

At last - Protection and Promotion of Human Rights by Mercosur.

Andrea Ribeiro Hoffmann

Introduction

Mercosur started to engage in human rights governance transfer only after more than fifteen years of existence. Until the mid-2000s, Mercosur had no agenda for human rights; only a few non-binding documents referred to them, such as the *Presidential Declaration on the Zone of Peace* (1996)¹. That changed in the last decade, when Mercosur produced binding and precise norms such as the Protocol of Human Rights (2005)², and bodies which have created programs and instruments to protect and promote human rights, and foster the dialogue with civil society, such as the Mercosur Meeting of High-level Authorities on Human Rights (2004) and the Mercosur Human Rights Public Policy Institute (2009).

What explains the timing of Mercosur's late activism in this area? Which human rights have been addressed and how? Why has the protection and promotion of human rights been included in Mercosur's agenda later than democracy, which was already addressed by the Protocol of Ushuaia, signed in 1998? These questions are particularly puzzling given that Mercosur member-states are signatories of the American Convention of Human Rights and have accepted the competence of the Inter-American Court of Human Rights.

This chapter explores the driving forces behind Mercosur's engagement with governance transfer in the area of human rights in order to explain the timing and the content of that transfer. The following sections shows how demand and supply of Mercosur human rights

¹ The Declaration refers to human rights only broadly and in its Preamble: 'the respect of human rights, fundamental freedoms, social progress and the protection of the environment constitute fundamental elements to the achievement of peace and security in the region'.

² The Protocol establishes very precise commitments and procedures to deal with violations of human rights: Art.1 states that the existence of democratic institutions and the respect of human rights and fundamental freedoms are essential conditions of the process of integration. Art. 2 states that its signatories shall cooperate to the promotion and effective protection of human rights and fundamental freedoms via the institutional mechanisms established by Mercosur. Art. 3 states that in the case of serious and systematic violations of human rights and fundamental freedoms the protocol shall be implemented and that the parties shall promote consultations. Art.4 foresees the suspension of the affected party in case those consultations are not effective.

governance transfer have evolved in the last decades; they include the drivers and the content of Mercosur human rights norms, instruments and policies to protect and promote human rights.

The demand for Mercosur's engagement with human rights governance transfer: the 'left turn' and the empowerment of civil society actors

The demand for Mercosur to engage in governance transfer in the area of human rights evolved primarily from civil society organizations. Human rights NGOs and activists were empowered by the governments of President Nestor Kirchner in Argentina (2003), Lula da Silva in Brazil (2003), and Tabare Vasquez in Uruguay (2005), a moment referred as the 'left turn' in Latin American politics (Castaneda 2006)³. At the national level, these actors demanded the revocation of amnesty laws and the creation of truth commissions to deal with the crimes committed during the dictatorships; at the regional level, they demanded the incorporation of a human rights agenda in Mercosur, and the acknowledgement of the regional alliance between the military dictatorships in the fight against communism referred as 'Condor Operation'.⁴ While their success at the national level varied,⁵ a human rights agenda fitted the approach to Mercosur of the newly elected governments of its member-states, in which the original focus on free trade was replaced with a new paradigm of

³ The Mercosur original full-member states are Argentina, Brazil, Paraguay and Uruguay. Venezuela's accession treaty entered in force in 2012 but only in December 2013 the Paraguayan Congress approved its ratification and concluded the legal dispute about the legality of the accession during the suspension of the country from Mercosur; Bolivia signed an accession treaty in 2012 but it is not yet in force.

⁴ The military dictatorships lasted in Argentina from 1976-1983, Brazil 1964-1985, Paraguay 1954-1989, and Uruguay 1973-1985. The Condor Operation included Brazil, Argentina, Chile, Bolivia, Paraguay and Uruguay.

⁵ In Argentina, the Amnesty Laws were declared unconstitutional in June 2005. In Brazil, the Constitutional Court upheld the constitutionality in 2010, but its revocation is the subject of controversial discussion, along with other topics, in the works of the Truth Commission, which was established in 2011. In Uruguay, the Amnesty Law was nullified in 2011, but the Constitutional Court declared the 2011 law was unconstitutional. In a referendum in 2009, 48% of the population opted to uphold the Amnesty Law; the case is also subject to controversial debates. Paraguay never approved any amnesty law, but the perpetrators were never prosecuted. The Inter-American Court of Human Rights has also taken a role in the revision of the legality of amnesty laws in the region since the Barrios Altos case, when it ruled that two amnesty laws introduced by the government of President Fujimori in 1995 in Peru were incompatible with the American Convention on Human Rights.

economic development together with a focus on a regional social agenda (Veiga and Rios 2007, Briceno 2010, Riggirozzi and Tussie 2013).⁶

One of the main actors which has campaigned for human rights commitments in Mercosur is the ‘Observatory of Human Rights Public Policies in Mercosur’, a coalition of organizations from civil society created in 2004 with the objectives of monitoring and influencing the human rights public policies of Mercosur member-states, and of enabling and promoting the participation of civil society in Mercosur institutions.⁷ The Observatory has participated as an observer in several meetings of Mercosur bodies and the Mercosur Parliament since 2005.

Another very active civil society organization is the ‘Fórum da Sociedade Civil nas Américas’. The Forum is a coalition of NGOs created in 1997, and its office in the Americas is located at the NGO Cepia (*Cidadania Estudo Pesquisa Informação e Ação*) in Rio de Janeiro. One of its main areas of action is social policies and human rights in processes of economic integration, particularly Mercosur (Pitanguy and Heringer 2001: 145-146).⁸ The Forum produced a report in 2001 analyzing the protection and promotion of human rights in Mercosur member-states from a comparative perspective, and advanced recommendations for an agenda of human rights in Mercosur. The report argues that Mercosur should, on the one hand, contribute to the strengthening of the domestic systems of protection and promotion of human rights by the promotion of information, studies, best practices and so on, and, on the other hand, develop a regional agenda, i.e. activities which would target specific areas or elements which Mercosur is better positioned to do than its member-states. Suggestions included cases where the violation of human rights is derived from problems of a regional nature, such as the traffic of drugs and arms and prostitution networks. The report also makes

⁶ A key institution designed to implement the social agenda is the Social Institute, created in 2007 by the CMC Dec. 03/07. The Institute’s main objectives are to contribute to the consolidation of Mercosur social dimension, contribute to overcome Mercosur’s asymmetries, cooperate with the elaboration of regional social policies, systematize and update the regional social indicators, compile and exchange good practices, promote horizontal cooperation mechanisms, and identify sources of funding (Art.2).

⁷ The observatory is comprised of twelve organisations from civil society: Centro de Estudos Legais e Sociais (CELS), Serviço Argentino de Direitos Humanos (SADH), Centro de Direitos Humanos e Ambiente (CEDHA), from Argentina; Instituto Sou da Paz, Themis-Assessoria Jurídica e Estudos de Gênero, Conectas Direitos Humanos, from Brasil; Instituto Paraguaio de Direitos Humanos (IPDH), Comissão de Igrejas para Ajuda de Emergência (CIPAE), Raízes para o Fortalecimento e o Desenvolvimento, from Paraguai; Serviço Paz e Justiça (SERPAJ), Instituto Solidariedade e Desenvolvimento (ISODE), Instituto de Estudos Legais e Sociais do Uruguai (IELSUR), from Uruguai. See <http://www.observatoriomercosur.org.uy/pr/observatorio.php>

⁸ http://www.cepia.org.br/Portugues/Programas/Forum_Civil_/forum_civil_.html

reference to political crimes that took place during the dictatorships and which involved cooperation among the armed forces of Mercosur member-states, such as the case of the Condor Operation. Finally, the Report also argues that Mercosur should adopt a broader perspective in judicial terms, incorporating concerns related to democracy and human rights and not simply restrict itself to trade and taxes law.

The suggestion to expand the activities of Mercosur Dispute Settlement Mechanism (DSM) to human rights proved to be a step too far. There is no formal restriction on the substance of cases considered, but it has so far only dealt with cases related to economic and trade matters. An expansion of its jurisprudence to the area of human rights would not require any changes in the DSM structure, but most experts consider that it would be very difficult to do that in the absence of a regional court or a Charter of Human Rights (Sant'anna Rosa Apud Lixinski 2010:357). Proposals for the creation of a regional court have been discussed in the context of the 'Dialogue Between the Supreme Courts of Mercosur member-states', and the 'Permanent Forum of Supreme Courts of Mercosur' (both created in 2004), but a regional court would demand changes in the Brazilian and Uruguayan Constitutions which are considered very unlikely (interviews). The Bridges Case has exposed the limits of such a development. The case was brought to the *ad hoc* arbitration court in June 2006 by Uruguay against Argentina. It refers to the blockade enforced on international bridges between both countries by environmentalist groups protesting the construction of pulp mills on the Uruguay River, which forms part of the border between the countries. The case is analyzed in detail by Lixinski, who argues that the ruling took a narrow view and gave clear preference to goals of economic integration over the question of human rights (2010:364).

Despite the absence of a regional legal system to judge human rights cases, Mercosur has concluded a Protocol of Human Rights (approved by the CMC Dec.17/05 and in force since April 2010). While this is a binding legal document and a potentially strong instrument to protect human rights it has not yet been invoked. Like the Protocols of Ushuaia I and II, which established procedures about how to deal with democratic crises⁹, the HR Protocol

⁹ The Protocol of Ushuaia I entered into force for its full member-states on January 2002. Associated member states Bolivia, Chile, Venezuela, Ecuador and Colombia have ratified it as well. Article 1 of the Protocol states that the existence of democratic institutions is an essential condition to the development of the process of integration. Articles 2 and 3 state that in case of a rupture of the democratic order the protocol shall be implemented. Article 4 states that in case of a rupture of the democratic order the other member-states shall promote consultation among themselves and with the affected party. Article 5 states that in case the consultation with the affected party is not productive the

states that the respect of human rights and fundamental freedoms are essential conditions of the process of integration (Art.1), and foresees the suspension of the violating party in case consultations to deal with serious and systematic violations of human rights and fundamental freedoms in one of the member-states are not effective, especially in times of institutional crisis or during a state of emergency foreseen in their respective constitutional orders (Art.3,4). The protection of fundamental rights is also addressed in the Decision of the Common Market Council (CMC Dec.64/10) which approved an Action Plan for a Mercosur Citizenship Statute. According to Art.2 of the decision, the Statute ‘shall include fundamental rights and benefits to Mercosur member-states, free movement of peoples, equality their civil, social, cultural and economic rights and freedoms, equality in the access to work, health and education’. Detailed objectives in these areas are established in Art.3; most refer to social rights, but it includes as well reference to the rule of law such as the creation of a Mercosur system of consumer protection.

In addition to the Protocol and the foreseen Citizenship Statute, the most successful achievement in the area of human rights in Mercosur has been the creation of the Human Rights Public Policy Institute in 2009. One of its main objectives is to contribute to the consolidation of human rights as a fundamental dimension of Mercosur’s development and identity (Art.2), and an expression of this concern has been the focus on the violation of human rights committed during the dictatorships. The choice of the building where the Institute is situated is also highly symbolic: the Escuela de Mecánica de la Armada-ESMA in Buenos Aires, which was an illegal center of detention during the dictatorship, and was converted into a Space for the Memory and the Protection and Promotion of Human Rights.

other member-states shall consider the nature and extension of measures to be adopted. These measures include the suspension of the rights of the affected party to participate in the decision-making bodies and the suspension of the rights and duties of the process of integration. The Protocol of Ushuaia was invoked to deal with three democratic crises in Paraguay in 1996, 1999 and 2012 (Ribeiro Hoffmann 2010). The Montevideo Protocol, referred as Ushuaia II, concluded in December 2011 but is not yet in force. It reaffirmed the contents of the Protocol of Ushuaia and included in its article 1 that it is to be implemented not only in the case of a rupture of the democratic order (as in Ushuaia) but also in the case of a menace of rupture of the democratic order, the violation of the constitutional order or any other situation which puts in risk the legitimate exercise of power and the democratic principles and values. Ushuaia II broadened therefore the cases in which Mercosur’s democratic clause can be implemented. Article 6 is also much more precise in the description of measures, referring to the closure of borders (Art6.), promotion of the suspension of the affected party from other international and regional organizations (Art.6d), additional political and diplomatic sanctions (Art.6f). Article 7 however states clearly that the measures should not risk the wellbeing and the human rights of the population, and should respect the sovereignty and territorial integrity of the affected party.

On the occasion of the 20th Anniversary of Mercosur, Victor Abramovich, first Executive Secretary of the Institute, affirmed that

The local of the headquarters of the HR Institute has an important political meaning because it states the existence of a common past between Mercosur member-states, a common history of massive and systematic violations which must be faced and which at the same time remains as a permanent memory, creating a commitment for the present and future. This past contributes to a cultural statement which is in opposition to the terror of the State ... it helps us to think about the basic norms of social coexistence in a democracy. Human rights are a central element in the transitions of our countries, and are intrinsically related to the idea of democracy which we South Americans have. This past which we share is also important in how it reflects upon regional identities, identities which express our peoples and which can be the base on which Mercosur is conceptualized, not only as a common market but also as an incipient political community.¹⁰

The right to the truth and fight against impunity is also addressed in the *Mercosur Presidential Declaration on Human Rights* from 2005 (Art. 5); Art. 6 states that it is a collective right to know the truth about the past events.

Another example of the successful empowerment of civil society actors in Mercosur is the changes resulting from the upgrade of the *Ad Hoc Group on Human Rights*¹¹ into the *Meeting of High-level Authorities in Human Rights of Mercosur*. The upgrade of the *Ad Hoc Group* was formally advanced in the *Mercosur Work Programme 2004-2006*, after the left turn¹², but

¹⁰ Translation by author. Victor E. Abramovich, was appointed in April 2010 (GMC Res 5/10).

¹¹ The Ad Hoc Group was established in 2000 under the Forum for Political Consultation and Concertation (FCCP). The FCCP was itself created one year earlier, in 1998, with the aim of consolidating and expanding Mercosur's political dimension (CMC Dec.18/98); it is composed of officers from member-states' Foreign Ministries, and can make recommendations for consideration by the Common Market Council (CMC), Mercosur's main legislative body.

¹² Art.2.7 of the Work Program states that Mercosur should deepen the exchange of information and the protection and promotion of human rights in the region, and that it should support the institutionalization of the works of the *Ad Hoc Group on Human Rights* and promote the debate on the desirability of the adoption of a Mercosur Charter of Human Rights. Since its creation, the Meeting has incorporated a number of sub-bodies such as the Permanent Commission on Children, the Working Group on Economic, Social and Cultural Rights, the Permanent Commission on Education and Culture, the Permanent Commission on Discrimination, Racism and Xenophobia, the Working

Izquierdo argues that the talk given by the UN High Commissioner Mary Robinson in a seminar in Montevideo in 2001 was also important to mobilize civil society. The main initial task of the *Ad Hoc Group* was to articulate a regional perspective in the implementation of the UN Millennium Development Goals (Bizzozzero 2005:6); it had no contact with civil society groups and was a process of articulation generated by the states, which feared that this space could be used to denounce them if left open to civil society actors (Izquierdo op.cit. 2). The HR Meeting, instead, ‘has some distinctive characteristics, such as the interaction with civil society organizations in a space of constant dialogue and the participation in the meetings of other sectors of the bloc such as representatives of the Specialized Meeting of Women (REM) and the Specialized Meeting of Official Public Defenders as well as legislators of the Mercosur Parliament. On several occasions, representatives of international organizations were present, such as the Secretary of the Inter-American Court of Human Rights and Commissioners of the Inter-American Commission of Human Rights.’ (Pont, 2011:62). Organizations from civil society were also invited to send suggestions to the process of elaboration of a new Internal Regulations from the HR Meeting in 2012 (Proceedings XXI Meeting, March 2012).

Other civil society organizations mobilized in specific areas of human rights, such as the feminist networks ‘Women and Mercosur’, ‘International Gender and Trade Network’, and ‘Articulación Feminista Marcosur’ in the area of gender (Espino 2008, Ribeiro Hoffmann 2013). In the area of social and economic rights, labour unions have been traditionally strong actors; they played a major role in the process of democratization of Mercosur member-states, and had already created, in 1986, the Southern Cone Union Head Offices Coordinating Agency (Coordenadora das Centrais Sindicais do Cone Sul – CCSCS) gathering together the main union head offices from Argentina, Brazil, Bolivia, Chile, Paraguay and Uruguay (Vigevani 1998, Pitanguy and Heringuer 2001). With the exception of the *Socio-Laboral Declaration* from 1998, which was seen as a fundamental conquest for workers in their struggle to retain the rights they enjoyed at the national level (Duina 2006)¹³, most labour

Group on Memory, Truth and Justice, the Working Group on Sexual Diversity and the Working Group on Disability. http://www.mercosur.int/t_generic.jsp?contentid=492&site=1&channel=secretaria. Accessed on 15/03/2013.

¹³ The Declaration is a detailed document and emphasizes that Mercosur must take into account the social effects of the process of integration and promote the adequacy of its member-states labor regulatory frameworks, and the recognition of minimum labor laws. It has articles on the individual rights of non-discrimination, promotion of equality, migration, forced labor, child labor, worker rights; and collective rights of freedom of association, unionization, collective negotiations, strike and

union demands were, however, not successful; the proposal for the creation of a Social Charter to Mercosur in 1993 failed, and the Multilateral Agreement of Social Security signed in 1997 only entered into force in 2005¹⁴ (Vigevani 1998; Pont 2011).

Keeping the US out? Regional hegemony and changing Brazilian foreign policy

The previous section showed how civil society organizations pushed for domestic and regional human rights commitments in Mercosur member-states. The ‘left turn’ governments empowered those actors and are themselves a product of the deepening of the process of democratization in the region, which moved beyond the level of protecting representative democracy towards more interventionist commitments around individual human rights. The changes towards stronger human rights regimes at the domestic level can be fully accounted by these pressures. But why did Mercosur member-states agreed to develop a human rights agenda in Mercosur? As seen, human rights fit Mercosur’s new paradigm, but this move is still puzzling, given that all member-states are members of the Inter-American System of Human Rights. This section argues that the expansion of Mercosur’s agenda into human rights in Mercosur also has to be seen in the context of Brazilian foreign policy. Two aspects are relevant: its changing approach to the international protection and promotion of human rights, and its strategy vis-à-vis the United States in South America.

The governments of Fernando Henrique Cardoso (1995-2002), Lula da Silva (2003 -2010) and Dilma Rousseff (since 2011) have increasingly attributed a central importance to human rights in their domestic and foreign policies. Santiso shows how Brazil under President Cardoso adopted the position that the ‘promotion of democracy abroad and the protection of national sovereignty are not mutually exclusive concepts, but rather mutually reinforcing principles and that, in fact, democracy is the first criteria for legitimate sovereignty’ and that ‘since the late 1980s and after decades of military rule, Brazil has endeavored to project an image of a country respecting human rights within its borders and promoting them abroad’ (Santiso 2003:356). Brazilian foreign policy has dealt with the apparent contradiction between

dialogue. It also states conditions to the promotion of employment, protection of unemployed. Support to human resources and professional qualification, health and security on work and social security. Art.20 created a Sociolaboral Commission to assist Mercosur member-states in the implementation of the Declaration.

¹⁴ The Multilateral Agreement of Social Security accorded the protection of individual rights to workers, not collective rights. Articles 2 of its annex state that the rights of social security from workers from member-states and their families must be recognized.

promoting democracy and human rights while taking a hard stance on non-intervention and sovereignty via two strategies. The first strategy is pointed out by Burges: ‘Brazil was strongly committed to the idea of democracy as being the only legitimate form of political organization, with the proviso that the institutional shape and operation of a democracy is a matter for internal political debate, not external imposition.’ (2008:80). This strategy was followed by President Lula government in the controversy around the democratic credentials of President Hugo Chavez before the ratification of Venezuela’s accession to Mercosur by the Brazilian congress, when it took the position that if the Venezuelan people considered the regime democratic, it was not for Brazilians to deny it. The second strategy is the restriction of instruments to political declarations and diplomatic pressure, excluding the possibility of the use of military intervention. This has also been the Brazilian position in the discussion of the principle of the Responsibility to Protect (R2P). Spektor (2012) argues that Brazilian attitudes toward national sovereignty and non-intervention evolved from a radical position against international intervention to a favorable one towards the R2P, and a move back to the more cautious concept of Responsibility While Protecting (RWP) after the crisis in Lybia, when Brazil’s Foreign Minister Antonio Patriota expressed concerns that arguments for humanitarian intervention ‘might be misused for purposes other than protecting civilians, such as regime change’. The concept of RWP was presented in a paper circulated at the UN and in practice proposed the introduction of criteria such as last resort, proportionality, and balance of consequences, before the Security Council authorizes the use of force, and also the creation of a system for monitoring and reviewing the intervention as it evolves.

These two strategies – to promote democracy and human rights while keeping a hard stance on non-intervention and sovereignty – explain why Brazil, and, as it turns out, other Mercosur member-states, opted to expand Mercosur’s agenda, instead of relying on the Inter-American System. The choice of instruments to protect and promote democracy and human rights has been an object of contention between South American countries and the United States within the context of the Organization of American States (OAS), and became politicized at least since the controversial speeches of US President Bush and US Secretary of State Condoleezza Rice at the 35th General Assembly in 2005. Divergence between the US and Latin American states in the OAS has its roots in the 19th C controversy about the Monroe Doctrine and the US support to the military dictatorships in the Southern Cone during the Cold War, but has been stronger in the area of security and defence, not having affected the Inter-American Human Rights System (Weiffen 2012, Herz 2010, Merke 2013). Venezuela, Ecuador and

Bolivia, which are members of the Bolivarian Alliance for the Peoples of Our America (Alba), have campaigned against Inter-American institutions in a more polarizing fashion than Mercosur original full member-states¹⁵, but the recent ‘Belo Monte Dam’ judicial case involving Brazil raised the concerns about a loss of Brazilian support for the Commission and Court of Human Rights.¹⁶

Merke (2013) shows how Argentinean foreign policy has dealt with the role of the OAS in the areas of security and defense, on the one hand, and human rights on the other hand. He argues that, in the areas of security and defense, the country has followed the Brazilian lead and that of other South American countries in opting to abandon the Inter-American System and create a new institution, the South American Defence Council in the Union of South American Nations (UNASUR), in order to weaken the influence of the United States. In the area of human rights, however, the country has opted to continue to make use of the Inter-American System, given that in this context the influence of the United States is not seen as a problem, and that the Commission and Court of Human Rights are seen autonomous institutions.

The perspective adopted by Argentinean foreign policy highlights the differences between the role of Mercosur and the Inter-American institutions in the areas of security and defence, on the one hand, and democracy and human rights, on the other hand. Mercosur, unlike the Inter-American Human Rights System, does not have a legal body to deal with human rights cases; decisions about the violation of human rights are taken by the Presidents of member-states in bodies which require consensus; their sovereignty is therefore not threatened. The case of the suspension of Paraguay from Mercosur in 2013 shows how the political and legal logics can differ in complex contexts (Perotti 2013).

¹⁵ Venezuela denounced the American Convention in September 2012 and withdrew from the Inter-American justice system in September 2013.

¹⁶ The ‘Belo Monte Dam’ case launched a political crisis when the Brazilian Supreme Court overturned the suspension of the construction of the dam in August 2012 in opposition to the request by the Inter-American Commission of Human Rights. The case has been criticized on the grounds of the lack of independence of the Brazilian Supreme Court *via-á-vis* the economic interests of Dilma’s administration, and has indicated the limits of the affectivity of international and regional systems of human rights (Picq 2012, Glock 2013, Amazon Watch/AIDA/Global Justice 2011, <http://amazonwatch.org/work/belo-monte-dam>).

Epistemic communities and the supply of human rights governance transfer

The supply of human rights governance transfer was provided by regional epistemic communities; they shaped the content of norms and design of policies and instruments. Ernst Haas defined epistemic communities ‘networks of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area.’ (Haas 1992:3). Legal scholars working with regional integration have constituted such a network; they have taken a stance in favor of the legalization of the process of regional integration, and have provided support to the strengthening of Mercosur mechanism of dispute settlement and the creation of regional human rights system. Some members of the epistemic community work at universities, some are or were legal advisors to Mercosur or national level institutions or work as human rights lawyers. They meet in diverse fora and also interact in the context of other regional integration organizations in Latin America and in the Inter-American System of Human Rights.

Differently from the position of Mercosur member-states’ ‘left turn’ Presidents, however, the epistemic communities have taken an approach in which Mercosur and the Inter-American System of Human Rights are seen as mutually reinforcing each other. Mercosur human rights approach is in conformity to the Inter-American Human Rights System, and they share the understandings about civil and political rights, especially in regard to the approach towards the violations of human rights during the dictatorships. One local specificity of Mercosur’s human rights approach is the emphasis on social and economic rights. Mercosur’s human rights epistemic community members stress the gap in policy implementation in Mercosur member-states; post-democratization constitutions are very progressive in social and economic rights, but traditionally excluded and poor parts of the populations are very often not aware of their rights, or dare not access the organs of justice, seeing them as part of the oppressive elite. Mercosur states have embraced democratic regimes in a period of deep economic crisis; their governments were never able to develop efficient social policies and welfare states, and in some cases, did not even plan to, given that alongside with democratization a new model of economic development evolved, based on neoliberal premises. (Ventura 2003; Ventura and Rolim 2002, Morales 2013, Pintaguy and Heringer 2001, Piovesan 2002, 2011, Klor 2011).

This has also been the position of Mercosur's Human Rights Institute; the coordination with the other international and regional systems for the protection and promotion of Human Rights has been an important aspect of the Institute's activities, as illustrated in the objectives stated in its Work Program 2006-2007. The first objective is the coordination of actions in the multilateral bodies of human rights; the second objective refers to the internal application of norms and decisions of the bodies from the Inter-American system of Human Rights. Among the specific actions proposed within this objective are: the building of consensus regarding the working of the Inter-American system in order to strengthen it; the organization of extraordinary meetings of the Inter-American Commission and the Court of Human Rights in Mercosur as a new measure to promote the better understanding of these bodies and to promote cooperation among local judicial systems and universities in terms of jurisprudence and publications; and, finally, the establishment of a dialogue to reaffirm the national entities of protection and promotion of human rights at the regional level. In fact, its main legal activity so far has been the solicitation of a Consultative Opinion on the rights of migrants' children to the Inter-American Court on Human Rights.¹⁷

Pont's argument about the profile of officers working in the Mercosur HR Meeting and the Inter-American Court and Commission of Human Rights supports the view that they are part of an epistemic community: 'these officers have a long history of working on the subject – even before the bloc existed – and have long remained in their offices, which has resulted in a mutual knowledge and formal and informal bonds enabling convergence and agreements. A shared characteristic is the strong involvement in the subjects and firm convictions regarding the importance of preserving human rights for the life of societies and the reinforcement of democracy (Pont 2011:62).

An example of the profile of the participants of the human rights epistemic communities is Mercosur's Human Rights Institute first Executive Secretary, Victor Abramovich. Abramovich has served as the Second Vice-president of the Inter-American Human Rights Commission (IAHRC) and was previously Commissioner and the Special Rapporteur on the Rights of Women for the IAHRC. Before that he was the Executive Director of the NGO Centro de Estudios Legales y Sociales (CELS), a consultant for the Inter-American Institute of Human Rights, a consultant of the Inter-American Development Bank, legal advisor of the Ombudsman office of Buenos Aires, and has worked with the U.N. Economic, Social and

¹⁷ http://www.oas.org/en/iachr/media_center/PReleases/2011/109.asp.

Cultural Rights Committee. Abramovich also has an established academic career, having received his Juris Doctor from the University of Buenos Aires, his LLM from American University and having directed the Human Rights Law Clinic at the University of Buenos Aires, among others. He has also written a number of articles, books and law reviews regarding human rights and the impact of litigation on economic, social and cultural rights.¹⁸

Conclusion

This chapter showed that human rights civil society organizations were the main drivers of the engagement of Mercosur in human rights governance transfer. Organizations such as the Observatory of Human Rights Public Policies in Mercosur and Fórum da Sociedade Civil nas Américas were empowered by the governments of President Nestor Kirchner in Argentina (2003), Lula da Silva in Brazil (2003) and Tabare Vasquez in Uruguay (2005), and ultimately pushed successfully for a human rights agenda in Mercosur. These actors demanded the protection and promotion of social and economic rights to counterbalance the negative effects of economic liberalization, and the improvement of civil and political rights in a process of deepening democracy. In particular, they demanded the acknowledgement of the massive violation of human rights by the dictatorships of these countries during the Cold War, and their regional alliance, the Condor Operation.

The conclusion of the Protocol of Human Rights (2005), the upgrade of the Ad Hoc Group on Human Rights into the Mercosur Meeting of High-level Authorities on Human Rights (2004) and the creation of the Mercosur Human Rights Public Policy Institute (2009) were the main norms and instruments created to protect and promote human rights in Mercosur member-states. The framing and institutional design of these norms and instruments has not been an imposition of external actors, but rather provided by epistemic communities which are organized at the regional level, and who are also active in the Inter-American System of Human Rights. In fact, despite a stronger emphasis on social and economic rights, human rights norms and policies adopted by Mercosur are in conformity with Inter-American System of Human Rights.

The fact that Mercosur member-states are signatories of the American Convention of Human Rights and have accepted the competence of the Inter-American Court of Human Rights raised the puzzle of why they decided to create a new system to protect and promote human

¹⁸ <http://www.wcl.american.edu/faculty/abramovich/>

rights instead of relying on the Inter-American. This chapter showed that the creation of a human rights regime in Mercosur attended Brazilian foreign policy interests of engaging in the international promotion of human rights while assuring the principles of sovereignty and non-intervention, and keeping the US out of the region. While the Inter-American System has mechanisms to deal with human rights legal cases, Mercosur has not; any decision on the violation of human rights has to be taken by unanimity by member-states Presidents. Moreover, in Mercosur the use of military intervention in the case of violations of human rights is rejected by all member-states, differently from the OAS. Mercosur-member states share the concern with sovereignty and non-intervention for historical reasons, but a confrontational attitude towards the Inter-American System of Human Rights has been more controversial. If the engagement of human rights government transfer in Mercosur results in the weakening of the Inter-American system, it would be a non-intended consequence of the successful activism of civil society organizations and epistemic communities working for the consolidation of mechanisms to protect and promote human rights.

References

Bizzozero, Lincoln (2005). La agenda del Mercosur y los derechos humanos. ¿Hacia una comunidad regional? Paper presented at the ‘Seminario Mercosur , Sociedad Civil y Derechos Humanos’, organized by the Observatorio de Politicas Publicas en el Mercosur 6.4.2005, Montevideo.

Briceno, Jose (2010). “From the South American Free Trade Area to the Union of South American Nations: The Transformations of a Rising Regional Process”. *Latin American Policy* 1:2.

Burges, Sean W. (2008). “Consensual Hegemony: Theorizing Brazilian Foreign Policy after the Cold War”. *International Relations* 22.

Castaneda, Jorge (2006). “Latin Americas Left Turn”. *Foreign Affairs* 85:3.

Dreysin de Klor, Adriana (2011). *Derecho originário de Mercosur*. Marcial Ponts.

Duina, Francesco (2006). The Social Construction of Free Trade. The European Union, NAFTA and Mercosur. Princeton University Press.

Epstein, Susa et al (2007) 'Democracy Promotion: Cornerstone of Us Foreign Policy?' *CRS Report for Congress*, Dec 26, 2007. Available at <file:///C:/Users/anflo/Desktop/US%20democra%20promotion.pdf>. Accessed on 26/02/2014.

Espino, Alma (2008). *Impacting Mercosur's Gender Policies, Experiences, Lessons Learned and ongoing work of civil society in Latin America*. Paper presented at the Montreal International Forum 2008.

Glock, Clarinha (2013). *Inter-American Human Rights System Reform Faces Deadline*. Available at <http://www.ipsnews.net/2013/03/inter-american-human-rights-system-reform-faces-deadline/>. Accessed on 26/02/2014.

Haas, Peter (1992). Introduction: epistemic communities and international policy coordination. *International Organization* 46:1.

Herz, Monica (2011) *The Organization of American States (OAS)*, Routledge.

Izquierdo, Silvia (2005). 'Los procesos regionales y los derechos humanos. La experiencia europea y el recorrido del Mercosur'. Paper presented at the 'Seminario Mercosur , Sociedad Civil y Derechos Humanos', organized by the Observatorio de Políticas Públicas en el Mercosur 6.4.2005, Montevideo.

Lixinski, Lucas (2010). 'Human Rights in Mercosur'. In Filho, Marcilio T.F., Lucas Lixinski and Maria B.O. Guipponi, eds (2010). *The Law of Mercosur*. Hart Publishing.

Merke, Federico (2013) 'Política Exterior da Argentina e Eleição Institucional: A OEA no espelho da UNASUR e do Mercosul'. *Lua Nova* 90

Morales, Mariela (2011). 'La cláusula democrática del Mercosur en la encrucijada? Algunas reflexiones sobre el ingreso de Venezuela'. *Revista de Derecho Público* 128.

Morales, Mariela (2013) 'La doble estatalidad abierta: interamericanización y mercosurización de las Constituciones suramericanas'. In: *Estudos Avançados de Direitos Humanos. Democracia e Integração Jurídica: Emergência de um novo direito público*. Elsevier, Rio de Janeiro.

Perotti, Alejandro (2013) ‘La justificación jurídica del ingreso de Venezuela al Mercosur es totalmente nula’. Available at <http://www.abogados.com.ar/la-justificacion-juridica-del-ingreso-de-venezuela-al-mercosur-es-totalmente-nula/10986>. Accessed on 16/02/2014.

Piovesan, Flavia (2002). ‘Globalizacao econômica, integração regional e direitos humanos’. *Interesse Publico* 13.

Piovesan, Flavia (2011). *Direitos Humanos e Direito Constitucional Internacional*. Ed.Saraiva 13. Ed.

Pitanguy, J. and Rosana Heringer (2001). ‘Direitos Humanos no Mercosul’. *Cadernos Forum Civil* Ano 3 n.4.

Pont, Mariana Luna (2011). ‘Southern Common Market’ In *The democratization of international organizations. Democracy Report 2011*, ed by Giovanni Finizio, Lucio Levi and Nicola Vallinoto. Center of Studies on Federalism.

Ribeiro Hoffmann (2013). ‘Gender in EU-South American relations.’ In van der Vleuten, A. and Anouka van Eerdewijk, eds. *Mapping gender norm dynamics. Gender, Regions and Norms: debunking Eurocentrism*. Palgrave Mcmillan.

Ribeiro Hoffmann (2010) Explaining the Enforcement of Democracy by Regional Organizations: Comparing EU, Mercosur and SADC.” Co-authored with Anna van der Vleuten, *Journal of Common Market Studies*, 48 (3): 737-758.

Riggirozzi, Pia, Diana Tussie (eds) (2012) *The rise of post-hegemonic regionalism. The case of Latin America*. Springer.

Santiso, C. (2003). ‘The Gordian Knot of Brazilian Foreign Policy: Promoting Democracy while Respecting Sovereignty’. *Cambridge Review of International Affairs*, 16: 2.

Spektor, Matias (2012). ‘Humanitarian Interventionism Brazilian Style?’ *Americas Quarterly*. Summer 2012. Available at <http://www.americasquarterly.org/humanitarian-interventionism-brazilian-style>. Accessed on 16/02/2014.

Veiga, Pedro da Motta, Sandra Rios (2007). ‘O regionalismo pós-liberal na América do Sul, origins, iniciativas e dilemas.’ *Working Paper CEPAL*, junho 2007.

Ventura, D., Rolim, Marcos (2002). 'Os Direitos Humanos e o Mercosul: uma agenda (urgente) para além do Mercado'. Available at http://www.rolim.com.br/2002/_pdfs/dhmercopol.pdf-. Accessed on 16/02/2014.

Vieira, L. C Chiappini (2010). 'Análise do sistema de aplicação das normas emanadas dos orgaos do Mercosul nos ordenamentos jurídicos internos dos estados partes'. Buenos Aires: *Centro Argentino de Estudios Internacionales*.

Vigevani, T. (1998). *Mercosul: impactos para trabalhadores e sindicatos*, São Paulo. Ed LTr.

Weiffen, Brigitte, Detlef Nolte und Leslie Wehner (2013) 'Overlapping security institutions in South America: The case of OAS and Unasur', *International Area Studies Review* 16 (4), S. 370-389.