist paradigm to the globalist/autonomist paradigm in the PEB. The economic reforms and stabilization inaugurated in the mid-1990s during the FHC government paved the way for Brazil to gain competitiveness and benefit from the accelerated growth of the international economy and the boom in demand for raw materials by China in the first decade of the 21st century. This favorable situation allowed the country to project itself as a large emerging economy. The international economic crisis of 2008/2009 opened space for new institutions (such as the financial G20) to play a relevant role in the new global governance. This scenario favored a greater international presence of the country. In this context, President Lula made an effort to project Brazil's image as a "major global player", prioritizing the globalist paradigm, and, as a consequence, Latin America was eclipsed within the scope of the PEB. Thus, this transition from the pragmatic Americanist/institutionalist paradigm (FHC) to the globalist/autonomist paradigm (Lula/Dilma) reduced the importance of Mercosur and explains its current crisis (FLORÊNCIO, 1990, p 21).

Third interpretation:

Creation of UNASUR as a source of weakening of MERCOSUR and politicization of the Initiative for the Integration of Regional Infrastructure in South America (IIRSA):

The Mercosur crisis results from the inflection in Brazilian policy towards South America, with the creation, in 2004, of the South American Union of Nations (Unasur). At the same time that the change towards the globalist/autonomist paradigm reduced the priority of Mercosur in the international context, at the regional level Unasur had a similar effect, as it absorbed the focus of our regional strategy, to the detriment of Mercosur. Although Unasur was intended to amalgamate the two sub-regional integration processes – Mercosur and CAN – in reality it had the concrete result of weakening Mercosur and politicizing IIRSA (FLORENCIO, 1990, p. 27).

Fourth interpretation:

MERCOSUR atypical model, absence of a *hub and spoke pattern*:

The Mercosur crisis results from an atypical pattern of intra-bloc trade: the larger partner reveals an inability to play a role that effectively benefits the smaller partners and there is no "hub and spoke"¹³ relationship between its members. In clear contrast with other successful integration experiences, Brazil has a surplus in exchange with Paraguay and, in several years, with Uruguay. In addition, the mechanism aimed at reducing asymmetries – FOCEM – is insufficient, composed of poorly structured projects and with a political rather than technical bias (FLORENCIO, 1990, p. 32).

Fifth interpretation:

The crisis would be the result of the divorce between the PEB and Argentina in the Menem/Fernando Henrique era and the confluence of interventionist policies in the presidencies of the Kirchner couple and Lula – second term/Dilma:

The marked differences in foreign policy lines during the mandates of Menem, in Argentina, and Cardoso, in Brazil, throughout the 1990s, combined with the adoption of an interventionist and heterodox economic model prevalent in both countries, during the presidencies of the Kirchner couple, in Argentina, and of Lula-Second-term/Dilma, in Brazil, from the 2000s onwards, explain the crises in Mercosur (FLORENCIO, 1990, p. 36-37).

The theoretical framework, therefore, points to the strong explanatory power of interpretations 2, 3 and 4, namely:

[...] interpretations one and two, that is, the passage from the pragmatic Americanist/institutionalist paradigm (FHC) to the globalist/autonomist paradigm (Lula) and the change of concrete directions in the PEB – a priority for Unasur, the politicization of IIRSA and the weakening of Mercosur – condition and explain the recent crisis of the integration process. Interpretation four also contributes to explaining the crisis, that is, the atypical character of the block, in which the larger partner has a surplus with the smaller partners and there is no clear *hub and spoke relationship* (FLORENCIO, 2015, p.46).

CONCLUSION

Two general issues guided this work: the first concerns the fact that it is clear that one of the main purposes today is to modernize the regional integration model. The Southern Common Market (MERCOSUR) has completed 34 (thirty-four) years and we must adjust it to the current reality; the second question consisted of reviewing the accumulated literature on MERCOSUR that has addressed the different facets of this integration process – economic, political, social and legal – and has contributed to a reasonable understanding of what MERCOSUR is.

To this end, from the point of view of the reference and conceptual framework, we went through the relevant bibliography already made public in relation to the subject of study, as well as the legal diplomas of MERCOSUR, which helped in the theoretical construction and at the same time in the critical reconstruction of its foundations.

Therefore, the present work reached the following results:

1. Regarding the *objectives*:
 - a. Regarding the *general objective*, which is to "critically analyze the process of modernization of the integration model of the Southern Common Market (MERCOSUR)", it was concluded that the accumulated literature on MERCOSUR, in Brazil and in neighboring countries, has addressed the different facets of this integration process – economic, political, social and legal – and has contributed to a reasonable understanding of what Mercosur was in its origin, how it has evolved over the first two decades and what are its main problems and paradigm shifts in Brazil's foreign policy;
 - b. In relation to the *first specific objective*, which is "to evaluate the formation of the ALALC and ALADI in the sixties", it is concluded that the ALALC and ALADI, signifying an important antecedent of MERCOSUR, which led directly to the formation of the bloc, constitute two cements of this integration process;
 - c. In relation to the *second specific objective*, which is "to identify the positive and negative characteristics of the Treaty of Asunción, the Protocol of Ouro Preto, the Protocol of Olivos and other legal diplomas and their effectiveness", it is verified that they are important instruments of the normative frameworks for the creation, development and reconstruction of MERCOSUR, and it is concluded that all these treaties and agreements are within the framework of the Latin

American Integration Association (ALADI) that allows the participation of all States Parties and those associated with MERCOSUR for full integration.

- a. Finally, in relation to the *third specific objective*, which is to "analyze the process of modernization of MERCOSUR integration", it was concluded that there are at least five interpretations, with strong explanatory power of the causes of the crisis, with a view to formulating and implementing a set of measures of various orders to accelerate the process of modernization of the MERCOSUR integration model.
2. Regarding the *hypothesis* that "considering that MERCOSUR is in the stage of a (imperfect) Customs Union, there is a need to critically analyze its modernization process: adjustments to the reality in which we live, rescue the initial project and incentive to agreements with other states and blocs". The hypothesis is corroborated.
3. The *final conclusion* of this work is as follows:

The model chosen by MERCOSUR was characterized by open regionalism or regionalism for globalization, governmental institutionality and state-centric conception.

If MERCOSUR wants to be successful, it must go back to basics and comply with what was agreed in Article 1 of the Treaty of Asunción, or else it must start by assuming the responsibility of carrying out a profound reform of its constitutive instruments. The mimetic reproduction of a scheme of the European Union model has always been a chimera, from a practical point of view, and there are no institutional solutions that can make MERCOSUR an integrationist edifice.

Finally, Brazil must maintain a position of sub-regional leadership, privileging MERCOSUR and establishing new alliances and seeking a more preponderant role in the international system.

Therefore, there are sufficient reasons to reassess the foreign policies in Brazil and Argentina and to devise strategies for building in favor of a MERCOSUR foreign policy. There is no successful negotiation without reciprocity. Negotiating is just that: knowing how to give in exchange for something.

4. For future investigations, it is recommended: to expand the literature review and to carry out a comparative study of MERCOSUR with the other regional integration blocs. However, the examination of these implications goes beyond the limits of this work.

ACKNOWLEDGMENTS

To Prof. Dr. Leonardo Mèrcher Coutinho Olímpio de Melo, advisor of my Final Paper: Scientific Article of the Bachelor's Degree in International Relations at the UNINTER International University Center, my eternal gratitude.

To Prof. Dr. Graça Maria Teixeira da Silva, from the Center for Philosophy and Human Sciences of the Federal University of Acre, for her criticisms and numerous and valuable stylistic and philosophical suggestions, incorporated, as far as possible, to this work.

To the researchers of the Center for Strategic Studies and International Relations - NEERINT (Research Group registered in the Directory of Research Groups in Brazil and certified by the Federal University of Acre). Available at:

<http://dgp.cnpq.br/dgp/espelhogrupo/0654014884462019>.

REFERENCES

1. BOHLKE, Marcelo. Integração regional & autonomia do seu ordenamento jurídico. Curitiba: Juruá, 2006.
2. CANTERO, Carlos Marcial Russo. El MERCOSUL ante la necesidad de organismos supranacionales. Asunción: Intercontinental, 1999.
3. CUNHA, Paulo Ferreira da Cunha. Direito internacional: raízes e asas. Belo Horizonte: Fórum, 2017.
4. DESIDERÁ NETO; TEIXEIRA. Perspectivas para la integración de América Latina. Brasília, DF: IPEA: CAF, 2012.
5. DIAS, Manoel Coracy Saboia. Internalização, vigência e eficácia das normas do MERCOSUL no ordenamento jurídico brasileiro. 2006. 209 f. Trabalho de Conclusão de Curso (Bacharelado em Direito) – Faculdade da Amazônia Ocidental, Rio Branco.
6. DOMINGUES, Juliana Oliveira; OLIVEIRA, Cristina Godoy Bernardo de. Direito econômico internacional. Curitiba: InterSaberes, 2017.
7. DROMI, Roberto; EKMEKDJIAN, Miguel A.; RIVERA, Julio C. Derecho comunitario: sistemas de Integración: régimen del MERCOSUR. 2. ed. Buenos Aires: Ciudad Argentina, 1996.
8. FERREIRA, Ana Paula Lopes; MERCHER, Leonardo. História política comparada da América Latina. Curitiba: InterSaberes, 2015.
9. FINKELSTEIN, Cláudio. O processo de formação de Mercados de bloco. São Paulo: IOB – Thomson, 2003.
10. FLORÊNCIO, Sérgio Abreu e Lima. Trajetória do Mercosul e Mudança de Paradigmas da Política Externa Brasileira: possíveis interpretações para a crise do bloco. Boletim de Economia e Política Internacional, BEPI, n. 19, jan./abr. 2015, p. 59-73.
11. FONSECA JÚNIOR, Gelson; LEÃO, Valdemar Carneiro (Orgs.). Temas de política externa brasileira. Brasília: Fundação Alexandre de Gusmão/Editora Ática, 1989.
12. GARCIA JUNIOR, Armando Álvares. MERCOSUL: legislação fundamental específica. Edição em português e espanhol. São Paulo: Jurídica Brasileira, 1997.
13. GARCIA JÚNIOR, Armando Álvares. ALCA: a Área de Livre Comércio das Américas. 2. ed. São Paulo: Aduaneiras, 2007.
14. GARCIA JÚNIOR, Armando Álvares. Direito Internacional: questões atuais. 2. ed. São Paulo: Aduaneiras, 2004.
15. GARCIA, Eugenio Vargas. Cronologia das Relações Internacionais do Brasil. Rio de Janeiro: Contraponto; Brasília – DF: Fundação Alexandre de Gusmão, 2005.

16. GARRABELI, Carlos A. González. Procesos de integración: MERCOSUR e solución y de controversias. Asunción: CIDSEP-UC, 2004.
17. GUIMARÃES, Samuel Pinheiro. Desafios brasileiros na era de gigantes. Rio de Janeiro: Contraponto, 2005.
18. GONZALEZ-OLDEKOP, Florencia. La integración y sus instituciones. Buenos Aires: Ciudad Argentina, 1997.
19. JARDEL, Silvia; BARRAZA, Alejandro. Mercosur aspectos jurídicos y económicos. Buenos Aires: Ciudad Argentina, 1998.
20. LABRANO, Roberto Ruiz Diaz. MERCOSUR: integración y derecho. Buenos Aires: Intercontinental Editora, 1998.
21. LARRAÑAGA, Félix Alfredo. Desenvolvimento econômico do Cone Sul: o sistema logístico sub-regional. São Paulo: Aduaneiras, 2002.
22. LEAL, Rosemiro Pereira et al. Curso de Direito econômico-comunitário: Teoria do direito e técnica processual nos blocos econômicos. Porto Alegre: Síntese, 2001.
23. LIMA, Sérgio Eduardo Moreira. A Política Externa Brasileira. Palestra de abertura da V Conferência sobre Relações Exteriores (CORE), na Universidade da Amazônia (UNAMA), Belém, 9 de novembro de 2016. Cadernos de Política Exterior, Brasília, DF: Instituto de Pesquisa de Relações Internacionais, v. 2, n. 4, dez. 2016.
24. MACHADO, José Luiz. Blocos econômicos no panorama mundial: análise geográfica e econômica. Curitiba: InterSaberes, 2012.
25. MAZUOLLI, Valerio de Oliveira. Tratados internacionais. São Paulo: Juarez de Oliveira, 2001.
26. MENEM, Carlos Saúl. What is MERCOSUR? Buenos Aires: Ciudad Argentina, 1996.
27. MERCOSUL: Legislação e Textos Básicos. Ministério das Relações Exteriores e Comissão Parlamentar Conjunta do Mercosul – Seção Brasileira. Senado Federal. Brasília, 1996. 2. ed.
28. MERCOSUL: Textos básicos. Paulo Roberto de Almeida – Coordenador. Brasília: Fundação Alexandre de Gusmão, 1992.
29. NASCIMENTO, Maria Luiza Justo. A incorporação das normas do MERCOSUL aos ordenamentos jurídicos dos Estados-membros. Curitiba: Juruá, 2004.
30. OLIC, N. B. Geopolítica da América Latina. São Paulo: Moderna, 1992.
31. PARAGUAY. Corte Suprema de Justicia. Instrumentos normativos del MERCOSUR. Asunción: Corte Suprema de Justicia: División de Investigación, Legislación y Publicaciones del Centro Internacional de Estudios Judiciales, 2006.

32. PEREIRA, Ana Cristina Paulo. Direito institucional e material do MERCOSUL. Rio de Janeiro: Lumen Juris, 2001.
33. PRIETO, Félix Gerardo Ibarra. Soberanía y supranacionalidad en el proceso de integración del Mercosur. Dissertação (Mestrado em Relações Internacionais), Universidad Autónoma de Asunción, Asunción, PY, 2007.
34. SILVA, André Luiz Reis da; RIEDIGER, Bruna Figueiredo. Política externa brasileira: uma introdução. Curitiba: InterSaberes, 2016.
35. SCHUELTER, Cibele Christiane. Tratados internacionais e a lei interna brasileira: o problema da hierarquia das normas. Florianópolis: OAC - SC Editora, 2003.
36. SEITENFUS, Ricardo. Relações Internacionais. 2. ed. Barueri, SP: Manole, 2013.
37. TEMER, Michel. Princípios e objetivos da Política Externa Brasileira. Disponível em: <http://www.funag.gov.br/ipri/index.php/noticias/55-repertorio-da-politica-externa/659-principios-e-objetivos-da-politica-externa-brasileira>. Acesso em: 19 ago. 2017.
38. VENTURA, Deisy. As assimetrias entre o MERCOSUL e a União Europeia: os desafios de uma associação inter-regional. Barueri, SP: Manole, 2003.