

The Effectiveness of Democratic Conditionality in Mercosur and the European Union.

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Abstract. The present article analyzes the effectiveness of democratic conditionality in Mercosur and the European Union. All regional integration organizations need their member states to have political and economic stability in order to function properly. Democratic regimes usually guarantee such stability, leading the European Union and Mercosur to adopt measures to safeguard democracy. By drawing comparisons between the organizations' democratic criteria, the article evaluates how their differences affect the protection of democracy within member states. Factors like historical process, level of integration, and economic and political attributes influence the outcomes of democratic conditionality. Therefore, the article considers the origins and characteristics of both organizations, their democratic conditionality rules, and the application of such rules. The research was conducted via inductive reasoning and the study of legal documents and doctrine. Results indicate that the European Union and Mercosur have vague standards about preserving democracy, which would need to be further specified. Thus, that lack of definition has caused the European Union to make irregular choices on accession procedures. Equally, it has allowed the governments of Mercosur countries to interpret the political criteria according to their domestic interests. However, because of its greater political integration, the European Union would require a more robust model of democratic conditionality than Mercosur.

Keywords. Mercosur. European Union. Democracy.

1. Introduction

Regional integration organizations have become particularly popular throughout the last century. Among them, the European Union has evolved to a profound level of integration, being an example to other organizations. Although not as sophisticated, Mercosur has gained significance in the South American context. So the organizations can function properly, they require political stability and good cooperation. Thus, guaranteeing the establishment of democracies in member states becomes essential to attaining those goals. Both organizations have adopted political criteria that countries must observe before and after accession. However, each has created its own democratic standards according to its characteristics. Hence, it is necessary to compare the differences between them and their impacts on democracy. The present article evaluates the effectiveness of democratic conditionality in the European Union and Mercosur, considering the attributes of each organization and the effects they produce on democracy. Studying democratic conditionality makes it possible to analyze whether it successfully protects democracy within member states. Comparing the criteria established by the European Union and Mercosur also enables the examination of how different measures can result in contrasting outcomes.

2. Research Methods

Legal documents and juridical doctrine were the primary sources for scientific research regarding the democratic conditionality in the European Union and Mercosur. The Copenhagen political criteria, the Ushuaia Protocol, and other international treaties were the most consulted legal documents, for they provide a thorough understanding of the organizations' democratic standards. Scientific papers and books were largely utilized, given that they constitute central sources of legal research. The data contained in such sources was gathered, subdivided, and analyzed to acquire the information presented in the article. The studies were conducted via the inductive method, starting from specific observations of the data and progressing to form general conclusions.

3. Mercosur

3.1. Origins and Characteristics

Mercosur is a regional international organization that aims to establish a common market. However, because its common external tariff has not been harmonized, [1] Mercosur is an imperfect customs union [2].

Although it seeks economic integration, politics matter as well. Its founding members experienced dictatorships and democratic setbacks in the last century. When Argentina and Brazil inaugurated new democracies, the two countries grew closer. Their cooperation eventually included Paraguay and Uruguay, culminating in the Treaty of Asunción in 1991, which created Mercosur [3]. Notwithstanding, it was not the first attempt at economic integration in Latin America. In the 1960s, the Latin American Free Trade Association (LAFTA) intended to institute a common market. But, with the military coups and economic crisis, LAFTA ended and was replaced by the Latin American Integration Association (LAIA). In fact, Mercosur was constituted within LAIA, meaning it should be open to the accession of other LAIA members [1]. That explains why Venezuela later joined Mercosur.

Regarding its characteristics, Mercosur has an intergovernmental nature. Its organs and institutions generally represent the interests of member states and not the interests of Mercosur as an autonomous entity. Except for the settlement of disputes mechanism, decisions at Mercosur follow a consensus, with all member states being present [1]. One can even say that Mercosur is deliberately intergovernmental due to past failures at creating deeper integration processes in Latin America. That made member states opt for a more flexible form of integration that governments could easily maneuver. On that account, Mercosur's decisions do not apply directly to its member states, meaning they need to be approved internally to become legally binding. Likewise, Mercosur does not count with its own bureaucratic or administrative structure, which is why home authorities are responsible for implementing regional compromises [4].

Due to this politicized configuration, and the adoption of the presidential system in member states, presidents play a vital role in Mercosur. They have contributed to Mercosur's formation since presidential negotiations resulted in the Treaty of Asunción. Also, because institutionalized coordination is lacking, presidents have had to compensate for that fact and lead regional integration [5]. Nonetheless, the lack of institutionalization also implies the absence of democratic bodies. Although direct elections to Parlasur (Mercosur's parliament) have been envisaged, there are no indications that such an idea should come to fruition any time soon. Even if direct elections were to take place, Parlasur performs a consultative function. It is not like a traditional parliament, which would create legally binding instruments [6]. Even though Mercosur gives flexibility to national presidencies, it also allows domestic agendas to sway the organization's objectives. It would need stronger institutions to reach its full economic potential and guarantee the respect of democracy.

3.2. Democratic Conditionality

As much as Mercosur's main goal may be economic development, its member states have learned about the importance of political stability. That's because they share a recent past of dictatorships and weak democracies. They also found that political stability was necessary for the success of regional integration. Since national economies become more entangled in an international organization, anti-democratic regimes could cause internal instabilities that provoke regional effects [7]. Therefore, although regional integration benefits a state, it also makes it more vulnerable to the domestic affairs of other member states. Hence the need for an instrument to diminish the negative consequences of regional interdependence, such as a democratic clause.

The first document to directly approach the necessity of upholding democratic values was the Las Leñas Presidential Declaration, signed in 1992. It expressed the member states' will to regard democratic institutions as indispensable to the organization's progress [8]. In 1996, protecting democracy became an urgent matter when Paraguay went through an internal political crisis. The Paraguayan president, Juan Carlos Wasmosy, was at risk of being overthrown by a military coup led by General Lino Oviedo. Although the coup was unfruitful, it made other states more aware of the need to preserve their democracies. That same year, presidents signed the Presidential Declaration on Democratic Commitment in Mercosur, which viewed democracy as a prerequisite to advancing regional integration. Nonetheless, the most fundamental document in defense of democracies came two years later, when Mercosur approved the Ushuaia Protocol on Democratic Commitment [9].

The Ushuaia Protocol was signed by all member states plus Bolivia and Chile. It states that the existence of democratic institutions is a prerequisite to accession or permanence in the organization. If a signing party violates democracy, other parties must dialogue with the infringing party to find a reasonable solution. When dialogue is unsuccessful, non-infringing parties must consensually choose the means to reinstate democracy [10]. Article 5 of the document mentions penalties like suspending the infringing party from regional institutions or from its regional rights and duties. Article 7 of the Ushuaia Protocol determines that those measures should stop once the democratic order has been re-established. Notwithstanding, the Ushuaia Protocol proved to be rather generic, lacking practical solutions. Aiming to complement its predecessor, the Montevideo Protocol, or Ushuaia Protocol II, was created in 2011. Article 3 of the Montevideo Protocol mentions non-exhaustive measures to reinstall the democratic order. Those include actions like closing territorial borders, suspending or limiting commerce, and diplomatic sanctions. So far, Venezuela is the only member state that has ratified the protocol [9].

3.3. Application of the Ushuaia Protocol

The first time the Ushuaia Protocol was employed was after the impeachment of Paraguayan President Fernando Lugo in 2012. Although the Paraguayan Supreme Court argued that the impeachment was constitutional, it did not stop other states from thinking differently. The process happened in a bit more than 24 hours, which made other Mercosur members consider it a violation of due process. Consequently, Mercosur's democratic clause was applied, and Paraguay was suspended from the organization. Later, Paraguay questioned that decision before Mercosur's Permanent Review Tribunal. The Tribunal abstained from deciding the matter, stating it could not discuss political issues because that would impinge member states' jurisdiction [3].

With Paraguay suspended, the other members accepted Venezuela into the organization in 2012. Paraguay was the only state that was not in favor of Venezuela joining Mercosur, which made it question Venezuela's accession before the Permanent Review Tribunal as well [11]. However, Article 6 of the Ushuaia Protocol dictates that a suspended country shall not participate in decision-making processes, including the accession of new members [12]. Venezuela's accession was controversial due to the political crisis the country was going through. Nicolás Maduro, Venezuela's president, conducted arbitrary arrests of members of the opposition and allowed the use of violence to repress protests. In 2017, the Paraguayan Supreme Court transferred all of the Parliament's legislative functions to Maduro. On account of its political and economic problems, the other member countries decided to suspend Venezuela from Mercosur in 2016 and 2017 [13].

Therefore, Paraguay's suspension and Venezuela's accession were related events. It seems contradictory that Lugo's impeachment was considered anti-democratic, and Maduro's actions were not regarded as such when Venezuela joined the organization. The main reason for that is that Mercosur's democratic clause does not specify what democracy is. Equally, it does not explain when the democratic order is disrupted. That becomes even more problematic given the protagonism of national presidents and Mercosur's intergovernmental nature. The Brazilian Congress, for instance, applied a more substantial idea of democracy when examining Venezuela's accession. Matters like the betterment of social indicators were especially taken into consideration. In turn, when analyzing Paraguay's impeachment, a procedural approach to democracy was preferred. Ergo, the vagueness of the democratic clause enables states to interpret it according to their particular interests [11].

4. European Union

4.1. Origins and Characteristics

The integration process that resulted in the European Union dates back to the aftermath of the Second World War. European countries faced a severe economic and diplomatic crisis and had to restructure themselves. So, in 1950, Robert Schuman (French Foreign Minister) issued the Schuman Declaration. On that occasion, he invited Germany to form an organization with France on the production and use of coal and steel, two of the most important materials utilized during the war. The outcome was the foundation of the European Coal and Steel Community. Afterward, European countries grew interested in the establishment of a common market and regional integration. Hence, in 1957, the Treaty of Rome was signed, and two other communities were born: the European Economic Community and the European Atomic Energy Community [14].

A substantial contribution to European integration was the Marshall Plan. After the war, European nations couldn't overcome the crisis independently. External aid was necessary, and they could get it through the United States or the Soviet Union. Fearing that the USSR might gain control over Europe, the United States offered its support to Europe with the Marshall Plan. Most countries from Western Europe adhered to the Marshall Plan, while most Eastern European states fell under the Soviets' influence [15]. The plan proved to be fundamental in the process of rebuilding Western Europe. One of the many conditions imposed by the USA for participating in the plan was that countries should be able to collaborate. The Americans' help allowed further economic development and brought a sense of camaraderie to European states [16].

Eventually, in 1992, the Maastricht Treaty was signed, inaugurating the European Union. It meant the transition from a common market to an economic union and the progressive formation of a monetary union. Thus, the European Union sought economic and political integration. It displays supranational institutions, which represent the Union's instead of the member states' agenda. Furthermore, it has its own legal and judiciary systems [2]. The European Parliament executes the classical legislative functions. Therefore, the Union has legal instruments, such as directives, that don't need to be ratified to become legally binding. Likewise, decisions made by the Court of Justice of the European Union are imperative to member countries. Also, the Union has democratic institutions. That is the case of the European Parliament, whose members are directly elected by European citizens [14]. Nonetheless, the Union still presents a considerable democratic deficit. European citizens seem distant from the decision-making process, with neither decisive nor direct contributions [17].

4.2. Democratic Conditionality

The politics of candidate countries has always been decisive for their accession. However, it was only when Greece, Portugal, and Spain became potential members that democratic conditionality started to manifest. Those countries shared a recent past of dictatorships, having relatively new democratic regimes [7]. In 1962, the European Parliament adopted the Birkelbach Report, which studied the conditions for association and membership. It concluded that the mentions of liberty and union in the Treaty of Rome's preamble should be interpreted as prerequisites for membership. Nevertheless, the report had a minimal scope of application, given that the Parliament had an advisory role under Article 238 of the Treaty of Rome [18].

Albeit candidates' politics mattered, the founding treaties of the Communities didn't make any explicit references to democracy [7]. In 1978, democratic conditionality advanced after the Commission interpreted Article 237 (1) of the Treaty of Rome in the *Mattheus vs. Doego* case. The interpretation was that accession was only possible if the country's constitution guaranteed the continuity of a pluralistic democracy and the protection of human rights [19]. Afterward, democratic conditionality evolved with every enlargement. With the end of the USSR, the Union offered former communist countries the chance to become members. Because those states had to implement great economic and political reforms, the Union determined specific conditions to guide their accession. Then, in the Copenhagen European Council of 1993, the Copenhagen criteria were created. They were divided into three categories: economic, political, and the *acquis* criteria [20].

The European Commission subdivided the political criteria into two categories - the first being democracy and the rule of law and the second being human rights and minority protections [21]. Those conditions reaffirm the same ones the European Communities applied in accession procedures [22]. Furthermore, at the Luxembourg European Council of 1997, the Union defined that compliance with the political criteria was a prerequisite for opening accession negotiations. So, it prioritized the political criteria over other matters [19]. With the Treaty of Amsterdam, the political criteria were "constitutionalized" through their inclusion in Article 49 (1) of the Treaty on European Union [22]. Yet, the political criteria proved to be vague and unclear. Countries had to conform to them without receiving much guidance from the Union [19]. Moreover, the interest in membership has led states to adopt utopic laws that are not effective in their national contexts [23].

4.3. Application of the Copenhagen Political Criteria

A case concerning the application of the political criteria is the one of Turkey. During the Luxembourg summit of 1997, the European Council chose not to open accession negotiations with the country. The main reasons for that were human rights violations committed by Turkey and the conflict in Cyprus. The acknowledgment of an autonomous Kurdish identity [24] and military interventions in politics [25] were sensitive issues as well. Although Turkey made considerable reforms, it still failed to meet the Union's expectations. By rejecting Turkey, the European Union highlighted the inadequacy of its democratic conditionality. Other countries with weak democracies and known for human rights violations were accepted into the Union, making its choices seem biased and arbitrary. Thus, some groups argue that cultural and religious differences are the real factors that led to Turkey's rejection [24].

Slovakia has also failed to meet the political criteria. The country faced a grave problem regarding the mistreatment of Hungarian and Roma minorities. Society even blamed minorities for blocking the country's membership. Moreover, the Union reproved discrimination but didn't offer any solutions. However, the main reasons for Slovakia's rejection were related to other matters [26]. After the elections of 1994, an authoritarian regime was established in Slovakia under the leadership of Vladimír Mečiar. The new government concentrated political power on the figure of the Prime Minister, kept public administration under its control, and repressed the opposition [25]. Hence, Slovakia was not invited to begin accession negotiations in 1997. Two years later, the Union concluded Slovakia had made significant improvements and chose to open negotiations [27].

The Union has also dealt with violations against democracies after the accession of new member states. The cases involving Poland and Hungary serve as examples. In Hungary, the Orbán government adopted measures to confront the European Union and weaken Hungarian democratic institutions. It sought to abolish the system of checks and balances, control the state machinery, depoliticize society, and invade the Judiciary's independence. The context in Poland during the PiS government was similar, meaning that the same basic measures were adopted. Both cases prove that the European Union has not been able to influence countries as strongly as it did before their accessions. Although the political criteria aim to impede the membership of anti-democratic states, some countries have consolidated anti-democratic practices after joining the Union [28].

5. Comparing Democratic Conditionality in Mercosur and the European Union

Mercosur and the European Union have their ways of exerting democratic conditionality. The European Union provides economic assistance and institutional ties as rewards. Yet, because the Union doesn't offer much

besides membership, it doesn't present adequate support or coercion against a violation of democracy. Membership won't overcompensate the costs of reforms in states where governments need authoritarian policies to maintain power [25]. Also, membership causes the approval of unrealistic laws that will not be applicable in given national contexts [23]. Mercosur's strategy is that the costs of anti-democratic behavior must be high enough to discourage such behavior. Thus, it uses sanctions to get countries to comply with democratic values. Nonetheless, ratification of the Montevideo Protocol by all members would increase the costs of anti-democratic actions and the benefits of respecting democracy, for the document contains a wider variety of sanctions [7].

The differences between the organizations reflect their goals, level of integration, and institutions. The European Union presents deeper integration, being equally concerned with economic and political goals. So, it requires more robust democratic standards. Besides, the supranational nature of the Union makes it easier for members to internalize the Union's values. On the other hand, Mercosur aims mostly at economic integration, with political interests being secondary. Its intergovernmental nature gives members more freedom to choose their national policies, undermining regional rules. Moreover, the Union is most assertive when deciding on accession negotiations. Its influence diminishes after countries have joined the Union [27]. But, generally, members slow down their reforms rather than return to their previous non-democratic context [29]. Diversely, Mercosur is stronger after the accession of states when sanctioning them to restore the democratic order.

Nonetheless, the main challenge faced by Mercosur and the European Union is the vagueness of their democratic conditionality. The Copenhagen political criteria comprise a series of generalistic demands that candidate countries have to meet without receiving any clear orientation from the Union. Furthermore, the choices on which countries could join the Union have given the impression of being arbitrary and inconsistent. Mercosur's situation is very similar. The way member states interpret the concept of "democracy" changes in different circumstances. When considering Lugo's impeachment, the organization understood that democratic procedures were not observed. However, when assessing Venezuela's accession, Mercosur did not regard Maduro's actions as incompatible with the Ushuaia Protocol. That lack of uniformity has enabled member states' governments to employ the Ushuaia Protocol according to their domestic interests.

6. Conclusions

The analysis of democratic conditionality in Mercosur and the European Union indicates that both must perfect their political standards. Mercosur reacts to anti-democratic actions mostly by adopting sanctions. Once the violations against democracy come to an end, so do the sanctions. The European Union enforces democratic standards mainly in accession negotiations. Hence, membership functions as an incentive for countries to adopt democratic values. However, the strategies adopted by both organizations are not entirely efficient. Mercosur's sanctions could be more rigorous, and preventive measures could also be implemented. Similarly, the European Union should not depend so much on membership, for it won't always be worth the costs of democratic reforms. The differences between the organizations' standards are due to various factors, like level of economic integration, institutions, and history. Because political entanglement is greater within the European Union, it demands stricter policies concerning democracy. Despite their disparities, the main challenge faced by Mercosur and the European Union is the same: their democratic criteria are imprecise and unclear. The vagueness of such rules results in inconsistent decisions. Consequently, states often don't know how to comply with democratic conditions and may not take them seriously. Only when Mercosur and the European Union make their conditions more objective will they successfully promote democracy and regional cooperation.

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