The Brazilian Parliamentary Delegation to Mercosur: its functions in the
Brazilian National Congress
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SUMMARY

The paper discusses the work of the Brazilian Parliamentary Delegation to Mercosur, initially to the Joint Parliamentary Committee and then to its successor, the Parliament of Mercosur. It examines the process whereby the Delegation became institutionalized within the Brazilian National Congress and gained competences, functioning in a very similar manner to a bicameral parliamentary committee. It describes the evolution of these functions, considering them mainly at the national parliament’s level.

During the XXVII Meeting of the Mercosur Heads of State, on December 17, 2004, the Common Market Council (CMC) instructed the Joint Parliamentary Commission (JPC) to prepare a draft protocol establishing the Mercosur Parliament, and recommended its completion before 31st December, 2006. The Joint Parliamentary Commission successfully created the draft protocol and on December 9, 2005, in Montevideo, the Presidents of Argentina, Brazil, Paraguay and Uruguay signed the Constitutive Protocol of the Parliament of Mercosur, that replaced the Joint Parliamentary Commission.

With very weak competences, consultative in nature, the Parliament’s most distinguishing feature, when compared to other parliaments of integration processes, is the consultative function contained in art. 4, nº 12, which creates a link between the national parliaments and the regional Parliament. Its objective is to speed up the approval, by national parliaments, of norms issuing from the integration agreements, thus conferring legal security to the integration process.

The paper discusses the manner whereby the Brazilian delegation succeeded in incorporating the mechanism devised by art. 4 into the proceedings of the National Congress, and evaluates its work as a channel of communication with civil society.

Throughout the process of creating the Parliament, and later on, during the present stage of its establishment, the Brazilian delegation has possibly been the most effective, among the four delegations, in consolidating a role for itself in the proceedings of the National Congress, while at the same time participating in the monthly sessions of the Parliament in Montevideo.

However, its existence is now facing a serious challenge, since the Congress Resolution that created it lapsed on 31st December, 2010.

In spite of the fact that this paper refers to a “Brazilian parliamentary delegation” in its title, the word “Representation” is used in most of the work, pursuant to the provisions of Resolution CN nº 1 of 1996, and Resolution CN nº 1 of 2007 of the Brazilian National Congress.

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I – Introduction

Developments that took place in world affairs during the twentieth century – paramount among them being the establishment of regional blocs such as the European Union and Mercosur, provided national parliaments and their members with new opportunities to participate in the scene of international relations.

In the case of Mercosur, the historical context surrounding its creation\(^1\) was strongly marked by a determining factor. This was the political atmosphere that prevailed in the Southern Cone at the time, whereby the efforts towards a return to the democratic regime, initiated by the governments of the countries of the sub-region, played an important role. These efforts would in turn give place to a shared perception regarding issues such as respect for human rights and the need to strengthen democratic institutions (SCHMITTER, 1997).

There was, therefore, a framework of political principles that served as a basis for integration when the Act of Iguazu was signed in November of 1985 by Presidents Raúl Alfonsín and José Sarney, which was expressed in the sharing of values and in objectives that transcended the merely economic dimension. In fact, the role played by Mercosur as a warrant of the continuity of democratic institutions in the region would become clear on the occasion of the political crises in Paraguay in 1996 and 1999. Thus, one can see that the agility and the ease that Mercosur, in spite of being largely perceived as a mere economic bloc, has shown in dealing with political matters as well as economic ones, is due to its very origins.

It is obvious that when discussing democracy it is to the parliamentary institutions that one’s thoughts turn. In the case of Mercosur there surely has been, since the beginning of integration, an explicit intention on the part of the member states to involve the region’s parliaments in the process.

But a more pragmatic reason for involving national parliaments in the integration comes to mind when one realizes that, according to the Constitutions of the Mercosur

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\(^1\) Comprising four member States (Argentina, Brazil, Paraguay and Uruguay) plus Venezuela, whose accession has been approved by three of the national Parliaments but is pending approval by the Parliament of Paraguay, Mercosur was created by the Treaty of Asunción in 1991.
countries, it is a function of their national congresses to examine and approve international treaties before their ratification by the President of the Republic\textsuperscript{2}.

Therefore, it is not surprising that the negotiators of Mercosur decided to include a parliamentary body in every one of the instruments of the integration, starting from the Treaty for Integration, Cooperation and Development signed by Brazil and Argentina on 29 November 1988, then the Treaty of Asunción of 26 March 1991, which included Paraguay and Uruguay in the bloc, the Protocol of Ouro Preto, signed by the four countries on 17 December 1994\textsuperscript{3}, which established its institutional structure, and culminating with the Constitutive Protocol of the Parliament of Mercosur, concluded on 9 December, 2005.

It should be noted that the parliamentary dimension of Mercosur was apparently stronger during the Alfonsín–Sarney\textsuperscript{4} negotiations of the bilateral integration treaty between Argentina and Brazil. Later, from the Menem–Collor period onwards, the economic aspects would predominate in the integration process, and its rationale would cease to include political considerations, contemplating, rather, the goals of opening the member countries’ economies and of obtaining a better insertion of the region’s products in a globalized market.

This trend would be reversed by an interesting historical circumstance: the simultaneous accession to power of centre-left governments in all four member countries\textsuperscript{5}. With a view to addressing the social and political aspects of integration, the new leaders gave emphasis to the parliamentary dimension in the negotiating agenda\textsuperscript{6}.

II The two dimensions of parliamentary work in Mercosur


\textsuperscript{3} See Ministério das Relações Exteriores e Comissão Parlamentar Conjunta – Seção Brasileira (ed.), Mercosul: Legislação e Textos Básicos (Brasília, 2000).

\textsuperscript{4} The Argentine President Raúl Alfonsín and the then President of Brazil, José Sarney.

\textsuperscript{5} In Brazil, Luiz Inácio Lula da Silva was elected President, in October, 2002 and in Argentina Néstor Kirchner was elected President in April 2003. Later, in 2004, Tabaré Vasquez became President of Uruguay, and in 2008 Fernando Lugo was elected President of Paraguay.

\textsuperscript{6} See Decision nº 26, 2003, of the CMC: “Programa de Trabalho do Mercosul 2004-2006”. 
Article 24 of the Treaty of Asunción provided for the establishment of a Mercosur Joint Parliamentary Committee “in order to facilitate progress towards the formation of the common market” and added that the executive branches of the member states should keep the legislative branches informed of the progress of the common market.\(^7\)

From the diplomatic conference provided for by article 18 of the Treaty of Asunción, convened “... to determine the final institutional structure of the administrative organs of the common market...”,\(^8\) as well as their specific functions, emerged the Protocol of Ouro Preto (1994). The Protocol determined furthermore that the Committee’s members would be in equal numbers by member state and nominated by their respective national parliaments, according to their internal procedures (arts. 23 and 24).

In December of 2004, by means of Decision Nº 49/04 issued by the Common Market Council (“Conselho do Mercado Comum” – CMC), the governments of the member States decided to create a Parliament of Mercosur and entrusted the Joint Parliamentary Committee of Mercosur with the task of drafting a Protocol to create the new body. The technical group nominated by the Committee members produced a document that, once approved by the parliamentarians, was placed under the consideration of the Council, and was finally approved and signed in December 2005 by means of Decision Nº 23/05.

In spite of Mercosur’s clear vocation for institutional deepening and functional density, the negotiators did not intend to adopt the European “community method” for the bloc, with supranational aspects. Therefore, almost every decision taken by the CMC needs to go through a lengthy procedure within the national parliaments, in order to be approved and incorporated unto domestic law.

Notwithstanding its historical origins rooted in political, as well as economic goals, Mercosur hasn’t made much progress in establishing mechanisms, within the parliaments.

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\(^7\) See the English version of the Treaty of Asunción in *International Legal Materials* 30, nº 4 (1991). Actually a Parliamentary Joint Committee was included in the Treaty of Asunción by virtue of the pressure made on the negotiators by the parliamentarians present at the signing of the treaty that took place in the city of Asunción.

\(^8\) For a more detailed account about the inclusion of a parliamentary body in the Treaty of Asunción see Drummond, Maria Claudia *A democracia desconstruída: o déficit democrático nas relações internacionais e os parlamentos da integração*. Brasília: Senado Federal, Subsecretaria de Edições Técnicas, 2010, pp. 318-320. See also Gobbi, Hugo *Démocratie et Integration dans le Mercosur*. Doctorate thesis presented at the Catholic University of Louvain, Department of Political and Social Sciences, Louvain-la-Neuve: 2001, p. 86.
of its member states, to provide a specific treatment to the bloc’s decisions that require parliamentary approval. As a result, acts signed by the CMC during its meetings each semester may take years to become effective as part of the domestic law of the member countries. This fact weakens the legal security of the bloc and prevents Mercosur from offering stable rules and predictability to possible investors. Without security and a stable legal framework, investment cannot be attracted and therefore wealth and jobs are not created.

The incorporation of the Treaty of Asunción and of the Protocol of Ouro Preto into the domestic law of the member states legitimated the insertion of the ‘parliamentary dimension’ of Mercosur in the realm of the national parliaments.

When it included the Joint Parliamentary Committee of Mercosur within the institutional structure of Mercosur, the Protocol of Ouro Preto conferred upon it legal status as an institution of the integration. Curiously enough, except for its consultative function whereby it could send recommendations to the Council (art. 26), none of the powers that were granted to the Committee by the Protocol of Ouro Preto were to be performed at the integration level, but rather within the national assemblies.

In fact, aware of the need to strengthen the legal security of Mercosur and to speed up the lengthy procedure in the national parliaments for the approval of the acts adopted by the bloc, the negotiators inserted a provision in the Protocol of Ouro Preto (Article 25) that gave the JPC the function of endeavouring “to speed up the corresponding internal procedures in the State Parties in order to ensure the prompt entry into force of the decisions taken by the Mercosur organs provided for in Article 2 of this Protocol”\textsuperscript{9}.

As a result, in all four countries members of the national parliaments (MPs) and parliament officials were faced with a challenging task: how to insert a committee created by means of an international treaty into the work of the national assemblies, and in addition, how to devise a procedural mechanism whereby the decisions and resolutions issued by the decision-making bodies of Mercosur\textsuperscript{10} would be given a special treatment, a kind of “fast track”, that would prevent them from being scrutinised by all the several


\textsuperscript{10} The Common Market Council, the Common Market Group and the Mercosur Trade Commission. See Art. 2 of the Protocol of Ouro Preto, ibid.
instances that, according to the parliamentary Rules of Procedure, they should be submitted to?

Moreover, the fact that at that time the process of integration taking place in the Southern Cone enjoyed even less recognition among citizens and government officials than it does today, didn’t help. In addition, the few people who had a vague idea of the bloc’s existence tended, based on the expensive and unproductive experiences of other international assemblies, to view with suspicion the existence of a parliamentary body dedicated to the integration.

III Mercosur in the Brazilian National Congress

It was only in 1996, a full two years after the Protocol of Ouro Preto was signed, that the Brazilian National Congress passed a resolution – Resolution CN nº 1/1996– that legitimated the activities performed by the Brazilian parliamentary delegation to the JPC within Congress. The delegation was referred to in the Resolution as the ‘Brazilian Representation in the Joint Parliamentary Committee of Mercosur’, but in practice it has since been functioning as a permanent bicameral committee. It was initially comprised of eight members from the Federal Senate and eight members from the Chamber of Deputies, at the time of the JPC’s creation and during its existence, and of nine members from each House once the JPC was succeeded by the Parliament of Mercosur.

On the basis of the provisions established by articles 25 and 26 of the Protocol of Ouro Preto, and of article 24 of the Treaty of Asunción, Resolution CN nº 1/1996 of the Brazilian National Congress established functions to be performed by the Representation, that came to be known simply as the ‘Mercosur Parliamentary Committee’, within the national assembly. Article 2 establishes that the Representation should:

- present a preliminary report about all matters of interest to Mercosur, submitted to the national assembly;
- issue a detailed report about all the information sent to parliament by the executive branch, depicting the evolution of the common market, as provided for by article 24 of the Treaty of Asunción.\footnote{See supra.}
• submit to the deliberation of the Joint Parliamentary Committee proposals that, in accordance with article 26 of the Protocol of Ouro Preto, may become recommendations to be sent to the Common Market Council.

In addition, according to article 3 of the Resolution, the Brazilian Representation in the JPC should survey all the initiatives undertaken by the executive branch that might, directly or indirectly, affect Mercosur.

The first function conferred by Resolution CN nº1 /1996 upon the Brazilian Representation was devised so that all international treaties celebrated as part of the integration process – and indeed every piece of draft legislation submitted to parliament and having a bearing on Mercosur – should come under the Brazilian Representation’s scrutiny on a preliminary basis. The idea behind this provision was that only by means of this mechanism would the Brazilian Representation be able to keep track of legislation affecting Mercosur in the Brazilian Congress, and particularly the decisions taken by the Mercosur organs, as provided for by article 25 of the Protocol of Ouro Preto.

Therefore, the Brazilian Representation should issue a preliminary report on any draft legislation or international treaty related to or affecting Mercosur, from the point of view of the process of integration – adopting, therefore, a regional rather than a merely national standpoint.

The other difficulty faced by the members and technical advisors of the Representation concerned the fact that, traditionally, the subject matter “integration” was seen within Parliament as being part of the country’s international relations in general and not enjoying the specific approach that it deserved, in the light of the Mercosur foundational treaties. In fact, although Mercosur is not based on the community method, as was the European integration, it cannot be described and understood with resort simply to the principles of general international law. It demanded, then, an expert body in Parliament, with the specific knowledge and the distinctive mindset that does not limit itself to a national outlook, but is capable of perceiving the region as a whole, to tackle the matters issuing from the integration process.

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12 Article 3 stated that the Brazilian Representation in the Joint Parliamentary Committee of Mercosur should obtain information from the competent organs of the executive branch concerning all initiatives adopted by the latter that might affect Mercosur, directly or indirectly.
In this regard, it is important to note the fundamental role played by the quadripartite meetings of the JPC, held periodically, to familiarize the Brazilian parliamentarians with their Spanish-speaking counterparts, giving them a new awareness of the problems and issues affecting the region as a whole.

In order to avoid hurting the susceptibilities of the Foreign Affairs Committees of both houses, since the matters related to integration would normally come under their scrutiny, it was decided that the Representation would not issue a binding opinion on the bill, but would adopt a report that would be simply recommendatory, serving as a source of information for the study of the matter by the subsequent committees in parliament.

The Representation should then keep track of the progress of the bill in both houses of parliament, while keeping the Ministry of External Relations informed, as well as the other national delegations to the JPC.

However, the members of the Brazilian Representation were well aware of the impossibility, as a result of the very nature of a presidential regime based on the independence of the three branches of government, of complying with the provision stated in article 25 of the Protocol of Ouro Preto. They knew that a reform of the Rules of Procedure of the Brazilian National Congress to introduce a specific treatment to the bills originating from the decision-making organs of Mercosur would be necessary, but unlikely, in view of the vast number of matters in parliament that would take precedence over such a reform.

### IV The work of the Brazilian Representation under the Constitutive Protocol of the Parliament of Mercosur

The Constitutive Protocol on the Parliament of Mercosur, signed in 2005, added new functions to the ones performed by the Joint Parliamentary Committee at the level of integration, which arise from paragraphs 5 to 7 of art.4. Thus, it can request information from the decision-making and consultative institutions of Mercosur; it can invite representatives of the Mercosur organs to inform or evaluate the development of the process of integration; it receives, at the end and at the beginning of each semester, the
President *Pro Tempore* of Mercosur, who gives a report or presents his work plan to Parliament; it produces an annual report on human rights.

But its most distinguishing feature, when compared to other parliaments of regional blocs, is the consultative function contained in art.4 n° 12.Originating from the need of faster approval of the Mercosur norms by the national parliaments of the member countries, which hadn’t been resolved by the provision in the Protocol of Ouro Preto, the norm contained in art. 4, n° 12, of the Constitutive Protocol of the Parliament of Mercosur was inspired by a previous document, an inter-institutional agreement concluded between the Joint Parliamentary Committee and the Common Market Council in 2003. This was the first inter-institutional agreement ever to be signed in the sphere of Mercosur. It stipulated that the Joint Parliamentary Committee would issue an opinion on all draft Mercosur norms, requiring legislative approval in one or more States Parties, prior to its adoption by the decision-making organ of Mercosur. In exchange, in case the draft norm was adopted by the decision-making organ of Mercosur in accordance with the recommendations contained in the opinion issued by the Joint Parliamentary Committee, it would receive a faster treatment in the realm of the national congresses of the member countries.

This mechanism, that came to be called “parliamentary consultation”, found its way to the Constitutive Protocol of the Parliament of Mercosur, being viewed as the core itself of the Mercosur Parliament’s functions in the integration. In fact, once enacted, this competence would not only strengthen the parliamentary dimension of Mercosur, but also contribute to the transparency of the process of integration, by virtue of the debates and discussions that would take place in the regional Parliament.

A multidisciplinary group of legislative advisors from both Houses of the Brazilian Congress, composed of experts in International Law, Regional Integration, Constitutional Law and Parliamentary Procedure, appointed at the request of Deputy Dr. Rosinha, (from the PT - “Partido dos Trabalhadores”- Workers’ Party), a member of the Brazilian Chamber of Deputies from the state of Paraná, had met several times to produce a draft document creating the Parliament of Mercosur. This document was to be taken to a meeting in Montevideo, where a quadripartite technical group would start discussions on the future Protocol.
One of the main difficulties faced by the Brazilian technical group concerned exactly the legality of the “parliamentary consultation”. Some of the experts were of the opinion that the mechanism violated the sovereignty of the national parliaments, particularly because under the Protocol a deadline for the congresses to consider, and approve or reject the Mercosur norm, was stipulated, namely, 180 days\textsuperscript{13}. The establishment of such a deadline was crucial for the acceptance of the Protocol by the Common Market Council, whose interest was to speed up the approval, by national parliaments, of norms issuing from the integration agreements.

Finally, it was argued that the approval of the Protocol by the national congresses of the member countries would, by itself, validate such a provision, what was accepted by the group. Thus consultation became one of the functions of the regional Parliament, as provided for by art. 4, nº 12, of the Protocol.

In regard to the work of the Brazilian representatives in the creation of the Parliament of Mercosur, two names must be mentioned: that of the above mentioned Deputy Dr. Rosinha, who, having become President of the Brazilian Delegation for the period 2003/2004, initiated and conducted the negotiations of the Protocol for the Brazilian side; and Senator Sergio Zambiasi, who, having succeeded him in the Brazilian leadership\textsuperscript{14}, was largely responsible for the approval of the Protocol in the Brazilian Congress in the record-breaking period of twenty-four hours, by means of direct negotiation with the chairmen and the party leaders in both houses\textsuperscript{15}. Since the Common Market Council had established, by means of Decision nº49 of 2004, a deadline for the installation of the Parliament, that is, 31\textsuperscript{st} December of 2006, it was crucial that the Protocol should be approved during the second semester of 2006.

Conceived to be performed within the national parliaments, the consultation creates a clear link between the national assemblies and the Parliament of Mercosur. Again its

\textsuperscript{13} At the same time, the technical group decided to establish a deadline (45 days) for the Executive to send the Mercosur norm to Congress, counted from the date of its conclusion by the decision making organ of the bloc.

\textsuperscript{14} Senator Sergio Zambiasi, from the state of Rio Grande do Sul, belonged to the Partido Trabalhista Brasileiro - PTB.

\textsuperscript{15} According to the Senator’s own account to the author, on 9, March 2010, in Montevideo, on the occasion of the XXII ordinary session of the Parliament of Mercosur.
objective is to speed up the approval, by national parliaments, of norms issuing from the integration agreements, thus conferring legal security to the integration process.

But the parliamentarians who had been appointed to compose the Brazilian Representation to the Parliament of Mercosur knew that the Common Market Council would only decide to submit a norm under negotiation to the regional Parliament’s opinion, once all four national parliaments had created the preferential procedure devised by art. 4, paragraph 12.

For the Brazilian representatives, the challenge now was to get Congress to vote a new resolution establishing the “preferential treatment” that the function of consultation called for.

V Resolution CN nº1/ 2007 of the Brazilian National Congress

Since the Parliament of Mercosur is composed of members from both the Chamber of Deputies and the Senate, the proper act to regulate its representation should be a resolution of Congress.

In what may be deemed the most important achievement by the Brazilian Representation to the Parliament of Mercosur, Congress Resolution Nº 1, of 2007, was approved on 24 July, 2007, the result of the work of the technical staff of both Houses, in close cooperation with the Secretariat of the Federal Senate (Secretaria Geral da Mesa), who also acts as Secretariat during the sessions of Congress.

In its art. 4º, Resolution nº 1 of 2007 stipulated a two-step preferential procedure. First the Representation should examine, in a preliminary stage, if the Mercosur norm had been adopted by the Mercosur decision-making organ in accordance with the opinion issued by the Parliament of Mercosur. In the affirmative case, the norm should then be subjected to the preferential procedure devised in paragraphs 1 to 5 of art. 4º.

Instead of being examined by approximately thirteen different instances – including committees and the floors of the Chamber of Deputies and of the Senate, the bills would be scrutinized by the Brazilian Representation to the Parliament of Mercosur in what concerns its merit, legality, constitutionality, and financial and budgetary adequacy. The provision establishes that, if it deems it necessary, in view of the bill’s complexity and specificity, the
Representation may request the opinion of other Chamber and Senate committees. However, these opinions should pertain exclusively to the subject matter of the request made. Once the Representation has concluded its analysis and issued an opinion, the Mercosur norm, together with the decree\textsuperscript{16} that incorporates it into domestic law, should be submitted to the vote on the floors of both Houses.

Should the Representation, at the time of its preliminary exam, conclude that the norm has not been adopted in accordance with the opinion issued by the Parliament of Mercosur, such norm should then obey the ordinary procedure, applicable to all international treaties in Congress.

In sum, the Brazilian Representation to the Parliament of Mercosur has been able, in spite of the lack of interest and even of a certain resistance that the issue of regional integration encounters in the national parliament, to occupy a space in the proceedings in Congress, that used to belong exclusively to the two Foreign Affairs Committees.

Moreover, pursuant to Resolution nº 1 of 2007, the competence to draft the decree approving the norm concluded by the Mercosur organs, or treaties celebrated between Mercosul and third countries or other regional blocs, that used to belong traditionally to the Foreign Affairs Committee of the Chamber of Deputies, was attributed to the Brazilian Representation to the Parliament of Mercosur.

Unfortunately, the parliaments of the other three member countries of Mercosur have not been able, so far, to adopt a similar mechanism to provide for the “preferential treatment” of the Mercosur norms, as required by the consultation devised by art. 4, nº 12, of the Constitutive Protocol of the Parliament of Mercosur.

Of course this lack of compliance, by the national parliaments, with the only provision of the Protocol that grants the Parliament of Mercosur a more effective role in the bloc does not help strengthen the regional parliament. In addition, it serves as a good excuse for the Council to defer taking any steps to put this function into practice. Therefore, the so-called “parliamentary consultation” has never been effective in Mercosur.

On a more positive note, the Representation has advanced in the sphere of legislation, a competence that had not been envisaged by any of the resolutions.

\textsuperscript{16} “Decreto Legislativo”.
Although the reports it issues are not binding, a major advance accomplished by the Representation still at the time of the Joint Parliamentary Committee, while performing its internal role within the Brazilian National Congress, has been to enlarge its competence to act as a regular bicameral committee.

Since it has, among its functions, that of issuing a report on any matters in Congress with a bearing on Mercosur, it often offers suggestions of amendments to the bills that come under its scrutiny.

For example, an extremely controversial draft bill regarding the Free Trade Area of the Americas (FTAA), initiated in the Senate, came under the consideration of the Representation. Originally, it proposed that the Brazilian people should be consulted, by means of a plebiscite, as to Brazil’s participation in an eventual hemispheric free trade area. The rapporteur suggested an amendment to the draft bill, that was approved by the Representation, whereby the plebiscite should be replaced by a referendum, which should occur after the signature of the treaty. The bill was never voted by Congress, since the talks on the FTAA came to an end.

On another occasion, it suggested an amendment to draft bill of the Chamber of Deputies Nº 1.477–D/1999, that created the “Grand Mercosur Frontier Program” (Programa Grande Fronteira do Mercosul). The suggestion was adopted by the other committees that reviewed the bill in the Brazilian parliament, and it became Law nº 10.466, of 22nd, May, 2002.

So, although the Representation’s reports are not binding and serve only as information to the other committees for the study of legislation affecting Mercosur, the latter tend to comply with its reports and recommendations.

VI The Brazilian Representation and civil society

In view of the vague function attributed to the JPC by the Treaty of Asunción, that is, to keep the legislative branch informed about the development of the process of

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18 The Representation suggested an amendment to art. 5º. According to the interview held on 19, January, 2011, with Humberto Napoli Licursi, Adjunct Secretary of the Brazilian Representation to the Parliament of Mercosur, at the Chamber of Deputies, Brasília.
integration, the MPs who formed the Joint Parliamentary Committee perceived the organ as a kind of “communication channel” between the public at large and the negotiating instances of Mercosur.

Thus they thought that it was the Committee’s duty to disseminate information regarding the integration process among interested sectors in society. In fact, the creation of Mercosur was followed by an increasing demand for information concerning the integration process, coming at first particularly, from the Brazilian economic sector. The Brazilian Representation to the JPC made good use of the modern facilities provided by the Brazilian Federal Senate to publish informative material about Mercosur. Among these, one of the most important was the collection of treaties and legislation on Mercosur, published in cooperation with the Ministry of Foreign Relations, and now in its fourth edition

In addition, it promoted seminars and public hearings about those aspects of Mercosur deemed more sensitive to the Brazilian productive infrastructure.

In April, 1992, the Brazilian Representation held a seminar on the possibility of Mercosur adopting a norm on industrial property. In November, it held a public hearing on the impact of Mercosur on the more sensitive sectors of the Brazilian economy. In June of 1993, public hearings were held on the issue of a common external tariff and in November of the same year, on the primary sector in Mercosur, on the Argentinian privatization experience and on the Brazilian constitutional review (DRUMMOND, 2010, 319).

During the following years, aware of the need to bring the reality of the process of integration to the whole country, particularly to the northern and the north-eastern regions, the Representation, together with local state and municipal authorities, organized a series of seminars about Mercosur in different states of the Federation.

In the year 2004, the Representation promoted a large debate about the “Aquífero Guarani”, with the support of Itaipu Binacional, the government of the state of Paraná and the Ministries of Foreign Relations and of the Environment. It is important to note that by this time the Representation had been able to mobilise some sectors of civil society and therefore could count on the cooperation, for this event, of the Central Única dos Trabalhadores do Paraná (a branch of CUT, the workers’ union); the Movimento dos Atingidos por Barragens (a movement of people displaced by dam constructions); Centro
de Pesquisa e Apoio aos Trabalhadores (a workers’ research and support centre); Núcleo de Direitos Humanos e Desenvolvimento da UFPR (Human Rights and Development Nucleus of the University of Paraná); Terra de Direitos (a human rights organization); Movimento dos Sem Terra (movement of the landless); Comissão Pastoral da Terra (the Catholic Church’s pastoral land commission)\(^\text{20}\).

While meetings were being held for the negotiations of the Constitutive Protocol of the Parliament of Mercosur, the Joint Parliamentary Committee organized a series of seminars in each member country to explain to society the reasons why a Parliament was being created for the bloc. In Brazil they were held mainly during the second semester of 2004 and in 2005, and focused on institutional aspects of the integration, such as the incorporation of Mercosur norms into the domestic law of the member countries, and tried to show the importance of the role that Parliament would play in this regard and its clear repercussion in the transparency of the process.

Other issues were discussed in debates and seminars promoted by the Representation, such as integration in the frontier areas (2002) and, in cooperation with the Botanical Garden of Brasília, biodiversity in the Americas (2007).

In regard to the role of the Brazilian Representation in conferring visibility to Mercosur and its decision making processes, it is important to note that the Senate’s press (the television channel, radio and news agency) is the only media to make a detailed coverage of the Parliament’s monthly meetings in Montevideo.

The importance of the role of the Senate media is enormous, since, besides enabling the Parliament of Mercosur to serve as a channel of communication between civil society and the decision making instances of integration, it also makes its work known in the Brazilian National Congress. In fact, since the Parliament has always encountered the most complete indifference – if not sheer opposition – on the part of the great press in the four member countries, the only regular coverage of the meetings of the Parliament in Montevideo is available thanks to the Senate media\(^\text{21}\).

\(^{19}\) See Comissão Parlamentar Conjunta do Mercosul – Seção Brasileira e Ministério das Relações Exteriores (ed.), Mercosul Legislação e Textos Básicos (Brasília, 2005).


VII The future of the Brazilian Parliamentary Representation to the Parliament of Mercosur

Since 31st December, 2010, there has been a gap in the Parliament of Mercosur. The term of office of the Brazilian Representation, as provided for by Resolution CN nº 1 of 2007, elapsed on that day, and so far, no other representatives have been elected or appointed.

In effect, the resolution had been adopted in the belief that the Brazilian members of the Parliament of Mercosur would, by 31st December, 2010, have already been elected in the general elections that were to take place in October of that year.

However, the Parliament had failed to comply with the Second Transitory Clause of the Protocol that established that the Council of the Common Market should adopt, by means of a Decision, a proportional representation for each member country, based on a proposal that should be issued by the Parliament.

After very difficult negotiations, the Parliament reached an agreement on proportional representation on 28th April 2009, adopted by the Council in its meeting of 16th December 2010. Therefore, a law instituting the elections for the Parliament of Mercosur couldn’t be approved in due time for the parliamentarians to be elected in the Brazilian general elections of 201022.

Article 10º of Resolution CN nº 1 of 2007 refers to the First Transitory Clause of the Protocol. This clause establishes two transition periods for the definitive establishment of the Parliament: the first to last until 31st December, 2010, when all members of Parliament should have been elected by universal suffrage, at the time of the general elections in each of the member countries; and the second to finish on 31st December of 2014, with direct elections being held concomitantly in all member countries.

In a strict interpretation of the transitory provisions of the Protocol, it seems clear that the condition (direct elections) for the Parliament to move on to its second transition period has not been accomplished, and therefore an extension of the first transition period should be formalised by virtue of a Decision issued by the Common Market Council.

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22 The agreement established the following numbers: Argentina, 43; Brazil, 75; Paraguay and Uruguay, 18 members each. Until direct elections are held in Argentina and Brazil, their delegations will be composed of 26 and 37 members, respectively.
But the lack of an extension of the first transition period by the Council, and the date stated in Resolution CN nº 1 of 2007 for the end of the term of office of the Brazilian members, originated a “vacuum” in the Brazilian Representation.

This, in turn, resulted in a disastrous initiative from a number of legislators who had not run for re-election, or whose candidacy had been defeated in the polls, who tried, by means of a political subterfuge, to fill the empty seats.

They prepared a new draft resolution to be voted on the last day of the legislative year, at the very end of the session of Congress convened to approve the national budget for 2011. According to the draft resolution, Congress would elect the members of the Brazilian Representation to the Parliament of Mercosur from a list of ordinary Brazilian citizens, to be organized by the party leaders. Another version of the draft resolution intended to appoint legislators for the Parliament, including those whose term of office would end of February 1st, 2011.

This was based on an erroneous interpretation of art. 11 of the Protocol, which lists the requisites to be fulfilled by those individuals who intend to be candidates in the direct elections to the Parliament of Mercosur. According to paragraph 2 of art. 11, the function of parliamentarian of Mercosur is incompatible with holding an office in the national parliament. This provision in fact intended to prevent members of the Parliament of Mercosur from holding a double office, that is, in the National Congress and in the Parliament of Mercosur.

The possibility of a Brazilian Representation to the Parliament of Mercosur, composed of members who had been rejected by the polls, or who simply had decided not to run for re-election for the national parliament, caused alarm both in the Parliament of Mercosur and in the Common Market Council.

Thus the regional Parliament approved, in its session of 13 December, 2010, a Note repudiating the hypothesis that the Parliament could be composed of individuals “without the legitimacy granted by the vote of the people”, in view of the speculations prompted by the end of the Parliament’s first transition period. It also approved a recommendation (Recomendação nº 16/2010) to the Council, requesting it to issue a decision whereby, until

direct elections for the Parliament of Mercosur are held in all four countries\textsuperscript{24}, members from those countries that have not had direct elections should be chosen among parliamentarians in office in the respective national parliament. Both the Brazilian Minister of Foreign Relations\textsuperscript{25} and the Uruguayan Vice-Chancellor\textsuperscript{26} expressed their support for the Parliament’s position.

In addition, Deputy Dr. Rosinha, speaking before the Mercosur summit meeting on 16\textsuperscript{th} December, 2010, on behalf of the Brazilian Pro Tempore President of the Parliament, Senator Aloizio Mercadante\textsuperscript{27}, denounced the scheme taking place in the Brazilian Congress that, in his words, “represents one more attempt, of many, to destroy the Parliament of Mercosul”\textsuperscript{28}.

According to the Executive Secretary of the Brazilian Representation\textsuperscript{29}, the plan failed partly due to conflicting political interests that came into play and internal rivalries, and partly for a procedural reason. At the end of the session on 22\textsuperscript{nd} December, the number of legislators on the floor was not enough to vote a Congress resolution, and, as promised, Deputy Dr. Rosinha was there until the end, to request that the quorum be verified in case there might be a last minute attempt to vote the resolution\textsuperscript{30}.

\textbf{VIII Concluding remarks}

In conclusion, Mercosur incorporated, from its very beginning, in its founding treaties, a parliamentary dimension represented by a joint parliamentary committee.

\textsuperscript{24} Paraguay held direct elections in 2008.
\textsuperscript{26} Ambassador Roberto Conde is a former member of the Parliament of Mercosur. He said that the Uruguayan delegation would leave the floor in protest against the presence, in the Parliament, of parliamentarians not elected by the popular vote.
\textsuperscript{27} Senator Mercadante is from the state of São Paulo and belongs to the PT (Workers’ Party).
\textsuperscript{29} According to an interview given to author by the Executive Secretary of the Brazilian Representation to the Parliament of Mercosur, Antônio Ferreira Costa Filho, on 10\textsuperscript{th}, January, 2011, in the Chamber of Deputies of Brazil.
For pragmatic reasons, the functions conferred to the committee were envisaged to be performed in the national parliaments. In effect, the treaties failed to confer upon the committee any relevant roles at the level of the integration.

On the other hand, the parliamentary consultation introduced by art. 4, nº12, of the Protocol that created the Parliament of Mercosur has the specificity of allowing the committee to perform a double role, both in the national assemblies of the member states and within the organisational structure of the integration process. This double role has the advantage of filling in the gap that seems to exist in the European case, for example, between the regional (the European Parliament) and the national parliaments.

One might point out that, from the point of view of the theory of multi-level governance, the parliamentary consultation, as devised by the Protocol, presents an interesting opportunity for a case-study.

One of the greatest challenges faced by the national parliamentary delegations is obtaining their own insertion in their respective parliaments, in such a way that will allow them to exercise, under their respective rules of procedure, the functions conferred upon them by the Protocol of Ouro Preto and the Constitutive Protocol of the Parliament of Mercosur.

To this moment, the Brazilian Representation is apparently the most successful among the four national delegations. It succeeded in having the National Congress pass Resolutions CN nº 1, of 1996, and CN nº 1, of 2007, whereby it became an organ of parliament with specific functions, as we have seen, which allow it to participate and closely keep track of the parliamentary procedure involving the agreements celebrated by Mercosur.

From a practical point of view, it should be stressed that, until the parliamentary consultation is put into practice and the preferential treatment is effective, the goal of speeding up the approval, by the national parliaments, of the Mercosur norms and agreements, as desired by the negotiators of the Protocol of Ouro Preto and of the Constitutive Protocol of the Parliament of Mercosur, will not be accomplished.

Quite on the contrary, in the Brazilian case, the report that the Brazilian Representation must issue preliminarily slows down - since it is one more instance to
review the bill - rather than speeds up the parliamentary procedure for the approval of the
 treaties and agreements signed by the Mercosur organs.

However, the provisions of Resolution CN Nº1 – 96 and of Resolution CN nº 1 –
2007, had the virtue of calling the attention of the Brazilian National Congress to the
process of integration going on in the region. In fact, Mercosur had been, until then, little
known by the majority of the members of the Brazilian Congress, except for those coming
from states that share a border with the member countries of Mercosur.

It should be noted, in regard to the traditional distance existing in presidential
regimes between the Legislative and Executive branches, that in the case of the Brazilian
Representation to the Parliament of Mercosul a clear convergence has taken place between
the Representation and the sectors in the Ministry of Foreign Affairs (Itamaraty) in charge
of negotiating integration, irrespectively of the government in power.

The Representation views this interaction as indispensable for collecting the
necessary information pertaining to the negotiations and for its dissemination both in
parliament and among the general public. It is true that there have been periods when the
contact is closer and easier, depending on the political circumstances surrounding the
presidency of the Representation. But it is interesting to note that, notwithstanding party
affiliation on either side, the relationship between the President of the Representation and
the diplomats in charge of Mercosur in Itamaraty has been one of respect and cooperation,
with frequent meetings between the two teams and a number of joint initiatives, such as
publications and seminars.

It is important to note, in addition, that the Brazilian Representation is received for a
working breakfast, before each session of the Parliament in Montevideo, by the Brazilian
Ambassador to the Latin-American Integration Association (ALADI) and Mercosur. On
this occasion, the parliamentarians are informed about the progress of the negotiations,
discuss – and often question - the Brazilian government’s position on some of the issues,
and debate matters of interest to the Representation\(^{31}\).

It is interesting to speculate - from the multi-level governance point of view - as to
what Itamaraty’s role will be, once the Brazilian representatives to the Parliament of
Mercosur have been directly elected.

\(^{31}\) Ambassador Regis Arslanian.
At the present moment, the Brazilian National Congress faces two challenging tasks: first, to approve a new resolution that incorporates the progress already achieved by Resolution CN n° 1 of 2007, especially that concerning the preferential treatment for the norms of Mercosur.

Second, to approve legislation establishing direct elections for the Parliament of Mercosur, preferably to take place in 2012, together with the elections for mayors.

And last, but not least, to appoint the new Brazilian representatives – possibly 37 - without allowing any ill-conceived scheme to compromise the legitimacy of the Parliament.

References


