

**European Master's Degree
In Human Rights and Democratisation**

The right to education in Mercosur Regional integration process

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ABSTRACT

The current process of economical globalisation has deepened inequalities among and within the countries. These inequalities are easily identified in developing countries, and the indivisibility of Human Rights seems, according to many authors, difficult to achieve in Latin America for various reasons.

Inequalities are indeed reflected in the right to education, due to the lack of a qualified, free, compulsory education that would allow - the “full realization of the human personality” and future reach of higher education based on the merits of any human being. Given its obvious importance, education is not merely a right; it is a tool to achieve other human rights in the region.

Since its consolidation, Mercosur has showed its concern with the social dimension of development, including the right to education. Free trade of goods, services and people is most likely to have impacts on the society. This work first contextualizes the right to education as a Human Right (international and regional instruments) and recalls the obligation of the States towards the accomplishment of the right to education. It then analyses all the efforts made in the Mercosur’s Educational Sector towards its protocols and agreements, in order to see the applicability of this particular Human Right; and whether the education measures taken by Mercosur, apply to the weaknesses of the region.

Finally, the present work stresses future threats by considering education a tradable service (GATS) and ways in which Mercosur could have a powerful negotiation weight in WTO table against those measures.

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INTRODUCTION

Mercosur is placed within a continent in a development process, where countries individually struggle to integrate themselves into the current international system of economical globalisation. In order to be part of the system, nations implement rigid economic measures that don't necessarily respond to the most pressing challenges that they face in their respective societies.

The existing economical development models on a global level do not adequately reflect the profound social and economic problems peculiar to South America. However, in their desire to be part of the globalisation process, South American States tend to import the socio-economic models found in these instruments, without having due regard to their own national and regional particularities.

In this regard, a regional framework such as Mercosur is perceived to be a way out, where States stop seeing themselves as individual countries in the struggle for adapting their national economies to global trade liberalisation and try to integrate into a regional block, thereby closely following the example of the European Union in order to maximise economic benefits at a regional level. However, such a mechanism of economic regional integration should also aim at solving common social problems affecting the region such as the unjust distribution of goods, poverty, violence, weak health systems and weak basic educational systems. These problems must be addressed parallel to economic development, in order to finally start an efficient development process which also focuses on human development to improve the influence of this regional mechanism on a global level.

It is important to highlight that the centre of this study is Mercosur and since it is an economical integration, in the view of this author, it is important to contextualise the present economical international system. Even though Globalisation is referred to in few occasions through this work, I will mention it only as a way of introduction.

The globalisation process exacerbates inequalities in the global distribution of economic assets, thereby creating realities where "some are more equal than others". Developing countries are in a savage contest for their integration into the current

system of globalisation. International economic regulations and conditions are most likely to have negative impacts on weaker societies. Indeed, on a global level, the socio-economic gap between the highly industrialised countries and the rest of the world is ever widening. On a national level, the same phenomenon may be perceived in the relations between a privileged minority whose wealth is ever increasing and the vast majority of the population who is living in abject poverty.

In the South American context specifically, the forces of neoliberalization have caused a serious increase in poverty¹. One of the most scandalous examples is the one revealed in the UNDP report² concerning the distribution of wealth in countries such as Brazil, where 20% of the richest population owns 80% of the national income. This inequality of opportunities and impossibility to be part of the upper 20% is a fuelling factor for violence and for a growth of the informal/illegal sectors as the only chance to escape from poverty.

It is submitted that the mentioned economic inequalities among countries and within countries will be reflected in social gaps. The problems that arise in South American countries are mostly related to the so called “second generation of rights”: economic, social and cultural rights that can amount to important human rights violations and especially in regard to the right to education. The right to education is particularly important for the development process of Mercosur countries taking into consideration that it is the basis to achieve other fundamental rights. In this sense, UNICEF has made a valuable contribution pointing at basic education as a fundamental basis for development, affirming that “decades of research have found an important link between the expansion of basic education and economic development.”³ This is the reason why I consider education more important than other Human Rights in order to fight against huge inequalities, social injustice, poverty, etc. Therefore, it is important to note that despite the efforts made by the UN system to establish the importance of the indivisibility of human rights, the reality in the South American context is very

¹ Banco Interamericano de Desarrollo *Más allá de las fronteras. El nuevo regionalismo en América Latina* Informe de progreso económico y social en América Latina, BID, 2002.

² UNDP (United Nations Development Program), Human Development Report, 1996. Oxford University Press, NY, 1996. Of the 37 countries throughout the world with a similar level of development for which data are cited in this report, the figures for Brazil show the widest gap between the 20% of the population with the highest income and the poorest sector.

³ UNICEF, The State of the World's Children 2004, at http://www.unicef.org/sowc04/15579_girls_positive_force.html

different, as States tend to honour their immediate obligations concerning “enforceable” civil and political rights more than the “progressive” realisation of the “second generation of rights”. In the view of the present author, the unequal attention that is paid to economic, social and cultural rights in comparison to civil and political rights does not promote improved overall respect for human rights.

As Bernardo Kliksberg explains in his book *“Fallacies and Myths related to Social Development”*⁴

“Experiences in Latin America and in other parts of the world indicate that economic growth is a necessity. However, they also show us that believing economic growth alone will bring about the necessary results in an extreme simplification of the theme “development” and its social dimensions. The fallacy that growth is enough gives the idea that we would be making progress if the *per capita* gross domestic product went up, and that all eyes should be on it. Over the last decade, the UN has developed a concept that has been widely used at the international level, the “human development paradigm”. This paradigm radically attacks this oversimplification. Growth alone is not enough; it is necessary but not sufficient. Thus, a more comprehensive discussion should be fostered. We should ask ourselves when a society is actually making progress and when it is moving backward. It is suggested that we should define definitive parameters based on what is happening to people. Resulting conclusions emphasize the fact that the greater the growth and quantity of resources, the better the possibilities for society. However, peoples’ livelihood, which is the ultimate propose, cannot be measured by something that serves as a mean. It should be measured by indexes that reflect what occurs at basic levels of daily life.”

The first question to be asked is why Mercosur is so relevant for this study. Mercosur is the most successful economic integration process of the region and has achieved considerable economic growth and international presence since its resent creation. It has established a mechanism of negotiation rounds as a trading block, which makes its member states interesting for investment. This new regional experience has shown a great dynamism but at the same time seams to show a worrisome tendency to neglect issues of social justice in practice. Due to its short existence, and taking into

⁴ Kliksberg, Bernardo, *Fallacies and Myths related to Social Development*, Sao Paulo, Cortez, Brasilia, DF, UNESCO, 2001, pp.22-24.

consideration that we are talking about more than half of South American territory and that future alliances are foreseen with the Andean Community in 2014 (American Community of Nations), human rights must be mainstreamed from the very beginning, providing for future fair unions that tackle social development and for joint efforts to decrease the poverty rates.

Mercosur is a region with a lot of potential (due to its natural resources, sharing the same language, historical similarities as well as political similar processes, etc.) converting the region very attractive for foreign investment, but where poverty is predominating and consequently human rights are at stake, and must be addressed from the beginning.

The second question that is bound to arise would be why is education considered so important in this particular region, in the view of this author. It is argued that education in Mercosur countries cannot only be viewed as one human right but it is a right that, once it is implemented, guarantees a series of other fundamental rights, such as the full development of the person, other opportunities and therefore a decrease in violence, real political conscience and educational growth. Education is the gateway to other fundamental rights and must play a central role in the development process of Mercosur.

According to UNESCO⁵, guaranteeing the quality of education free of charge is especially important in the South American region, where appropriate and advanced education is not accessible to vulnerable sectors of the society. Therefore, families are not encouraged to send their sons/daughters to school, as they are more valuable and helpful at home or work in order to contribute to the livelihood of the family.

Analysing the international and regional instruments containing the right to education, as well as the educational efforts of the region, I may present the following questions along the thesis:

What specific obligations and mechanisms does the right to education entail at the international and regional level?

⁵ UNESCO, *Situación Educativa de América Latina y el Caribe 1980-2000*, UNESCO Santiago, Santiago de Chile, 2001.

Is Mercosur incorporating effective measures on its educational sector in accordance with international and regional human rights instruments?

Which are the programmes and protocols issued by the Mercosur educational system and do they adequately implement States' obligations? Or do they copy inequality at a regional level?

What does the liberalisation of education as a tradable service (GATS) entail for future problems?

I would like to stress that I had major difficulties on accessing the material related to education negotiations in Mercosur as well as nearly no academic material about this aspect of Mercosur.

The Methodology used to build this essay in order to gather all the relevant information related to Mercosur and the right to education was to, first identify relevant international and regional instruments and reports related to the right to education in the region. Then I also identified the 6 existing Protocols and agreements as well as the three plans of action of the educational sector of Mercosur, which are mainly on the internet. An other way I had to incorporate relevant documentation and pertinent considerations is through conversations and interviews with Brazilian governmental institutions as well as some interviews realised in UNESCO Paris. All these documentation made possible a pertinent analysis of the subject.

In order to understand the States responsibilities and Mercosur efforts and future concerns about the right to education, my thesis will be divided in the six following parts:

In the first chapter, I will present the right to education as a human right. For that purpose, I shall present the international instruments that contain the description of this right, in order to underline the obligation of all State parties towards the "progressive" implementation of the right to education. I will also highlight the difficulties in the practice of the indivisibility of human rights as a parallel process to the end of bipolarisation. This indivisibility is not reflected in the developing countries and further efforts must be done in order to include important ESC rights in the development process. I will analyse articles 13 and 14 of the ICESCR containing the right to

education as well as the general comments and the obligations of States and the essential features to be protected, respected and fulfilled by every Mercosur member State.

The second chapter relates to Mercosur and human rights. This chapter highlights the obligation of the States towards education reaffirmed in all regional human rights instruments, the ratification of all Mercosur countries and the incorporation into constitutional law. Once we have a clear idea of the international and regional obligations I will attempt to situate Mercosur in the context of regional integration frameworks. In order to describe the beginnings of this regional process of integration, special attention shall be paid to important efforts made towards the consolidation of new democracies in the beginning of the regional process. I will briefly present Mercosur's objectives, its structure and decision making process as well as its legal personality and the main differences between the European Union and Mercosur attempts concerning human rights.

In the third chapter I will present Mercosur's stance towards education, mentioning the importance of education for a real development in the region. I will also present the rates of education in some Mercosur countries and the awareness shown by many international organisations in order to identify shortcomings in the educational systems to be considered in the regional process, especially considering the difference between education for all and quality education for all. It is important to present the differences of educational standards in the member States and note that Argentina and Uruguay's basic education is considerably different from the one of Paraguay and Brazil. Having positive educational experiences among the State parties should encourage the regional solidarity and sharing of positive experiences. This is a question that we will bear in mind through the next chapters. Quality of education is indispensable. Finally I will present Mercosur education related organs and mechanisms as well as the Mercosur educational sector structure highlighting a preoccupation towards the targets of education in Mercosur Plans of action.

The fourth chapter contains the descriptive analysis of the education sector of Mercosur and the respective efforts made towards a better education in the region. The starting point of the analysis will be the three triennial Plans of Education issued by Mercosur, their description, objectives and targets. Parallel to these plans of action, many attempts

took place regarding the respect of human rights in the regional integration process (including the right to education). Examples include civil society proposals, signed “Declarations” and negotiations.

In the fifth chapter the content of the 6 existing protocols and agreements regarding education in Mercosur shall be analysed. Their similarities, differences and specific objectives and targets shall be the basis of this analysis. The protocols concern basic education as well as higher education and professional training. From this analysis, important lessons can be learnt and recommendations can be made.

The sixth and last chapter will deal with a possible external threat to the full realisation of the right to education as established in international, regional, and economic treaties: education as a tradable service. Countries are currently negotiating the liberalisation of education under the WTO Agreements (GATS). Mercosur, as a strengthened regional trade block must categorically refuse any negotiation that may weaken the realisation of the right to education. According to some authors, the liberalisation of education services is most likely to deepen inequalities and may lead to an irreversible situation. Here again (as in all other chapters) the State responsibility and the regional solidarity to confront common problems will be stressed.

1. THE RIGHT TO EDUCATION IN THE INTERNATIONAL HUMAN RIGHTS SYSTEM

One of the most important responsibilities of the State is the responsibility they carry in the education sector. Analysing the right to education from a Human Rights perspective demands a proper introduction of its legal international instruments in order to contextualize its importance in the Mercosur Region.

This study concerns specifically the right of education in MERCOSUR countries (Brazil, Argentina, Uruguay and Paraguay) which will be referred in Chapter 3. However, it is important to understand that all Mercosur member States are signatory parts of the international Human Rights instruments (2.2), reaffirming their obligation towards the realisation of Human Rights such as the right to education. This links the regional integration to the Universal commitments in the field of the Right to Education. This presentation will begin from the general aspect of the international instruments, to understand in the first place the “Universal” commitment each State of the region has separately, and the subsequent steps taken in behalf of the right to education.

For that purpose, I will try to present the historical evolution of the right to education in the international (legal as well as political) system. The next Chapter will be enriched with information about the evolution of educational policies within Mercosur.

The Universal Declaration of Human Rights already mentions in the Preamble, the duty of individuals and nations to “Promote rights and liberties through teaching and education...”⁶

Further on, the Universal Declaration of Human Rights (art.26) expresses that “Everyone has the right to education” and that “education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher

⁶ Universal Declaration of Human Rights, approved and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, Preamble.

education shall be equally accessible to all on the basis of merit”⁷, this means that basic education must be provided to the population free of charge. Once basic education is completed, the student shall continue higher education by his or her merits, having an equal opportunity to be introduced in a professional education level. “Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms”⁸.

Education is considered one of the basic rights to achieve the “full development of the person” and a particular importance must be given to this right in development regions, where most of the time, human development plays a fundamental role in the overall development process.

1.1. International Covenants: towards indivisibility or fragmentation?

The main universal instrument that includes the right to education - as a human right - is the International Covenant of Economic, Social and Cultural Rights (hereinafter ICESCR)⁹, specifically on articles 13 and 14 that I will carefully analyse further on (1.2.).

Having a panorama of the political background parallel to the evolution of the Covenant is strictly necessary in order to have a deeper understanding of its implementation among the countries. Since its creation, historical, political and economical changes had an impact in Human Rights and greatly influenced as well as modified its situation in the international context.

Once the Universal Declaration of Human Rights was created in 1948, the Human Rights Commission focused on the preparation of an internationally binding human rights convention with observation and monitoring procedures.

In 1951, the western countries proposed the division of Economical, Social and Cultural Rights as - in their opinion - States could not have a direct enforceable international

⁷ Universal Declaration of Human Rights, approved and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, art.26(1).

⁸ Idem. art.26(2).

⁹ International Covenant in Economic, Social and Cultural Rights, concluded 16 December 1966, entered into force 3 January 1976.

obligation. The socialist States had the opposite stand, defending the interdependence and indivisibility of all Human Rights.

Finally, after almost two decades of drafting and negotiations have passed (December 1966), the UN General Assembly approved the division of the international instrument into the International Covenant on Civil and Political Rights (ICCPR)¹⁰ and the International Covenant on Economic Social and Cultural Rights (ICESCR) for signature. Both entered into force ten years later (1976). The ICCPR seemed to contain all the “negative” rights; and the ICESCR all the “positive” ones. The influence of the Cold War ideological rivalry between East and West was quickly reflected in the Human Rights sphere. The ICCPR became a statement of the core principles of liberal democracies, which envisioned a minimalist State concerned primarily with the protection of individual rights and freedoms compatible with the demands of capitalism and free markets. The ICESCR represented the commitment of socialist and communist States providing housing, employment, health care, and education for their citizens. The value of these sets of rights: negative, civil and political “freedoms” in one hand, and positive, economic and social “rights” on the other (that were to be indivisible in the first place), clashed as conceptual and political opposites.

The different implementation language in each of the treaties reinforced this division even further, creating an institutional reality that these rights were to be treated differently as a matter of international law. Whereas States parties to the ICCPR were to take whatever necessary steps to “give effect to the rights”¹¹ in the Covenant, States parties to the ICESCR were only required “to take step to the maximum of its available resources to achieving progressively the full realisation of the rights”¹² contained in the Covenant. By the last, we understand that, at the same time, States would only be expected to take these steps (“not only individually but with the support of international assistance and cooperation”¹³) in light of their “available resources.” These differences reinforced the discursive environment about the different nature of rights: “negative” civil and political rights take less effort to achieve and realise than to “positive”

¹⁰ *International Covenant on Civil and Political Rights* (hereinafter ICCPR) adopted by the General Assembly resolution 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976.

¹¹ Art.2(2) of ICCPR.

¹² Art. 2(1) of ICESCR.

¹³ *Idem*.

economic and social rights. The “progressive implementation” language within the ICESCR suggested costly and burdensome “obligations,” especially for developing countries.

Some authors propose a division of rights by three generations. Civil and Political Rights are referred to as the “First generation of rights” due to their inspiration in the French Revolution and the “*droits de l’homme*”. Economic, Social and Cultural Rights are referred to as the “Second generation” of rights, inspired in the Marxist theory. The “third generation” of rights are those referring to the “collective rights”.

The establishment of a new political order during the last decade and a half (once the Cold War was over), made us experience the effects of a planetary *status quo* change. These changes were also felt in the international Covenants of Human Rights division. With the end of the bipolar world, we have now the effect of unipolarisation (in the economic and political sphere) and a world planning to exist without economic limits (globalisation and trade liberalisation). Human Rights are finally rethought as indivisible in the Vienna Declaration and Programme of Action of 1993 “All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”¹⁴

As Manfred Nowak clearly explains: “Although the international community expressly recognised the indivisibility, interdependence and universality of human rights in the Vienna Declaration and its Programme of action, it will take some time until these principles are implemented in practice and legally recognised by all States. Specially when Europe and the United States continue to exact high human right standards from the countries of the South yet seem to get away with a very one-sided interpretation of

¹⁴ Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993, General Assembly, A/CONF.157/23, art.5.

human rights themselves, excluding economic, social, cultural and collective rights to a large extent.”¹⁵

It is very important to understand the reason why the right to education (placed among the Cultural rights of the ICESCR) is so difficult to be implemented at the same level as Civil and Political Rights, especially in a developing region. I will now analyse the scope of application of the articles referring to education in the ICESCR signed by all MERCOSUR members¹⁶ as well as in the other international treaties.

1.2. Education as a Human Right in the International Covenant on Economic Social and Cultural Rights

According to the Covenant, the State has the “obligation to respect the right to education”¹⁷ - it is its negative obligation of non-interference in private matters. It is what Fons Coomans refers to as “freedom dimension”¹⁸. The State has also the responsibility to protect, respect and fulfill the “social dimension” of education (its accessibility and availability). The Right to Education is specifically mentioned in article 13 and 14 of the ICESCR. Article 13 contemplates education as a Universal Right, while article 14 gives lines of action and steps to be taken by States (progressive measure of education)¹⁹. I will present the mentioned articles and their respective General Comments in the following part.

1.2.1. Universal Right to education (art.13)

Comprehensive provisions on the Right to education are contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights. The Committee on Economic, Social and Cultural Rights, having the mandate of monitoring the

¹⁵ Nowak, Manfred, *Introduction into the International Human Rights Regime*, Leiden/Boston, Martinus Nijhoff Publishers, 2003, pp.14.

¹⁶ Uruguay ratified the ICESCR in January 1976, followed by Argentina in November 1986, Brazil in April 1992 and Paraguay in September 1992.

¹⁷ ICESCR art. 13(3) and 13(4).

¹⁸ ICESCR, art. 13(2) and art.14.

¹⁹ ICESCR, art.14.

implementation of ICESCR, elaborated General Comment No.13 (Article 13) on the right to education.

This General Comment refers to several standard-setting instruments and points out the obligations of the State.

It emphasises that the right to education, like all human rights, imposes three levels of obligations on States parties: the obligation to respect, the obligation to protect and the obligation to fulfill the right to education.

In turn, the obligation to fulfill incorporates both: an obligation to facilitate and an obligation to provide education.

State parties have immediate obligations in relation to the right to education, such as “guaranteeing” that the right “will be exercised without discrimination of any kind”²⁰ and the obligation “to take steps”²¹ towards the full realisation of article 13. Such steps must be “deliberate, concrete and targeted” towards the full realisation of the right to education.

The realisation of the right to education over time, that is “progressively”, should not be interpreted as depriving States parties’ obligations of all meaningful content. Progressive realisation means that State parties have a specific and continuing obligation “to move as expeditiously and effectively as possible” towards the full realisation of article 13.

According to article 13 (2), States have the obligations to respect, protect and fulfill each of the “essential features” - Availability, Accessibility, Acceptability and Adaptability²²- of the right to education. I will try to briefly point out the essential features of the so called “four A scheme” mentioned in the general comments of the right to education as follows:

²⁰ ICESCR, art. 2 (2).

²¹ ICESCR, art. 2 (1).

²² Coomans, Fons and Hallo de Wolf, Antenor, *Privatisation of education and the right to education*, in De Feyter, Koen and Gómez Felipe (eds.), *Privatisation and Human Rights*, Oxford, Intersentia, 2005, pp. 233-237.

A State must respect the Availability²³ of “compulsory and available free to all”²⁴ education by the functioning of education institutions and Programs available “in sufficient quantity within the jurisdiction of the State party”. The Availability of education expressed in the general comments goes further pointing at the infrastructural and quality requirements such as “sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials... library, computer facilities and information technology”.

The State must protect the Accessibility²⁵ of education by ensuring that educational institutions and programs are available physically and economically, as well as ensuring that there is safe physical reach and affordable to all in a non-discriminatory basis. Accessibility has then three overlapping dimensions: non-discrimination, physical accessibility and economic accessibility. States must fulfill the Acceptability of education by taking positive measures to ensure that education is “accessible to all, especially the most vulnerable groups”, it must also ensure appropriate and good quality education for all. Whereas primary education shall be available "free to all", States parties are required to progressively introduce free secondary and higher education²⁶.

The State must provide the Acceptability²⁷ of education ensuring the form and substance of education (including curricula and teaching methods). Education must be culturally appropriate for minorities and indigenous people, ensure pluralist Curricula (non-interference of the State on beliefs and philosophical convictions). Education must be of good quality (minimum standards)

The State must provide the Adaptability²⁸ of education by designing and providing flexible curricula reflecting the contemporary needs of students in changing societies and communities. Adaptability of education also means that education must “respond to the needs of students within their diverse social and cultural settings”.

²³ General Comment No. 13 of the Committee on Economic, Social and Cultural Rights, E/C.12/1999/10, 8/12/1999, paragraph 6(a).

²⁴ ICESCR, Art. 13(1.a).

²⁵ General Comment No. 13 of the Committee on Economic, Social and Cultural Rights, E/C.12/1999/10, 8/12/1999, paragraph 6(b).

²⁶ *Idem*, paragraph 6.

²⁷ *Idem*, paragraph 6(c).

²⁸ *Idem*, paragraph 6(d).

1.2.2. Progressive measures and Plans of action for primary education (art.14)

The International Covenant on Economic, Social and Cultural Rights has also elaborated the General Comment No. 11 on Article 14 (concerning primary education).

Article 14 focuses in the compulsory primary education (Availability) parallel to the gender equality (Accessibility). The general comments go further saying that “It should be emphasised, however, that the education offered must be adequate in quality, relevant to the child and must promote the realisation of the child's other rights”²⁹ (Adaptability).

The general comment to article 14 also refers to the free, compulsory primary education for all as an unequivocal requirement. In the same perspective “the right is expressly formulated so as to ensure the availability of primary education without charge to the child, parents or guardians. Fees imposed by the Government, the local authorities or the school, and other direct costs, constitute disincentives to the enjoyment of the right and may jeopardise its realisation”³⁰.

According to UNESCO³¹, these two last points (quality and free of charge) are specially important in the South American region, where an appropriate and qualified education is not accessible to vulnerable sectors of the society. Families are not encouraged to send their sons/daughters to school once they are more valuable and helpful at home or work so they can bring extra income to the family.

This General Comment emphasises the “clear and unequivocal obligation” of States under article 14 to provide education and its duty to present to the Committee a plan of action drawn up along the lines specified in paragraph 8 below.

“The State party is required to adopt a plan of action within two years. This must be interpreted as meaning within two years of the Covenant's entry into force of the State concerned, or within two years of a subsequent change in circumstances which has led to the non-observance of the relevant obligation. This obligation is a continuing one and States parties to which the provision is relevant by virtue of the prevailing situation are

²⁹ General Comment 11 of the Committee on Economic, Social and Cultural Rights Plans of action for primary education (art.14), Paragraph 6, Geneva, 10/05/99.

³⁰ Idem, Paragraph 7.

³¹ UNESCO, *Situación Educativa de América Latina y el Caribe 1980-2000*, UNESCO Santiago, Santiago de Chile, 2001.

not absolved from the obligation as a result of their past failure to act within the two-year limit. The plan must cover all of the actions, which are necessary in order to secure each of the requisite component parts of the right and must be sufficiently detailed so as to ensure the comprehensive realisation of the right. Participation of all sections of civil society in the drawing up of the plan is vital and some means of periodically reviewing progress and ensuring accountability are essential. Without those elements, the significance of the article would be undermined.”³²

External factors may interfere with States parties in the fulfilment of their obligation to provide a plan of action. These difficulties, however, cannot relieve States parties of their obligation to adopt and submit a plan of action to the Committee, as provided for in article 14 of the Covenant. The State has the obligation to adopt the plan of action and cannot “escape the unequivocal obligation to adopt on the grounds that the necessary resources are not available”³³.

Concerning the progressive implementation of education, the General comment emphasises that the plan must include progressive measures underscoring both “the importance and the relative inflexibility of the obligation in question”.³⁴

Article 14 also points at the progressive implementation of education and the support of the UN specialised organisations³⁵ (ILO, UNICEF, UNESCO, WB, and IMF).

As mentioned in the beginning of this Chapter, all MERCOSUR States are signatory parts of the Covenant. Therefore, they all have the responsibility to PROTECT, RESPECT AND FULFILL the right to education in all its forms and shall implement the interrelated and essential features - “four A scheme”.

1.3. Other international instruments containing the right to education

In this part of the chapter I would like to draw the attention to the other international instruments containing the right to education.

³² General Comment 11 of the Committee on Economic, Social and Cultural Rights Plans of action for primary education (art.14), Paragraph 8, Geneva, 10/05/99.

³³ Idem, Paragraph 9.

³⁴ Idem, Paragraph 10.

³⁵ Idem, Paragraph 11.

1.3.1. International Covenant on Civil and Political Rights (ICCPR)

Article 18(4) of the ICCPR stresses the States responsibility to respect “the liberty of parents” and “ensure the religious and moral education of their children in conformity with their own convictions” (Acceptability). This is already contained in the ICESCR in a broader and more detailed description concerning the Right to education. According to the ICCPR, the State has the obligation to Respect the right to education - it is its negative obligation of non-interference in private matters.

1.3.2. International Convention on the Elimination of All Forms of Racial Discrimination (CERD)³⁶

According to article 5, States Parties undertake the obligation to “prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone” to “education and training”³⁷.

Article 7 refers to the positive obligation of the State “to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination”.

1.3.3. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)³⁸

CEDAW has a detailed article dedicated to the right to education. The entire article 10 of the convention is about the elimination of gender discrimination and the equal opportunities in education for men and women. This equality shall be “ensured in pre-

³⁶ International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter CERD)- Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 - entry into force 4 January 1969.

³⁷ Idem. Art. 5 (d.v).

³⁸ Convention on the Elimination of All Forms of Discrimination against Women (hereinafter CEDAW) adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 - entry into force 3 September 1981.

school, general, technical, professional and higher technical education, as well as in all types of vocational training”³⁹.

The importance of reformulating any educational influence on gender based discrimination is also stressed in this Convention.

Article 14(d) specifies the obligation of States towards the education of women in rural areas.

1.3.4. Convention on the Rights of the Child (CRC)⁴⁰

The most complete recognition of the right to education is in the Convention on the Rights of the Child, mentioned in its articles 23, 28, 29 and 30. The CRC details the State responsibilities towards the “right of the child to education on the basis of equal opportunity”⁴¹. States must provide “primary education compulsory and available free to all”. Different forms of secondary education must be “available and accessible to every child” and “higher education accessible to all on the basis of capacity”⁴² (meaning equal opportunities for students).

Article 28(3) especially calls the attention of developing countries to “promote and encourage international cooperation in particular with a view to contributing to the elimination of ignorance and illiteracy”.

Article 29 of the CRC stresses two important targets: “the education of the child shall target the child's personality, talents, mental and physical abilities to their fullest potential”, as well as the “development of respect for the child's parents own cultural identity, language and values”⁴³.

³⁹ CEDAW, art. 10(a).

⁴⁰ Convention on the Rights of the Child (hereinafter CRC) adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 - entry into force 2 September 1990

⁴¹ Idem. Art. 28(1).

⁴² Idem. Art.28(1)

⁴³ Idem. Art.29(1).

Article 29 goes further stating that “no part of the article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions”⁴⁴.

1.3.5. UNESCO conventions and Programmes

The importance of Education has been highlighted in many international conferences and included in UN Goals such as the Millennium Development Goals⁴⁵, Dakar World Education Forum 2000: Education for All and the recent Decade of Education. The United Nations Educational, Scientific and Cultural Organisation (UNESCO) is the specialised agency of the United Nations and was founded on 16 November 1945.

Numerous conventions, Recommendations and Programs are issued by the United Nations specialised agency for Education.

The first Convention issued by UNESCO⁴⁶ in the education area is the “Convention against the discrimination in Education”⁴⁷. Followed by the “Protocol Instituting a Conciliation and Good offices Commission to be responsible for seeking the settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education”⁴⁸.

After this important step against discrimination in Education, the recommendation concerning Education for International Understanding, Co-operation, Peace and Education relating to Human Rights and Fundamental Freedoms was issued on 19th of November 1974.

⁴⁴ Idem. Art.29(2).

⁴⁵ UN Millennium Project 2005, *Investing in Development: A practical Plan to Achieve the Millennium Development Goals*, NY, UN, 2005. and UN Secretary-General report, *In larger Freedom: towards development, security and human rights for all*, 59th session of 21st march 2005, A/59/2005, NY, 2005.

⁴⁶ United Nations Educational, Scientific and Cultural Organisation (hereinafter UNESCO) founded on 16 November 1945.

⁴⁷ Adopted by the General Conference of the UNESCO on 14 December 1960

⁴⁸ Adopted by the General Conference of the UNESCO on 10 December 1962.

An interesting convention is the “Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Latin America and the Caribbean” issued in Mexico City, on the 19th of July 1974. It is the first regional convention in education. In the following years, other regional conventions took place in the regional level.

UNESCO also elaborated an important Recommendation on the Development of Adult Education on the 26th of November 1976.

In December 2002, the United Nations General Assembly adopted the Resolution 57/254 on the United Nations Decade of Education for Sustainable Development (2005-2014) and UNESCO was designated as the lead agency for the promotion of the Decade.

The United Nations Literacy Decade - Education for All (2003-2012) – was launched at UN Headquarters on the 13th of February 2003. It is also spearheaded by UNESCO, as the lead agency for the Decade. "Literacy as Freedom" is the theme of the Decade.

Most recently, the United Nations’ Millennium Declaration, adopted in 2000, states that all children will be able to complete a full course of primary schooling by 2015 but makes no specific reference to its quality.

Likewise, another relevant instrument for education was the Dakar World Education Forum 2000: Education for All, specially stressing the non-discrimination of education on gender basis.

2. MERCOSUR AND HUMAN RIGHTS

2.1.Regional treaties

As we have seen, the Right to Education is included in many international Human Rights Instruments and States are the principal stakeholders of this right. There are also Regional Human Rights instruments that include the right to education. I will hereby present the main Human Rights instruments of the region, containing the right to education, reinforcing the commitment and obligations of the States towards education.

2.1.1. American Declaration on the Rights and Duties of Man

The American Declaration of the Rights and Duties of Man⁴⁹ (hereinafter the Declaration) was the world's first international human rights instrument of a general nature, predating the Universal Declaration of Human Rights by more than six months.

The Declaration was adopted by the Nations of the Americas at the Ninth International Conference of American States that took place in the city of Bogotá (Colombia), in May 1948. The same meeting adopted the Charter of the Organisation of American States (2.1.2.) and thereby created the OAS.

The Declaration is a catalogue of 27 Civil, Economic, Social and Cultural Rights and ten duties.

Although it is a declaration and not a legally binding treaty, the jurisprudence of both the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights holds it to be a source of binding international obligations for the OAS's member States. According to Nowak, “today, the Declaration is considered the normative instrument giving authoritative interpretation” of the “fundamental rights of the individual”⁵⁰.

⁴⁹ OAS Resolution XXX of 2 May 1948, approved by the Ninth International Conference of American States, Bogotá, Colombia.

⁵⁰ Article 3(1) of the OAS Charter.

While largely superseded in the current practice of the inter-American human rights system by the more elaborate provisions of the American Convention on Human Rights (entered into force the 18th of July 1978).

Education is included in article 12 of the Declaration as follows: “every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity”.

Likewise, every person has the right to an education that will “prepare him/her to attain a decent life, to raise his/her standard of living, and to be a useful member of society”.

According to article 13, the right to education “includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilise the resources that the State or the community is in a position to provide”.

Article 13 also specifies that “every person has the right to receive, free, at least a primary education”.

2.1.2. Charter of the Organization of American States

The OAS Charter was signed in Bogotá in 1948 and entered into force the 13th of December 1951⁵¹.

Right to education is included in 9 articles of the Charter⁵². Article 3(n) starts by pointing at the fact that “education of peoples should be directed toward justice, freedom, and peace”.

According to article 30, “the Member States, inspired by the principles of Inter - American solidarity and cooperation, pledge themselves to a united effort to ensure international social justice in their relations and integral development for their peoples. Integral development encompasses the economic, social, educational, cultural,

⁵¹ The OAS Charter was amended by the Protocol of Buenos Aires in 1967, by the Protocol of Cartagena de Indias in 1985, by the Protocol of Washington in 1992, and by the Protocol of Managua in 1993.

⁵² Charter of the OAS, articles 3, 30, 31, 34, 47, 48, 49, 50 and 95.

scientific, and technological fields through which the goals that each country sets for accomplishing it should be achieved”.

The expression “economic, social, educational, cultural, scientific, and technological fields” is constantly repeated in the mentioned articles.

Rapid eradication of illiteracy and expansion of educational opportunities for all is one of the progressive measures that States must achieve⁵³

Further on, “Member States will give primary importance within their development plans to the encouragement of education... oriented toward the overall improvement of the individual, and as a foundation for democracy, social justice, and progress”.⁵⁴ States must “cooperate with one another to meet their educational needs”⁵⁵

The OAS Charter also includes the importance of the incorporation of the right to education in the constitutional provisions. Including “Elementary education, compulsory for children of school age”⁵⁶, “Middle-level education extended progressively, with a view to social improvement”⁵⁷ and “Higher education available for all”⁵⁸

Emphasis is given to the importance of eradication of illiteracy⁵⁹ as well as the improvement and extension of education to cover all levels⁶⁰.

2.1.3. American Convention on Human Rights

The American Convention on Human Rights (also known as the Pact of San José) was adopted the Inter-American Specialised Conference on Human Rights by that took place in the city of San José (Costa Rica), in 22 November 1969. It came into force after the eleventh instrument of ratification was deposited on the 18th of July 1978.

⁵³ Idem, article 34(h).

⁵⁴ Idem, article 47.

⁵⁵ Idem, article 48.

⁵⁶ Charter of the OAS, article 49(a).

⁵⁷ Idem, article 49(b).

⁵⁸ Idem, article 49(c).

⁵⁹ Idem, article 50.

⁶⁰ Idem, article 95.c.2.

The responsible bodies for overseeing compliance with the Convention are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, both of which are organs of the Organisation of American States (OAS).

San José Convention refers to education in a broad way as one of the rights to be respected among the Economic Social and Cultural standards. “The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realisation of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organisation of American States as amended by the Protocol of Buenos Aires”⁶¹.

2.1.4. Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural rights "Protocol of San Salvador"

In the ensuing years, the States parties to the American Convention supplemented its provisions with two additional protocols.

The first – the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (more commonly known as the "Protocol of San Salvador") – was opened for signature in the city of San Salvador on the 17th of November 1988 and entered into force on the 16th of November, 1999. It represented an attempt to take the inter-American human rights system to a higher level by enshrining the protection of the second-generation rights. The protocol's provisions cover areas such as the right to work, the right to health, the right to food, and the right to education. It came into force on the 16th of November 1999.

Article 13 of the Additional Protocol is exclusively dedicated to the right to education. The Protocol of San Salvador sets forth the right to education and specifies that “everyone has the right to education”⁶². It also specifies that "education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all

⁶¹ American Convention of Human Rights, art.26.

⁶² Protocol of San Salvador, art. 13(1).

nations and all racial, ethnic or religious groups".⁶³ Further on, the Protocol stresses that primary education must be "compulsory and accessible to all without cost"⁶⁴. Secondary education should be made generally available and accessible to all by the progressive introduction of free education. Finally, higher education should be made equally accessible to all, on the basis of individual capacity.

The Protocol also affirms the right of parents to select the type of education of their children and the right of everyone to establish educational institutions in accordance with domestic law⁶⁵.

2.1.5. Inter-American Convention on the prevention, punishment and eradication of violence against women "Convention of Belem do Para"

On the 9th of June 1994, in the city of Belem do Pará (Brazil); the Organisation of American States (OAS) adopted the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (also known as the Convention of Belem do Pará). This international instrument recognises all gender-based violence as an abuse of human rights, constituting the central piece of legislation on gender violence in Latin America and the Caribbean. This Convention provides an individual right of petition and a right for non-governmental organisations to lodge complaints with the Inter-American Commission of Human Rights.

Furthermore, the Declaration on the Elimination of Violence against Women adopted by all States stipulates in Article 4 that "States should exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons." Under the Convention, the Inter-American Commission of Women has the responsibility to take positive measures to advance implementation of Belem do Para while the Inter-American Commission of Human Rights (IACHR) has the power to receive complaints against States who ratify it⁶⁶.

⁶³ Idem, article 13(2).

⁶⁴ Idem, article. 13(3).

⁶⁵ Idem, article. 13(4).

⁶⁶ Inter-American Convention to Prevent, Punish and Eradicate Violence against Women, art.12.

Education is included in its article 8, specifying that States must undertake progressively specific measures, including programs to modify social and cultural patterns of conduct of men and women. It also includes the development of formal and informal educational programs appropriate to every level of the educational process. Finally, it stresses the importance to promote and support governmental and private sector of education designed to raise the awareness of the public with respect to the problems of and remedies for violence against women⁶⁷.

2.2.MERCOSUR and Human Rights

In this chapter, I tried to point at the States responsibilities of the region as signatory parts of international HR treaties as well as Regional instruments. We also highlighted their responsibility to integrate effective Human Rights protection mechanisms for their citizens, concerning the right to education.

MERCOSUR member States ratified all the UN instruments (1.2.), as well as incorporated the legal framework of the right to education into national constitutions (table 1). Mercosur Member States also ratified all the regional instruments containing the right to education (table 2). Therefore, Mercosur States are bound to apply the right to education separately as well as in a regional block. Legislation on education is also part of their legal framework but I will not present it in the present study.

Table 1: International Instruments Ratifications

	CESCR	CCPR ratificatio	CERD ratification	CEDAW ratification	CRC ratification	Constitution Date of adoption	Articles
Argentina	08/11/86	08/08/1986	02/08/1968	15/07/1985	04/12/1990	22/08/1994	Art.14 & 75
Brazil	24/01/1992	24/01/1992	27/03/1968	01/02/1984	24/09/1990	5/10/1988	6, 20, 206,207, 208, 210, 211,213, 214
Paraguay	10/06/1992	10/06/1992	17/09/2003	06/04/1987	25/09/1990	20/06/1992	66, 73, 74. 75, 76, 77,78, 79, 80.
Uruguay	01/04/1970	01/04/1970	30/0//1978	09/10/91	20/11/90	27/11/1966	68, 69, 70, 71

Source: <http://www.right-to-education.org/> (special Rapporteur on the right to education to the UN)

⁶⁷ Convention to Prevent, Punish and Eradicate Violence against Women, art.8.

Table 2: Regional Instruments Ratifications

	OAS Charter	American Convention on Human Rights	Acceptance Of The Jurisdiction Of The Court	Protocol of San Salvador	Convention of Belem do Para
Argentina	04/10/56	05/09/1984	05/09/1984	23/10/2003	5 July 1996
Brazil	03/13/50	25/09/1992	10/12/1998	21/08/1996	27 November 1995
Paraguay	05/30/50	24/10/1989	26/03/1996	03/06/1997	18 October 1995
Uruguay	09/01/55	19/04/1985	19/04/1985	02/04/1996	2 April 1996

Source : <http://www.cidh.oas.org/basic.htm> (OAS instruments Ratifications)

I will now present what Mercosur is to be able to analyze further on the regional efforts made towards the right to education.

2.3.Mercosur in the context of Regional Integrations

It is important to contextualize the creation of MERCOSUR in the region in order to have a deeper understanding of its origin and its objectives.

Regional Integration is not a new concept in South America. Indeed, Simón Bolívar - known as El Libertador ("The Liberator"), directly responsible for the independence of Venezuela, Colombia, Ecuador, Peru, and Bolivia in the early years of the 19th century - had the goal of creating a federation of Spanish American nations to ensure prosperity and security after independence. Since then, various regional integration attempts took place in the continent until the “modern” economical free trade integration is proposed.

According to Johannes Heirman⁶⁸, the impulse of the regional integration process of Mercosur is due to particular conditions that occurred almost simultaneously.

South American continent re-started the attempts of regional integration after a long period of Military regimes with serious violations of Human Rights and freedoms. Countries were passing through a re-democratisation process and one of the main objectives of MERCOSUR was contemplated as a way to strengthen their compromise towards the consolidation and maintenance of their new Democracies. The compromise was explicitly expressed by the Presidents of the member States, Chile and Bolivia in

⁶⁸ Heirman, Johannes, *Los efectos de la integración sobre el desarrollo en América Latina*, in Javier Beltrán de Heredia y Cerain (eds.), *Educación y Desarrollo, América Latina ante el siglo XXI: problemas y perspectivas*, Bilbao, Universidad de Deusto, 2000, p.192.

the Leñas Presidential Declaration⁶⁹, Ushuaia Protocol of the Democratic compromise⁷⁰, the Presidential Declaration about the Democratic compromise in MERCOSUR⁷¹ and its additional Protocol.

The regional integration model contemplated in MERCOSUR is completely different from the previous decade experience of conservative economic models. The failure of the former economical models resulted in an economical crisis with terrible impacts that MERCOSUR countries needed to overcome. Regional Integration opens the economies to international and regional competition and gives priority to exportation rather than importation.

During the 90's, along with the re-democratisation of most South American countries, multilateral integration attempts gained a predominant place in the economic development model of the region.

Many regional agreements coexist together, such as the Latin American Integration Association⁷² (ALADI), the Andinean Community⁷³ (AC), the group of three⁷⁴ (G3), the Central American Common Market⁷⁵ (CACM), the Caribbean Community and

⁶⁹ *Declaración Presidencial de las Leñas*, 27th jun 1992, Las Leñas, Argentina.

⁷⁰ *Protocolo de Ushuaia sobre compromiso Democrático en el Mercosur, la Republica de Bolivia y la republica de Chile*, 24th July 1998 Ushuaia, Argentina.

⁷¹ X Presidential Summit of MERCOSUR, signed on the 25th Jun 1996, San Luis, Argentina.

⁷² *Latin American Integration Association*, Created by the Montevideo Treaty, signed on August 12, 1980, Montevideo, Uruguay. It is a Latin American trade integration association, based in Montevideo, composed by are Argentina, Bolivia, Brazil, Cuba, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela.

⁷³ The *Andinean Community of Nations* is a trade bloc composed by Bolivia, Colombia, Ecuador, Peru and Venezuela. This trade bloc was formerly called the Andean Pact and started with the signing of the *Cartagena Agreement* in 1969. Mercosur and the Andinean Community began negotiations in 1999 towards a merger of the two groupings, with the potential of creating a South American Free Trade Area (SAFTA). On December 8, 2004 it was announced the merger would be called the *South American Community of Nations*, patterned after the European Union.

⁷⁴ The G-3 is a free trade agreement between Colombia, Mexico and Venezuela that came into effect on January 1, 1995.

⁷⁵ *The Central American Common Market* is an economic trade organization between Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica. It was established on December 13, 1960 in the Managua conference.

Common Market⁷⁶ (CARICOM) and of course the Southern Common Market (MERCOSUR)⁷⁷.

In the global economical context, integration schemes became attractive for investment. The phenomenon of this kind of economical integration is known as “investment creation”. Indeed, the increase of the international investment flow in MERCOSUR is quickly perceived as well as the increase of the investment between the countries of the region.

According to CEPAL⁷⁸ “Before the creation of the existent commercial treaty, less than 20 Brazilian companies had branch offices in Argentina, today there are more than 450”.

In another report, CEPAL⁷⁹ points the fact that, in the last decade, the region exhibited one of the highest merchandise market growing rates at planetary level, as well as a profound modification in the composition of the exportations.

2.4.MERCOSUR

2.4.1. What is MERCOSUR?

MERCOSUR⁸⁰ is a trading zone composed by Brazil, Argentina, Uruguay and Paraguay, founded in March 1991 by the Treaty of Asunción. Its purpose are the following:

- To promote free trade and movement of goods, services and persons, with the elimination of customs rights
- To adopt a common external tariff (TEC) and common trade policy,

⁷⁶ The *Caribbean Community and Common Market* was established by the Treaty of Chaguaramas which came into effect on August 1, 1973. The first four signatories were Barbados, Jamaica, Guyana and Trinidad and Tobago. Today it has 15 Member States.

⁷⁷ Heirman, Johannes, *Los efectos de la integración sobre el desarrollo en América Latina*, in Javier Beltrán de Heredia y Cerain (eds.), *Educación y Desarrollo, América Latina ante el siglo XXI: problemas y perspectivas*, Bilbao, Universidad de Deusto, 2000, p.198.

⁷⁸ CEPAL, *La inversión extranjera en América Latina y el Caribe*, informe 1996, LC/G.1958-P, Santiago de Chile, 1997.

⁷⁹ CEPAL, *Panorama de la Inserción Internacional de América Latina y el Caribe 2001-2002*, Santiago, Chile, 2003.

⁸⁰ The name Mercosur is formed from the Spanish phrase *Mercado Común del Sur* which means "Southern Common Market".

- To coordinate the macroeconomic and sectorial policies⁸¹ and finally
- To harmonise the legislation in the pertinent areas in order to ensure the strength of the integration process.

Bolivia, Chile, Colombia, Ecuador, Peru, and Venezuela are associate member States.

In 1995, The Protocol of Ouro Preto established the institutional structure of MERCOSUR with International Juridical personality (2.4.2.). The State parties initiated its consolidation where the free trade zone and the tariff union were contemplated as a first step to strengthen the economy in the region in order to be inserted more powerfully at the international economic level.

According to CEPAL⁸², it is an area with a very high economical production considering it is a new regional attempt that can be compared with few areas of the world at their young stage (NAFTA and EU). The region represents more than a third of the South American Continent Gross Domestic Product (GDP) and 4% of the global GDP. To illustrate the dimension of its economy, MERCOSUR's economical space consists of 200 million habitants; an area of twelve million square kilometres and a global GDP stipulated around 800.000 million Dollars.

As a result of the extension of its space, the dimensions of its economic trade Union, and the resent free passage of people (with low basic salaries), the foreign and regional investments are attracted. Opening economic borders implies direct effects to the population. As a consequence, the next step must be taken according to the common internal challenges, such as the strength of the social dimension of Mercosur and the Human Development of its population in a long-term perspective. This effort must be done in order to build a stronger economy and make the continent more and more interesting for investment that will not affect the social sector. Right to education is affected in many ways (Chapter 3) but mostly, education must positively affect the trade union for its internal strength.

⁸¹ Treaty of Asunción, atr.15, 1991.

⁸² At www.cepal.org.

2.4.2. Mercosur Legal Personality

The integration process becomes a Trade Union from the Ouro Preto Summit (17/12/95) that gives a significant step towards the final objective: to consolidate a Common Market based on the European Union model.

Since the Ouro Preto Summit, MERCOSUR counts on competent institutions that work in order to deepen the integration process and the joint negotiations with other countries or economical blocks (thanks to the weight and advantages of the regional economical space).

The efforts made in the MERCOSUR institutional negotiations during the transitional period are then reflected in the juridical instrument of the “Protocol of Ouro Preto”.

The Protocol of Ouro Preto – simplified denomination for “Additional Protocol to the Asunción Agreement about the structure of Mercosur” – was concluded during the Diplomatic conference that occurred in the city of Brasilia (Brazil). The main objective of the Ouro Preto Protocol consists in establishing MERCOSUR’s institutional structure, its decision-making bodies, the specific attributions of each one of them, its decision-making system and the controversies solution system (or dispute settlement) between the member States of the Treaty of Asunción.

It is important to point out that that the juridical nature of MERCOSUR’s bodies and its decision-making system has an intergovernmental structure established by the Treaty of Asunción. This means that States negotiate between each-other once there are no supranational bodies. MERCOSUR’s decisions are always taken by consensus; there is not a vote system.

The Ouro Preto Protocol defines the main following institutional aspects:

- Juridical nature of MERCOSUR bodies (intergovernmental)
- Decision-making system: maintaining the consensual decision-making system used by all MERCOSUR bodies.
- MERCOSUR bodies: the following bodies were created (or maintained) in the institutional structure of MERCOSUR:

→ COMMON MARKET COUNCIL (CMC)⁸³: MERCOSUR's higher political body composed by the Ministers of Foreign Affairs and Ministers of Economy of the State parties. Chiefs of State participate at the meeting at least once a year. Its role is to make sure that the objectives and deadlines are accomplished. The Council elaborates Decisions that are compulsory for all Member States. It has the competence to create additional Ministerial meetings and adopt their treaties. Up to our days, there are 9 Ministerial Meetings in different sectors (including the Education Sector meetings).

→ COMMON MARKET GROUP (CMG): executive body coordinated by representatives of the Ministries of Foreign Affairs and Economy and by the Central Bank of each member State. It elaborates resolutions that are compulsory for all Member States.

→ TRADE COMMISSION: monitoring body of the Trade union implementation.

→ JOINT PARLIAMENTARY COMMISSION: Representative body of the National Parliaments in the integration process. It is composed by lawyers in order to accelerate the internal processes and make sure the norms are implemented.

→ ECONOMIC AND SOCIAL CONSULTIVE FORUM⁸⁴: Economic and Social sectors representation body of the member states. It has the participation of the private sector of Mercosur and issues recommendations to the Common Market Group.

→ ADMINISTRATIVE SECRETARIAT: Administrative support

The juridical personality of International MERCOSUR Law is recognised, this means that the block incorporates rights subjected to obligations as a different entity from the integrating countries.

⁸³ Protocolo Adicional ao Tratado de Assunção sobre a Estrutura Institucional do Mercosul, Chapter I, Ouro Preto, 17/12/1994.

⁸⁴ Resolution N° 68/96

2.4.3. Following the European Model?

Mercosur is a recent process, with many gaps to be completed, but considering its age, it is a very dynamic young process.

Mercosur norm incorporation system is different from the one of the European Union, since it works strictly in the international Law context (there is no Communitarian law). There is no supranational institution and the decision-making processes are different (2.4.2.).

Similarly to the EU, the general tendency of MERCOSUR is the harmonisation of the judicial orders.

The relation between the MERCOSUR norms and the internal Law of the countries involved is an obligation. Nevertheless, it is done through incorporation methods defined by the countries. Consequently, MERCOSUR norms do not have a direct application effect.

2.4.4. European and Inter American System of Human Rights

As we will see further on, Human Rights are being considered by Mercosur since its creation. The importance of the subject is growing considerably as it is being currently discussed among the Ministries of Justice of the State parties in special meetings (it is very difficult to have the information about these meetings due to the lack of transparency of the ongoing negotiations).

I will now make a brief comparison between the European and the Inter-American regional Human Rights systems.

Both regional Human Rights protection systems have important differences as well as some similarities: they both interact with the United Nations System and their common objective is to monitor, complement and bring effective mechanisms to achieve Human Rights in the region and therefore contribute for its protection at the global level.

The European System of Human Rights is based in the European Convention of Human Rights (entered into force in 1953). It is the most advanced Regional Human Rights System due to its juridical nature and the creation of the European Court of Human Rights (1st of November 1998).

The effectiveness of this instrument is reflected in the efforts made to integrate Human Rights as part of European integration Process. It is reflected in the ratification of the European Convention of Human Rights and the compulsory recognition of its jurisdiction as a precondition to be part of the European Community. The non-compliance of the country to the Court's decision can amount to the exclusion of the country from the European Community.

The agreement of member States to construct a supranational Court able to disagree with a national juridical decision and the common agreement to apply the court's decisions is a very important step in the international law. The nature of fundamental human rights in the European System is beyond national laws and practices (supranational).

The European Court decisions have demonstrated a very effective system to harmonise the national legislations concerning Human Rights.

We must highlight the fact that candidates to EU admission have to pass through a transitional process in order to harmonise their national legislation with the one established by the Regional Union, including their adherence and compliance to the EU Convention of Human Rights.

On the other hand, according to Nowak⁸⁵, the OAS system of Human Rights is frequently compared to the Council of Europe, mainly in relation to the European Convention on Human Rights. This comparison is due to many similarities expressed above such as the important role of Human Rights and their protection based on Regional Conventions (essentially limited to civil and political rights) and enforced by individual and inter-State complaints through a Regional Human Rights Commission and regional court of human rights.

⁸⁵ Nowak, Manfred, *Introduction into the International Human Rights Regime*, Leiden/Boston, Martinus Nijhoff Publishers, 2003, pp.189 -201.

Nevertheless the differences between these two Regional Systems are considerably important. In fact, one of the basis of the European regionalization is the democratic society and the rule of law. In turn, South America has had huge Human Rights violations during the military regimes and it is still facing high levels of poverty, violence, torture, etc. which makes a substantial difference of the challenges South America faces nowadays (mostly economical and social rights).

The Inter-American System of Human Rights protection is based in the American Declaration of Rights and Duties of Man (2.1.1.) and the American Convention of Human Rights, known as “San José Pact” (2.1.3.).

The protection Mechanisms of the American System of Human Rights are the Inter American Commission of Human Rights and the Inter-American Court of Human Rights. Any person may introduce an individual complaint to the Commission (inter-State complaints are also allowed). The following step is very long while many legal procedures take place before going to the Court. Financial compensations are normally agreed with the State party and the victim before going to the Court.

The Inter American Court has a consultative and judicial nature. By consultative functions, the court provides advises concerning the interpretation of the Convention, of other Human Rights Instruments and the compatibility between the national legislation and international instruments. In turn, the juridical competence of the Court has to be recognised by a ratification of Member States to the Inter American convention. Once the State ratifies the Declaration, it is bound to accomplish the court sentence.

Mercosur members are all State parties of the Inter American system of Human Rights; they also ratified its Convention (2.2.) and recognise the Court competence. Some analysts think that the duplication of human rights instruments at regional level (MERCOSUR) would be unnecessary.

Mercosur has made many efforts to include Human Rights in its regional provisions, such as the democratic charter (4.3). The ministers of justice as well as the ministers of internal affairs are making a joint effort to establish a mechanism targeting the harmonisation of legislations and the establishment of regional solidarity and cooperation.

2.4.5. South American Community of Nations

Mercosur has recently announced the new creation of the *South American Community of Nations*, patterned after the European Union, envisaging to be a continent-wide free trade zone that will unite two existing free-trade organisations—Mercosur and the Andean Community—eliminating tariffs for *non-sensitive products* by 2014 and *sensitive products* by 2019. Complete integration between these two trade blocs is expected by 2007. On the 8th of December 2004, presidents and representatives from twelve South American nations signed the *Cuzco Declaration*, a two-page statement of intentions, announcing the foundation of the South American Community.

Leaders announced their intention to model the new community after the European Union, including a common currency, parliament, and passport. According to Allan Wagner, Secretary General of the Andean Community, a complete union like the EU should be possible by 2019.

Efforts in education between the two blocs already started with the annexation of MERCOSUR to the Andres Bello educational agreement of the Andinean Community. But here again, we are talking about a Graduation and pos-graduation level and as we have seen, only a small portion of the population has access to it, provoking once and again the inequality game at a regional level.

3. MERCOSUR AND EDUCATION

3.1. The importance of education in the region

3.1.1. Education as a Development tool

The importance of education in the region can be seen from two perspectives: the first one is the benefits that education can bring to the Regional Integration, and the second one is what contributions can regional integration bring to a weak basic educational system.

Common basic problems are to be solved for a real development process in the region. These countries have a high level of poverty (or a very bad distribution of income, steering apart the minority elite from the majority with very low economic resources and less and less middle class). They also share common problems such as hunger, political instability (corruption), bad distribution of goods, high rates of violence, bad public basic educational system, and insufficient health assistance, among others.

Education serves several purposes in societies, the most important one being its role for social development and democratic empowerment. Education amounts to the general well being and economic competitiveness of societies, means of accumulating and sharing knowledge and cultural capital. As we have seen, societies and States are the main stakeholders of the right to education, but a Regional attempt willing to preserve a clear role in regulation as well as provision of quality education can empower the regional process in the long term. UNICEF has made a valuable contribution pointing at basic education as a fundamental basis for development, affirming that “decades of research have found an important link between the expansion of basic education and economic development.”⁸⁶

According to Amartya Sen⁸⁷, Education contributes directly to the freedom of a person. In his opinion, education is important to facilitate public discussion of social needs and encourage collective demands, increase the ability to resist oppression, to be politically organised, and to get a fairer system. Education also gives the opportunity to be inserted in a professional productive position and make further use of economic opportunities.

⁸⁶ UNICEF, *The State of the World's Children 2004*, at http://www.unicef.org/sowc04/15579_girls_positive_force.html

⁸⁷ Sen, Amartya, *Development as Freedom*, Oxford, Oxford University Press, 1999.

Education is already taken into account by some of regional Protocols we will see further on in this work (Chapter 5). Indeed, a reformulation of the geography and history classes contemplating the regional integration is already taking place and it will be very positive for the consolidation of a “popular” integration where the society participates and is aware of its functionality. It is a very positive effort. Unfortunately MERCOSUR is still in the “technical” or “political” level and its internal negotiations are not open to civil society. This measure is definitely important for the process, but a much deeper effort is to be done regarding education targets.

From a social perspective, priority must be given to a qualified education. The origin of poverty, misery, and social injustice at the local, national and regional level are not only due to poor resources, deficient production of technologies or the population growth. It is fundamentally due to the existence of a defective structure of values and policies. Without a proper education, the chain of poverty will never break in the member States, and therefore in the region.

3.1.2. MERCOSUR Education in numbers

According to MERCOSUR’s statistics⁸⁸, the average rate of education between the ages of 7 and 14 years old in the year 2000 was of 96%. This shows the positive effort of MERCOSUR’s member States towards the implementation of educational policies in order to increase the percentage of the schooling rates at these age range (with the exception of Paraguay - 90%).

Analysing the evolution of educational sector of MERCOSUR, between 1996 and 2000, shows that the bigger challenge for all member States is to provide access to education of the population between 15 and 17 years old. Access to education for this specific age sector improved 10 perceptual points between 1996 and the year 2000 (from 66% to 77%). Nevertheless, the rate is still very high and we must consider that this is exactly the age when a qualified education is important in order to access higher education and have access to most of the facilities given by Mercosur Protocols (5/6 target university studies).

⁸⁸ Sistema de Información y Comunicación del MERCOSUR Educativo, *Vitrina Estadística*, Montevideo, MERCOSUR, 2001, pp.38.

The illiteracy rate has importantly decreased since the 90's on, but in total numbers of the population, we are talking about millions again! Brazil's illiteracy rate in 2003 was 11,6% of its population⁸⁹ while Uruguay had only 2,2% of illiteracy. If we consider that the population of Brazil is of approximately 184 million people, the illiteracy rate (according to the governmental data) would affect 21 millions (only in Brazil)! This is twice the population of Belgium!

These gaps among countries must be seen as constructive in the regional integration process. Positive experiences in education (such as Uruguay) must be shared between member States in order to improve its access as much as possible.

Unfortunately, a lot remains to be done in the region. One of the difficulties I found doing my research is the lack of transparency and access to documents that could be of great value for the evaluation of the implementation of the educational measures. But the reformulation towards civil society information access is being discussed envisaging its gradual implementation. The lack of sources also is an indicator that education is not one of Mercosur's principal priorities.

3.1.3. Difference between education for all and qualified education for all

Even though Mercosur countries are overcoming the quantitative challenges related to the educational inclusion of great number of children, there are still serious and profound deficits in relation to the quality of education, at least in primary education.

According to UNESCO Youth Development report 2003⁹⁰, "several sources, agree on the fact that the education of youth lacks quality". A UNESCO/OECD research⁹¹, which assessed the competency levels of 15-year-old youth in 41 countries around the world in the area of reading, mathematics and science, ranks Brazil second to last. Also, in the Brazilian context (which is very different from the Uruguayan or Argentinean one),

⁸⁹ Brazilian Institute of Geography and Statistics - IBGE at www.ibge.gov.br.

⁹⁰ UNESCO, Youth Development Report 2003, Brasilia, UNESCO Brazil, 2004, p 83.

⁹¹ UNESCO/OECD, *Literacy skills for the world of tomorrow* – Further results from Pisa 2000. Paris, UNESCO, 2003.

another study by the INEP⁹² showed that 59% of the 4th grade students have extremely critical reading conditions.

Nevertheless, it is very difficult to measure the quality of education, and not every country has an evaluation system allowing trustful indicators of the education quality. Indeed, the statistics I just presented from the countries are the statistics given by States and do not necessarily bring the real dimension of the given education in the MERCOSUR countries.

Argentina and Uruguay have both a long history of efforts made towards a better-qualified education, while Brazil and Paraguay are the opposite. A sharing experience concerning quality education would be very valuable from the neighbour countries in this age frame, which, by the way, is fundamental for reaching higher education!

According to Werthein⁹³ during the 2nd meeting of the hemispheric educational quality forum, “quality education is a strategic value demanding a fast and innovative position of the educational systems”. In his opinion, quality of education must become a priority of the States: “There is a big distance between the discourse that values education and the mechanisms to construct a valuable education. Quality education is only possible with a policy that ensures stability of the investments in the area”. It is necessary to rethink the quality of education in Latin America and discuss alternative measures to confront one of the most difficult educational challenges: its quality.

In the same forum, Alice Abreu⁹⁴ mentioned the efforts made by the countries of the region to increase the access to education, but she highlighted that the quality of the offered education has to increase as well. Positive experiences of the neighbour countries can bring effective ways to increase its quality level.

A quality education implies many measures to be taken seriously into consideration such as the cultural diversity of the countries and the need to maintain cultural identity of the different groups (language, etc) within the education given.

⁹² Brazilian National Institute of Educational Studies and Research (INEP)

⁹³ Werthein, Jorge (UNESCO-Brazil representative) during his speech in the 2nd meeting of the hemispheric educational forum “Education quality”, Brasilia, 13 Jun 2005.

⁹⁴ Director of the Educational Science and Technology Department of the OAS.

Although the social matters (such as education) are not contemplated in the content of the treaty of Asunción, it is contemplated in its Preamble, “considering” that the economic integration “is a vital prerequisite for accelerating the regional processes of economic development with social justice”⁹⁵.

Defining the priority of putting efforts together to build a qualified basic education for all in the region would imply the access to subsequent middle education in order to have “equal access” to university and professional training. This is an effort *sine qua non* to walk towards a real development and an effective economical integration and sustainable human development⁹⁶.

3.2. Education Sector of Mercosur: Structure

There have been two structures in the educational sector of MERCOSUR. The first was the Mercosur education Ministerial Meeting that created the Coordinating Regional Commissions (CRC) as an assessor and as an implementation monitoring body of the agreements between the parts.

The construction of the second structure (Education Sector of MERCOSUR) implies a transition from the technical level to the strategic level in the implementation of MERCOSUR education sector actions. The aim of the transformation is to define strategies that orient and establish priorities in the actions of the sector in order to achieve visible results with real impact in the educational systems.

Almost a decade after the creation of the Education Ministerial Meeting, they finally decided to make a structural reform of Mercosur education sector. By the referred reform, the education sector envisages to bring a bigger visibility to the reached treaties (Chapter 5). Even though there has been a big effort towards establishing a bridge with education actors through seminars and meetings, the access of information (especially

⁹⁵ Preamble of the Treaty of Asunción

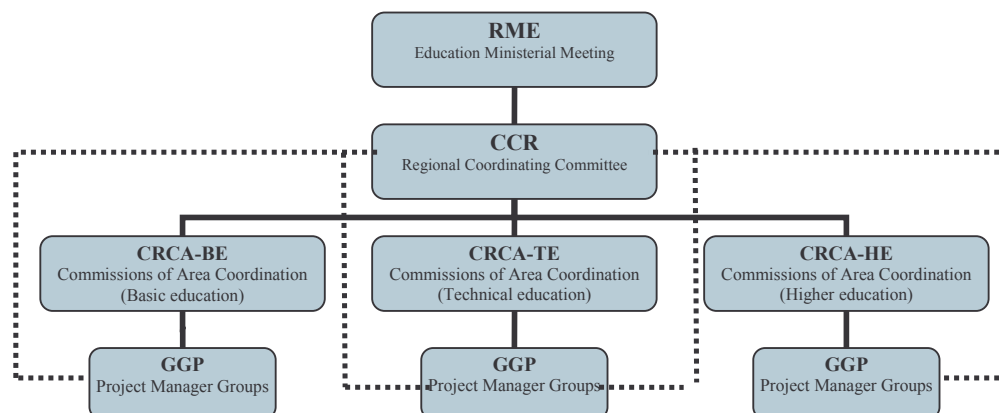
⁹⁶ By referring sustainable Human Development, I do not refer to environmental matters but to the conceptual idea of sustainability in the sense of the dependence theory, Countries have to make a sustainable society in order to strengthen their internal weakness, in this sense we can analyze in an other spectrum the sense given by the 1987 Brundtland Report, where sustainability is defined as: "*Meeting the needs of the present generation without compromising the ability of future generations to meet their needs.*"

concerning the project implementation and monitoring process) is still not available to civil society.

The Common Market Council (CMC) and the Common Market Group (CMG) decided to revise the structure of the dependent bodies of MERCOSUR (such as the former Education Ministers Meeting). As a consequence, it made a substantial reformulation of the organisational structure of its Education Sector (SEM)⁹⁷, trying to reach a better operational dimension and provide a faster process to the sector.

The new organisational structure of the SEM is divided in several bodies as we can see in table 1 bellow.

Table1: Organizational Structure of the SEM.



The Ministerial Education Meeting (RME⁹⁸) remains the highest decision making body of the SEM, responsible for the definition of educational policies to be implemented in order to support the regional integration process⁹⁹.

The Regional Coordinating Committee (CCR)¹⁰⁰ is the next responsible level, its duty is to propose integration and cooperation education policies, to advise the RME and

⁹⁷ Sector Educacional del MERCOSUR its new structure was approved by the CMC Decision CMC/DEC/15/2001 –Bolivia and Chile are part of it.

⁹⁸ From Spanish and Portuguese: “Reunion de Ministros de Educación”.

⁹⁹ CMC Decision CMC/Dec/7/1991.

¹⁰⁰ From Spanish and Portuguese: “Comite Coordinador Regional”.

coordinate the development of the SEM performance. The Committee must develop the following competencies:

- It is the link between the SEM and MERCOSUR institutional structure, specially concerning the communication of the Ministerial Meetings.
- It Establishes relations and articulation between the SEM and international cooperation/financing organisations, specialised agencies, institutions and actors of the civil society.
- It Proposes, approves and evaluates programs, projects and actions, establishing priorities and responsibilities, considering the transversally of their line of action.
- It Identifies the financing mechanisms as well as financial sources that will allow the implementation of the priority projects and programs of the SEM.
- It Creates Commissions of Area Coordination and Project Management Groups.

Three Regional Commissions of Area Coordination (CRCA) are created by educational levels: Basic Education, Technical Education and Higher Education. The Commissions are advisory bodies and their duty is to advise the CCR in the definition of SEM's strategic action and propose implementation mechanisms for the objectives and lines of action defined in the Plan of Action. CRCA has the duty to elaborate project profile, analyse its viability and present it to the CCR, which by its turn will have to identify the financial resources. The final elaboration of the Project will be in charge of the Management groups.

The Project Manager Groups (Grupos Gestores de Proyectos - GGP) are temporary *ad hoc* Groups established by the CCR, linked to the CRCA and CCR. GGP are responsible for the follow up and execution of the assigned project management.

The Communication and Information System (SIC) is responsible for the communication, information and cooperation of the SEM.

The new Structure of the Education Sector envisages a better performance and tries to diminish former weaknesses.

4. TRIENNIAL PLANS AND OTHER EFFORTS

4.1.Premises

According to the Ministers of education during the Brasilia Meeting in 1991 “One of the pillars of MERCOSUR integration process is the free circulation of people. That doesn’t only mean to incorporate facilities to pass the border with free customs, but also the enlargement of horizons in the work field. It is a real advantage to have the enlargement of the market space to offer a wider choice in the labour field. This purpose wouldn’t be possible without a system of studies revalidation and degrees recognition between the member States”.

On the 13th of December 1991, the Ministers of education signed a Protocol of intentions in the city of Brasilia (Brazil). The mentioned Protocol contains two parts: the first one is a Protocol of political intentions and the second one establishes the programs and actions to facilitate MERCOSUR objectives.

The declaration of intentions gives priority to the development of educational programmes in three fundamental areas:

- 1- Construction of a positive citizen conscience towards the integration process,
- 2- Qualification of human resources contributing to the development process, and
- 3- Harmonisation of the educational systems.

These areas are to become the three programmes of action of the first triennial plan (4.2.1.).

The Triennial Plan includes the need to create an Education Ministers Commission as the responsible body for the decision making in Mercosur education area. The Regional Coordinating Committee was also proposed in this document.

The CMC finally creates the Ministerial meeting of Education in 1991 through the Decision MERCOSUR/CMC/DEC N° 07/91.

In 1995, as predicted in the Treaty of Asunción, the definitive structure of MERCOSUR has been established. The Council, through Decision MERCOSUR/CMC/DEC N° 01/95, maintains the Meeting of Education Ministers as a permanent body.

Mercosur's characteristics and objectives have made a great effort to include the social dimension in its evolution process, but the question is, whether these efforts are in accordance with the needs of the region as well as with the international and regional instruments of Human Rights.

Mercosur has had 3 moments in its trajectory concerning the social dimension and more specifically the inclusion of educational matters in its permanent agenda. The transition phase, the consolidation phase and the implementation phase of the established objectives and targets. The transition phase regards the first steps taken in order to finally include permanently the Education Ministerial meeting. The consolidation phase regards the definition of Triennial Plans containing specific objectives, programmes and targets for the following three years. Finally, the implementation phase regards the implementation of the scheduled programmes.

4.2. Triennial Plans of the Educational Sector

The trajectory of the Mercosur Educational Sector has two phases defined by three Triennial Plans. The first phase envisages the consolidation of operative instruments and to overcome obstacles related to students' mobility across the region (from 1991 to 1995). The second phase targets the improvement of the implementation process (from 1995 up to present day). I will analyse the three triennial plans of the Mercosur Educational Sector in this part.

4.2.1. First Triennial Plan of MERCOSUR Educational Sector (1992-1995/1995-1998)

In 1992, the Council of the Common Market approved the "Triennial Plan for the Educational Sector of MERCOSUR (1992-1995)"¹⁰¹. Once this triennial plan expired, its actions were prorogued until 1998. Among other targets, the first triennial plan stresses that "the integration process of Mercosur urges to improve the scientific

¹⁰¹ *Triennial Plan for the Educational Sector of MERCOSUR*, created through the Decision MERCOSUR/CMC/DEC N° 07/92, at <http://www.sice.oas.org/trade/mrcsrs/decisions/dec1398p.asp>

professional training in order to update the labour force qualifications, as well as education programme development”. The same document stressed the importance of an alliance between the productive sector and the educational one.

The plan included the following three specific programmes:

Programme 1: To build a favourable citizen conscience regarding the integration process. Its objective is to promote civil society knowledge of the integration process and transmit the information in all educational levels. It also concerns Spanish and Portuguese teaching in different levels of the educational system.

Programme 2: To promote the qualification of Human Recourses that contribute to the economic development. According to this objective, the improvement of the economically active population’s education is one of the essential basis for the subsequent improvement of the economical production. By increasing education, there would be an increase in the quality of the goods and services produced in the region. As a result, there would also be an increase of competitive advantages offered by Mercosur products at the international level. This programme is to be implemented through the incorporation of “policies and strategies” by the State parties.

Programme 3: Harmonisation of the educational systems. Its objective is to receive proposals of juridical, administrative and academic mechanisms concerning the validation of educational systems in all Mercosur member States. It also pre-establishes the importance to build an information system gathering all relevant education data of the State parties.

The results of the first Triennial Plan are Stated in the introduction of the second triennial Plan¹⁰² as follows: “After 7 years of existence, the Educational Sector of MERCOSUR has made satisfactory progresses. (i) The approval of Protocols in order to facilitate the recognition and validation of studies and students free passage. (ii) the beginning of basic education curricula transformation in order to include the compulsory learning of the official languages of MERCOSUR and the introduction of history and geography teaching on a regional perspective, as well as the transformation of technical-Professional curricula targeting a competitive degree. (iii) Protocols

¹⁰² MERCOSUL/CMC/DEC. N° 13/98 term of reference paragraph 6 at <http://www.sice.oas.org/trade/mrcsrs/decisions/dec1398p.asp>

approved to facilitate the exchange of university teachers and the formation of human resources at post graduation level; and (iv) the elaboration of a university degree validation mechanism.

As a result of the first triennial Plan, the following protocols in the area of education were issued (I will analyse the protocols in detail in Chapter 5)

- Protocol of educational integration and recognition of certificates and degrees of primary and non- technical education - CMC Decision MERCOSUR/CMC/DEC N°04/94 (Annex 1)
- Protocol of educational integration and validation of certificates, degrees and titles of technical education - CMC Decision MERCOSUR/CMC/DEC N°07/95 (Annex 2)
- Protocol of educational integration for the continuation of post-graduation studies in Universities of the MERCOSUR member States - CMC Decision MERCOSUR/CMC/DEC N°04/95 (Annex 3)
- Protocol of educational integration for the formation of Human recourses at post-graduation level between MERCOSUR member States - CMC Decision MERCOSUR/CMC/DEC N°09/96 (Annex 5)

4.2.2. Second Triennial Plan of MERCOSUR Educational Sector (1998-2000)

The second triennial plan was approved and signed by the Ministers of Education during the Xth Meeting of MERCOSUR Education Ministers, through the approved document: “MERCOSUR 2000: Challenges and Goals for the Educational Sector”.

This preliminary document (MERCOSUR 2000) clearly shows the concern regarding the need of educational policies targeting quality of education in the region. Quality of education must be a high-priority goal and must be considered when defining regional programmes and projects. The document emphasises that “the new international order, the technological innovations and new productive systems structure multiply the necessity to update the educational system”.

The priority areas of MERCOSUR 2000 were:

- Educational renovation,
- Educational evaluation,
- Education and work,
- University cooperation and
- Information system

In 1998, The CMC approved the second Triennial Plan of Education (1998-2000)¹⁰³. According to the definition of the Triennial Plan 1998-2000, the Educational Sector of MERCOSUR (from Spanish and Portuguese, hereinafter SEM) must act according to 3 principles, 2 priority areas and subsequent strategies.

The three principles are:

1- Regional integration and respect of diversity: “MERCOSUR Educational Sector must contribute to achieve the objectives of MERCOSUR, according to the guidelines indicated by the Protocol of Intentions signed in December 1991. The SEM must recognise the sovereignty and the right to the self-determination of each member State, as well as the multiple cultural expressions in the region”¹⁰⁴;

2- Democratic Commitment: “MERCOSUR Educational Sector must contribute to create necessary conditions and include effective instrument for the promotion of the democratic values in the educational systems according to the "Democratic Commitment"¹⁰⁵ signed by member States¹⁰⁶.

3- Quality Education for all: “MERCOSUR Educational Sector must help to achieve sustainable qualified education in the region. In order to achieve this objective, regional cooperation as well as support of multilateral and international organisations is welcomed”¹⁰⁷.

¹⁰³ *Triennial Plan of Education (1998-2000)*, approved by the CMC Decision MERCOSUR/CMC/DEC N°13/98, at <http://www.cari1.org.ar/spanish/mercosur/decisiones/dec1998/dec1398.html>.

¹⁰⁴ *Idem*, Paragraph 8.

¹⁰⁵ *Declaración Presidencial sobre compromiso Democrático en el Mercosur*, signed by the chiefs of States during the *10th Presidential Summit of Mercosur* that took place in San Luis, Argentina on the 25th of Jun 1996.

¹⁰⁶ *Idem*, Paragraph 8.

¹⁰⁷ *Idem*, Paragraph 8.

The two high-priority areas for the development of the Educational Sector activities are:

1- To develop a regional identity, by stimulating the mutual knowledge and promoting cultural integration of the citizens.

2- To promote regional policies concerning the human resources qualification in the education area and the subsequent improvement of the education quality.

Within the established high-priority areas, the Triennial Plan adopts a set of strategies that must be considered in the development of activities, programs and projects:

- To coordinate the Educational Sector with other MERCOSUR bodies.
- To establish a link between MERCOSUR Educational Sector and the national education plans and processes of educational reform implemented by the States parties.
- To promote horizontal cooperation among the countries and institutions of the region as well as with other regional blocks.
- To take actions facilitating the mobility of students, academics and researchers as well as the exchange of experiences and labour practices.

According to the Brazilian Education Ministry¹⁰⁸ the main progresses of the second Triennial Plan of education are: (i) the elaboration and revision of Protocols targeting the recognition of studies and the regional academic mobility; (ii) the constitution and implementation of an Information and Communication System to disseminate the information produced by the education sector as well as to promote the communication among Mercosur actors, (iii) the design and implementation of an Experimental Mechanism of Graduation Degree Validation, (iv) the implementation of policies targeting history and geography teaching from a regional perspective, (v) and the implementation of pos-graduation regional programmes.

The main protocols and agreement issued during this period (Chapter 5), are the following:

¹⁰⁸ At www.mec.gov.br

- Agreement of university degree equivalence for the exercise of academic activities in Mercosur member States- CMC Decision MERCOSUR/CMC/DEC N°04/99 (Annex 6).
- Approval of Mercosur day - CMC Decision MERCOSUR/CMC/DEC N°02/00.
- Organic structure and plan of action 2001-2005 of the Mercosur educational sector, Bolivia and Chile - CMC Decision MERCOSUR/CMC/DEC N°15/01.

4.2.3. Third Triennial Plan of MERCOSUR Educational Sector (2001-2005)

In 2001, the Council of the Common Market approved the Third Triennial Plan for the Educational Sector of MERCOSUR¹⁰⁹

There are four challenges defined by the Third triennial plan of Mercosur Educational Sector: Basic education, technical education, higher education and the consolidation of the Information Communication System. In order to implement the mentioned targets, the SEM established a set of strategic actions for each one of them.

- 1- **Basic education** has two thematic sections defining the basic education projects. The first one concerns learning as a cultural process, by incorporating projects and activities for a better learning. This would imply the incorporation of new contextualised pedagogical practices such as the Spanish or Portuguese learning, history and geography of the region. In turn, the second thematic section concerns the construction of a quality education for all through a participative and contextualized teaching and management, having a priority attention to the vulnerable population. For this purpose, SME must stimulate the collaboration among schools, different actors and social institutions as well as incorporate new technologies in the scholar curricula.

¹⁰⁹ Organical structure and Plan of Action 2001-2005 of *the Educational Sector of MERCOSUR*, created through the Decision MERCOSUR/CMC/DEC N° 15/2001,

Basic education has 11 strategic actions:

- To implement a net of institutions allowing the exchange of experiences and the creation of an information bank about inclusive education.
- To implement a regional training course for history and geography teachers.
- To build an internship programme for the teachers of the member States.
- To consolidate the official second foreign language in all member States.
- To consolidate a mobility system for Spanish and Portuguese teachers among the countries.
- To develop biannual seminars concerning history and geography teaching, integrating other areas such as language and culture.
- To produce didactic material and divulgate successful pedagogical experiences of the member countries.
- To ensure the student transit in the region.
- To build an information net containing information of educational policies targeting to reduce the basic education weaknesses at regional level.
- To create an exchange net containing the strategies of eradication of basic education weaknesses as well as successful strategies of management, teachers and didactical experiences.

2- **Technical education:** the scientific and technological advance and the consequent changes in the labour field, demand a continuous training generating knowledge, attitudes, values and competitiveness of the workers. To achieve this objective, the countries must incorporate a qualified and continuous educational training, creating professional opportunities according to the new productive-specialised Labour forces. One of the most important targets is the technical studies validation.

Technical education has six strategic actions:

- To harmonise six professional areas until 2005,
- To create professional-training courses for the teachers of those professional areas,
- To implement innovative experiences concerning adult professional training in order to facilitate their insertion in the labour market,
- To expand successful processes to the public sector,

- To draft indicators measuring the improvement of all the above mentioned targets,
- To produce pedagogical material containing information and experiences exchange.

3- **Higher education:** defined as one of the major challenges, higher education must “spread and generate knowledge contributing for the construction of social justice and development in the region. In this perspective, one of the most important targets must be the creation of a common academic space allowing knowledge exchange and joint researches, in order to promote the educational, scientific and technological development in the region. Therefore, there is the need to promote the professional training (formation) of qualified human resources in order to achieve modernisation and integral development of our societies, fixing common targets and evaluation mechanisms”.

Higher education has three thematic sections:

- Validation of Degrees: in order to facilitate students’ movement, stimulate the evaluation process and improve the higher education quality.
- Mobility: To construct a common regional space for higher education, allowing the mobility of students, teachers and researchers.
- Inter-institutional cooperation: Higher education actors are mostly universities. The achievements made so far among the universities must be continued and stimulated.

Higher education has the following strategic actions:

- To start an experimental mechanism of degree validation for agronomy, engineering and medicine courses, envisaging the future enlargement of other graduation degrees.
- To create an agreement of students’ mobility among the countries, as well as mobility of teachers, researchers and management bodies.
- To eliminate legal obstacles of the mobility plan.
- To continue efforts to validate graduation degrees among Mercosur countries.

- 4- To consolidate an **Information and Communication System**: in order to improve the communication of the education sector with all the other MERCOSUR bodies. It is a very important instrument that must have national cooperation providing information about their successful experiences in education.

4.3. Other attempts and instruments

4.3.1. MERCOSUR Bill of Fundamental Rights: a civil society attempt

The Social Coordination Council of MERCOSUR drafted in 1994, a proposal of the MERCOSUR workers entitled “Mercosur Bill of Fundamental Social Rights”. This proposal is often considered as “a soft non-institutional law”. The proposal has not been approved by the Mercosur System, but some of its articles were incorporated in the “Social and Labour Declaration of Mercosur” (4.3.2.). The proposal recalls the duties of Mercosur States as signatory parts of the international treaties and their responsibilities to fulfill the rights contained in those international instruments applied at the regional context.

Article 13 of the proposal regards exclusively to the right to education, inherent to every citizen of Mercosur member States. The article also recalls the responsibility of the State towards the right to education (obviously this was not one of the articles included in the further Declaration). Article 13 states that “every person has the right to free, compulsory basic education”. Member States must ensure the realisation of the right to education providing a “free, public education system in order to develop the full capacities and development of the person.”

It is not an approved document and it is far from achieving all the aspects that a member State must adopt concerning the right to the education (such as non-discrimination, gender equality, respect of identity, etc.), but it certainly draws the attention to MERCOSUR member States on their responsibility to respect, protect and fulfill the basic education provision.

4.3.2. Social and Labour Declaration

The Mercosur Social and Labour Declaration was approved and signed by the Presidents of the member States during the XVth Mercosur Presidential Summit that took place in the city of Rio de Janeiro (Brazil), on the 10th of December 1998.

Similar to the Mercosur Bill of Fundamental Social Rights, this document recalls and confirms the compromise of the State parties towards previous adherence to international instruments regarding labour rights.

The next year, the CMC approved the creation of a Social and Labour Commission¹¹⁰ of MERCOSUR. According to the resolution, this is meant to be the monitoring body of the application of 20 fundamental rights contained in Mercosur Social and Labour Declaration. Since it is a Declaration, it is not a legally binding instrument but it is a proclamation of political intentions (with no legal implementation). Nevertheless, once again, the signature of this declaration shows the intention of Mercosur to incorporate a social dimension to the common market.

Even though it is a Declaration, States do have binding responsibilities and obligations according to their adherence to international treaties of labour rights – mentioned in the Declaration: “especially those of the ILO”.

The Social and Labour Declaration of Mercosur (specially in the “considering” paragraphs of the preamble) recalls the importance of human rights instruments. It recalls that Mercosur State parties have a “compromise towards international declarations, covenants, protocols and treaties”, including “declarations that have not entered into force yet”. The Social and Labour Declaration recalls their commitment towards international instruments of labour rights, implying the consolidation of the social dimension in the integration process as well as the support for the improvement of the social field.

The Declaration has two articles concerning the right to education in the labour field. Those are: article 6, concerning child and minor work and article 16, concerning vocational training and human resources development.

¹¹⁰ CMC Resolution MERCOSUR/GMC/RES N° 15/99, Asunción, 9th of March 1999.

Article 6 establishes the minimum age to be legally admitted in the work field can not be less than the one established by the compulsory education of each national legislation. The State parties also assume the compromise to adopt policies and actions in order to eradicate the child labour and the progressive elevation of the allowed working age.

Further on, article 6 stresses the States compromise regarding the protection of the minimal age of insertion into the labour field. It also stresses their compromise to take effective measures regarding the integral physical, intellectual and moral development of the child.

The State parties reinforce the need of diminishing the limit of daily hours of minors work in each of their national legislation, that cannot be extended to extra hours or night turns. Minors must have a healthy, moral and safe work environment. Finally the age of work admission cannot be less than 18 years old.

We also must pay attention to article 16 of the present declaration concerning Vocational Training and Human Resources Development by which “all workers have the right to vocational guidance and training”, the States Parties committed themselves to “establishing continuous and permanent vocational training as well as guidance services and programmes in order to allow workers to obtain the required skills for a productive activity”. They also committed themselves to “undertake further trainings in order to update the knowledge with the technical progress”. Further on, member States assume the compromise to “adopt measures to promote coordination. In order to improve the citizens entry into working life; States must coordinate from one side, vocational training, guidance services and programmes and from the other, employment and unemployment public services”.

This is an important attempt to recognise States responsibilities at regional level towards labour rights of the international instruments. It is strange to note that even though Mercosur Bill of Fundamental Social Rights had the same purpose of reminding States responsibilities, it was not accepted by the Member States. In the other hand, the ongoing discussion about the construction of a Mercosur Bill of Human Rights (4.3.5.) shows the intention of the Member States to include “reminding” instruments in Mercosur.

4.3.3. Buenos Aires Bill¹¹¹

More recently, the “Buenos Aires Bill on the social compromise” was signed by Mercosur Member States, Chile and Bolivia in the city of Buenos Aires on the 30th of June 2000. This Bill of social responsibilities targets more specifically the rights of the child and the right of the adolescent.

In the preamble of this document the State parties express their conviction on the fact that “the economic development and regional integration can be only achieved in a frame of social justice and equality”.

The signatory States confirm their compromise towards “the consolidation and defence of human rights and fundamental freedoms” by their adherence to declarations as well as international and regional instruments.”

Further on, the State parties express their awareness that the “economical growth is a necessary contribution, but not sufficient enough as to reach a better quality of life, eradicate poverty and eliminate the discrimination and social exclusion”, reaffirming that their purpose is to “contribute, together, to achieve a better social equality through an balanced and fair economical development”.

The Buenos Aires Bill stresses as a priority “to guarantee the right to basic education and facilitate the access to secondary, technical and vocational education, being both key elements to overcome poverty”.

In the fourth paragraph of the Bill, the States agree on their compromise to “ensure an effective implementation of the integral protection of the child and the adolescent as well as stimulate the policy - building on their behalf”.

¹¹¹ At <http://www.mercosur-comisec.gub.uy/INDEX-Comisec/Mercosur/Basicos/Documentos/CartaBsAs/CartaBsAs2.html>

4.3.4. Gramado Compromise¹¹²

The Gramado Compromise was signed by the Mercosur Ministers and high authorities of the Social Development sector in the city of Gramado (Brazil) on the 1st of December 2000. Bolivia and Chile are also signatory parts of this Document. The Gramado Compromise was a draft for the education plan 2001-2005 and shows the determination of Mercosur countries to reach a social development.

Gramado Compromise established the following priority lines of action and objectives:

- To promote reflection and dialogue spaces about Mercosur integration process with other governmental sectors and institutions involved.
- To promote an international cooperation policy between the SEM and other international institutions linked to education.
- To build strategies for the participation of teachers and students as fundamental actors of the integration process.
- To elaborate strategies for the recuperation, promotion and enlargement of exchange experiences as well as internships for students, teachers, supervisors, functionaries and researchers of the region.
- To create a SEM financial system in order to guarantee the funds designated to implement the education action lines.

Inside each one of the objectives (that were taken as a model for the third plan of action drafting), there are sub-categories of action that are exactly the ones proposed in the third Triennial Plan 2001-2005 (4.2.3.).

4.3.5. Mercosur Bill of Human Rights Project

The CMC decided to create the Mercosur working programme 2004-2006¹¹³ in the city of Montevideo on the 15th of December 2003.

The work programme established an *ad hoc* group of Human Rights linked to the Political consultation forum in order to evaluate the pertinence of the elaboration of a Mercosur Bill of Human Rights.

¹¹² Gramado Compromise, signed by Mercosur member States in the city of Gramado (Brazil), on the 1st of December, 2000.

¹¹³ MERCOSUR/CMC/DEC N° 26/03.

According to CMC decision MERCOSUR/CMC/DEC N° 26/03, the “Human Rights *ad hoc* group has the responsibility to deepen the information exchange, promotion and respect of Human Rights in the region. Identified as an effective mechanism for the exchange of information, experiences and common effort to evaluate and discuss the pertinence of the adoption of a Mercosur Bill of Human Rights.”

Further on, on the 16th of December 2004 in the city of Belo Horizonte (Brazil), the CMC created the Mercosur Meeting of High Authorities of Human Rights through the decision MERCOSUL/CMC/DEC. N° 40/04.

The first Mercosur meeting of high authorities of Human Rights took place in the city of Asunción in March 2005. The meeting had the participation of the governments as well as international organisations and civil society organisations specialised in Human Rights.

The main lines of action were orientated to the approval of a Human Rights clause allowing the exchange of information and cooperation of Mercosur Countries. This clause targets the prevention and combat of the violation of the rights of the child and the adolescent. It also targets the compulsory application of norms and decisions made by the Organisation of the American States (OAS).

During the meeting, the civil society Organisations expressed their discontent regarding the lack of transparency of the decision making mechanisms of Mercosur. They also criticized that Mercosur doesn't consider the Civil Society opinion which could be a positive asset to achieve the implementation of horizontal human rights integration in the economic measures.

Mercosur Parliamentary Commission also included the topic of Human rights among its discussions from the 2nd to the 23rd of August 2004, defining the objective to unify the public policies and empower the human dimension of the regional integration process by the proposal of a Mercosur Human Rights observation body. According to the Parliamentary Commission, the intention of the monitoring body is to strengthen the cooperation with the inter-American Commission and Court of Human Rights and it is not to be considered as a substitution.

The Mercosur monitoring and observation body was proposed during the conference of Human Rights public policies in Mercosur that took place in the city of Cordoba, (Argentina), from the 29th to the 31st July 2004.

The incorporation of a Bill of Human rights is one of the targets of “Mercosur Social agenda”. This attempt is considered to be very valuable taking into consideration the attention given to the incorporation of Human Rights in the regional system. However, some critiques have arisen from the civil society organisations, exposing the useless nature of its creation since there are already regional mechanisms dealing with the subject.

States have already signed Human rights international instruments (1.1.). They have also included the right to education in their national legislations (2.2.). But the insufficiency doesn't come from the institutionalised laws and instruments; the deficiency comes from the non-effective implementation of such rights that are not ensured in the daily life of the majority of Mercosur citizens. Insufficiencies are also due to the lack of permeability of human rights principles in all other legal and regional instruments.

The introduction of the right to education and other human rights in the constitutional framework of the member States does not necessarily mean that the States are able to implement the full realisation of the rights in reality.

Nevertheless, it is important to perceive the efforts taken by the regional integration of MERCOSUR to include and discuss the social dimension and responsibilities they have towards human rights.

5. PROTOCOLS AND AGREEMENTS REGARDING EDUCATION

In this chapter, I will analyse the following six existing Protocols issued by the Mercosur Education Sector, showing their similarities and their evolution for basic education and higher education. The Protocols concerned are the following:¹¹⁴

- Protocol of educational integration and recognition of certificates and degrees of primary and non- technical education - CMC Decision MERCOSUR/CMC/DEC N°04/94 (Annex 1).
- Protocol of educational integration and validation of certificates, degrees and titles of technical education - CMC Decision MERCOSUR/CMC/DEC N°07/95 (Annex 2).
- Protocol of educational integration for the continuation of post-graduation studies in Universities of the MERCOSUR member States - CMC Decision MERCOSUR/CMC/DEC N°04/95 (Annex 3).
- Protocol of educational integration for professional training of Human resources at post-graduation level among MERCOSUR member States - CMC Decision MERCOSUR/CMC/DEC N°09/96 (Annex 4).
- Agreement of University degrees and titles validation allowing the exercise of academic activities within the Mercosur member States - CMC Decision MERCOSUR/CMC/DEC N°04/99 (Annex 5).
- Agreement of University degrees and titles validation permitting the exercise of academic activities within the Mercosur member States, the Republic of Bolivia and the Republic of Chile - CMC Decision MERCOSUR/CMC/DEC N°05/99 (Annex 6).

5.1.Similarities

As we can see, five of the six existing protocols on education issued by the Mercosur Ministerial education sector, target higher education studies (university Degree, postgraduate, professional formation, etc).

¹¹⁴ All the Protocols analysed in this chapter are attached as Annexes to this work.

These Protocols have some similarities in their content, especially in the “considering” paragraphs of their introduction as well as identical articles in the body of their text that I will present in the following part.

5.1.1. Preambles

The preamble of all the protocols points out the signatory States' awareness that “education is fundamental and necessary in the regional integration process”, but they also consider that “education must bring answers to the challenges of productive transformations, of scientific and technological advances as well as the consolidation of Democracy in a context of regional integration”. The four last protocols express the necessity of “the promotion of a harmonic development as well as the exchange of scientific and technological knowledge among the member States as an effective mechanism to achieve modernisation” and finally reaffirm the need to “promote the cultural development through an integration facilitating the circulation of knowledge among the member States”

These are the common “considering” points of the Protocols Preambles, each one of the protocols having slight differences in their drafting notwithstanding the ideas mentioned above are present in all of them, complemented by specific considerations regarding the education area of each one of the targets.

5.1.2. Common articles

The structure of the Protocols has identical articles, referred to below. I will analyse, in the subsequent part, the drafting and the content of the articles of the protocols in order to understand their objectives.

While articles 1 of the Protocols present their objective and the conditions (normally the same as the country of origin), articles 2 establishes the criteria to achieve the objective mentioned in article 1 and article 3 expresses the member States recognition of the agreement.

There are other identical articles in the body of all protocols:

- Article concerning bilateral agreements: “in case of existence of bilateral agreements between member States more favourable to the subject of the Protocol, the State parties will be able to invoke the application of the most advantageous agreements¹¹⁵”.
- Article concerning Solution of controversies (or dispute settlement): “controversies (disagreements) arising between State parties, concerning the application, interpretation or of the non-application of the disposals contained in the present protocol, will be settled through direct diplomatic negotiations. If the State parties do not reach an agreement or if only part of the controversy (dispute) is settled through diplomacy, the procedures foreseen in the Solution of Controversies System (or dispute settlement system) will be applied to the Asunción treaty signatory States.”¹¹⁶
- Article concerning its validity as integral part of Asunción Treaty and the entry into force of the instrument: “The present Protocol is integral part of the Treaty of Asunción and shall enter into force 30 days after the date of deposit of the second instrument of ratification. For the other signatory States, this Protocol shall enter into force 30 days after the date of deposit of the ratifications”¹¹⁷.
- Article concerning the revision of the protocol: “The present Protocol can be considered for revision in common agreement, by the proposal of one of the State parties”¹¹⁸.
- Article concerning the Depository State. In all of them, Paraguay is the depository State of the Protocol and in charge of sending a copy of the ratifications to the other member States. Paraguay shall also inform the date of the entry into force.¹¹⁹

¹¹⁵ Article 5 of MERCOSUR/CMC/DEC N°04/94, article 7 of MERCOSUR/CMC/DEC N°07/95 and MERCOSUR/CMC/DEC N°04/95 and article 8 of MERCOSUR/CMC/DEC N°04/99 and MERCOSUR/CMC/DEC N°05/99.

¹¹⁶ Article 6 of MERCOSUR/CMC/DEC N°04/94, article 8 of MERCOSUR/CMC/DEC N°07/95 and MERCOSUR/CMC/DEC N°04/95, article 9 of MERCOSUR/CMC/DEC N°04/99 and MERCOSUR/CMC/DEC N°05/99.

¹¹⁷ Article 7 of MERCOSUR/CMC/DEC N°04/94, article 10 of MERCOSUR/CMC/DEC N°07/95 and MERCOSUR/CMC/DEC N°09/96, article 9 of MERCOSUR/CMC/DEC N°04/95, MERCOSUR/CMC/DEC N°04/99 and MERCOSUR/CMC/DEC N°05/99.

¹¹⁸ Article 8 of MERCOSUR/CMC/DEC N°04/94, article 9 of MERCOSUR/CMC/DEC N°07/95, article 11 of MERCOSUR/CMC/DEC N°09/96, article 10 of MERCOSUR/CMC/DEC N°04/95, MERCOSUR/CMC/DEC N°04/99 and MERCOSUR/CMC/DEC N°05/99.

¹¹⁹ Article 9 of MERCOSUR/CMC/DEC N°04/94, article 12 of MERCOSUR/CMC/DEC N°07/95 and MERCOSUR/CMC/DEC N°04/95, article 13 of MERCOSUR/CMC/DEC N°09/96, article 11 of MERCOSUR/CMC/DEC N°04/99 and MERCOSUR/CMC/DEC N°05/99.

5.2. Basic Education

One of the targets of the Mercosur Education Plan of action 2001-2005 (4.2.3) in the specific area of basic education is to “revert the basic education weaknesses affecting specially the first years of schooling and those of transition to other educational levels constitutes a common challenge for the education area”.

Further on, the Plan of action stresses the priority of ensuring education to vulnerable groups of society allowing their access to education, their permanence and educational promotion. Among vulnerable students, the Plan of action specifically refers to the children with special learning needs, those living in poverty, marginal rural and urban area, indigenous peoples and other sectors of the population that are in a social, cultural and economical marginal situation.

Up to now, the only treaty signed by the CMC, in its early beginning, concerning strictly basic education, is the first protocol of the education sector of Mercosur: “Protocol of educational integration and recognition of basic and non-technical education certificates and titles” issued by the CMC Decision MERCOSUR/CMC/DEC N° 04/94 in 1994 (Annex 1).¹²⁰

5.2.1. Premises

In 1991, The Common Market Council decided that the "permanent objective of education must be the improvement of its quality, incorporating a cultural and linguistic dimension”¹²¹.

The same document points at the fact that “there must be a deeper educational integration. In order to achieve this objective, it is important to establish joint professional training (formation) of Human resources and educational plans” (to learn Mercosur official languages, articulate the national information systems and recognise the basic education titles).

¹²⁰ There is also a project “*Educar en la diversidad*” which means “Educating in Diversity” which has not been approved.

¹²¹ Preamble of CMC Decision MERCOSUR/CMC/DEC N° 07/91

5.2.2. Protocol of educational integration and recognition of basic and non-technical education certificates and titles¹²²

The Protocol was signed by the education ministers of the member States in the city of Buenos Aires (Argentina), on the 5th of August 1994. The Protocol comprises 9 articles concerning the validation of basic studies in the other member States in order to permit the continuation of basic education studies. This is an important instrument to ensure that the young citizens of Mercosur countries will be able to continue their basic and non-technical education in another member State or enter into a higher educational level through the recognition of his/her final approval certificate.

The Protocol is based on the premise mentioned in its Preamble that “education is a fundamental factor in the regional integration process”¹²³, and the common will of the signatory parties to “consolidate common factors of identity, history and cultural heritage of the peoples”¹²⁴

In the first article of this Protocol, the State parties engage themselves to recognise “educational courses at the primary or junior high level (basic education) in the same conditions for all member States”¹²⁵.

Likewise, in order to further a continuous education, “certificates of course approval, will be valid in all other member States (provided that they are issued by an official institution accredited in one of the member States)”¹²⁶.

This article establishes the engagement to guarantee the validation of basic education in all member States in order to ensure scholar continuation in case of mobility of the child and a compromise to “incorporate the minimum standards of history and geography content in the scholar curricula”.

The second article deals with those who have not concluded their basic education and must continue their formation “Non technical primary and junior high level studies that have not been completed, will be accredited by any member State, thereby allowing

¹²² CMC Decision MERCOSUR/CMC/DEC N° 04/94

¹²³ Preamble of CMC Decision MERCOSUR/CMC/DEC N° 04/94

¹²⁴ Idem.

¹²⁵ Art.1 of CMC Decision MERCOSUR/CMC/DEC N° 04/94

¹²⁶ Art.1 of CMC Decision MERCOSUR/CMC/DEC N° 04/94

course conclusion in another member nation. Studies will be completed using an equivalency table to determine the level achieved”¹²⁷.

Article 3 establishes the creation of a Technical Commission, responsible of drafting the equivalence tables for basic education.

Article 6 mentions the solution of controversies (dispute settlement) by the diplomatic way. If the States do not reach a consensus, the dispute will be settled by the solution of controversies system of Mercosur.

This is the only protocol issued for primary education, although its importance has been mentioned in many fields of Mercosur documents, especially regarding the official Mercosur language teaching and a favourable conscience of the regional process as well as the incorporation of the regional history and geography in the basic education curricula. The Triennial plans also constantly express their concern regarding the quality of basic education and the importance of solidarity among member States and international organisations to build mechanisms to improve the education quality.

As expressed in chapter 3 of this work, even though efforts have been made towards a better basic education, it is the only protocol directly addressing this priority issue which is the basis of the educational system and of strengthen qualified labour work for the future (from the economical perspective) and a full accomplishment of the right to education as a tool for social development in the regional context.

5.3. University and pos-graduation studies

Mercosur has five protocols concerning higher education (graduation, post-graduation and professional training). The most difficult task is the attempt to build effective mechanisms to validate the degrees. That was not done at basic education levels, since the equivalence tables are already established in the annexes of the protocol (Annex 1). The importance given to a solid drafting of equivalence tables in the graduation and pos-graduation degrees is due to the need of mobility of young qualified professionals throughout the countries.

¹²⁷ Art.2 of CMC Decision MERCOSUR/CMC/DEC N° 04/94

I will now explain the evolution of the certificates validation mechanism through the Ministerial meeting decisions, then the content of each one of the Protocols and finally the achievements in higher education.

5.3.1. Premises

In order to achieve a real equivalence of higher education degrees, it was necessary to build mechanisms at the legal, administrative and academic levels. Since its inception, the Regional Coordinating Committee created the Technical Regional Commission in charge of the recognition of Education Studies, degrees and Diplomas issued in the region. This technical commission was already mentioned in the first protocol of education validation.¹²⁸

The initial step of the Commission was to develop an exchange of information among the member States about their university courses as well as exchanging information about their duration, content and titles.

In 1995, an experimental Plan started with three graduation courses¹²⁹: law, accountability sciences and engineering, setting out tables of equivalence among the countries. This exercise would permit the elaboration of the minimum content of the courses such as hours of study, curricula content, years of study and a subsequent validation.

In June 1997, the XIIIth Meeting of Mercosur Education Ministers decided to renew the impulse of the validation method used so far and created a new “working group of specialists in evaluation and accreditation in higher Education”¹³⁰. The working group is under the Technical Regional Commission in Higher Education: “the duty of the work group is to elaborate a proposal for a validation system of institutions and graduation courses, in order to facilitate the recognition of graduation degrees in the Region”. It was then decided to approach three aspects separately:

¹²⁸ Art. 3 of CMC Decision MERCOSUR/CMC/DEC N° 04/94 and art. 6 of CMC Decision MERCOSUR/CMC/DEC N° 07/95 contained in the Triennial Plans.

¹²⁹ Protocol of educational integration and validation of certificates, degrees and titles of technical education - CMC Decision MERCOSUR/CMC/DEC N°07/95 and Protocol of educational integration for the continuation of post-graduation studies in Universities of the MERCOSUR State parties - CMC Decision MERCOSUR/CMC/DEC N°04/95.

¹³⁰ Second triennial Plan.

1. Academic aspects: exclusively for validation models, evaluation indicators, quality standards, etc.
2. Normative aspects: the legal norm of the different higher education systems in the region. As well as possible changes to be introduced in the national legislation providing the established in the Protocol of higher education validation.
3. Professional permit: this is the final target; it refers to the construction of a regional professional market.

Each country presented a report including the three above-mentioned aspects, in order to consolidate a solid proposal targeting the recognition of graduation and post-graduation degrees. These validations were perceived as a way to improve the possibilities of the citizens' professional building through postgraduate studies and academic activities exchange among the State countries.

During the XIVth Meeting of Mercosur Education Ministers, carried out in the city of Buenos Aires (Argentina), in June of 1998, MERCOSUR Education Ministers along with those from Chile and Bolivia, signed a "Memorandum of understanding on the Implementation of an Experimental Mechanism of University degree validation in Mercosur Countries"¹³¹. This mechanism, according to the proposal of the Ministers will be applied with "experimental and gradual character for the recognition of those degrees required as a legal condition to work in the area"¹³².

The following general principles are set in the Memorandum of understanding¹³³:

"Degree validation amounts to public validation of university degrees. The degrees must be issued according to the national legal norms, ensuring the fulfilment of quality requirements at regional level"¹³⁴.

This process will be based on evaluation mechanisms guaranteeing the necessary academic formation of titleholders. "The implementation of this mechanism will respect the legislations of each country". In addition, "the autonomy of the universities will be respected"¹³⁵.

¹³¹ MERCOSUL/CMC/DEC. N° 13/98

¹³² Memorandum of Understanding (ANNEX 7)

¹³³ Idem.

¹³⁴ Idem.

¹³⁵ Idem.

According to the Memorandum, the validation will be defined for the courses determined by the Meeting of Ministers and these courses must have official legal recognition.

According to the memorandum, the competence of the Commission of experts is to ensure a quality education and its validation: “The process will be implemented according to criteria and parameters of the quality of each academic course. The Ministerial meeting will implement a consultative commission of experts by course”.

“The adhesion to the validation mechanism is voluntary and can be required strictly to legally recognised institutions by the country of origin”. “The request of degree validation has to integrate an institutional and evaluative report, prepared according to pre-established norms” and “the effects of the accreditation will be valid in all member States”.

Finally, during the XVth Meeting of Mercosur Education Ministers that took place in the city of Brasilia (Brazil) on the 20th of November 1998, the Ministers decided that the experimental mechanism of evaluation and validation of degrees should begin with the courses of medicine, engineering and agronomy.

5.3.2. Protocols

As we already know, five Protocols concerning higher education were signed. In this part I will expose the articles that describe the frame of the higher education Protocols:

The “Protocol of educational integration and validation of certificates, degrees and titles of technical education”¹³⁶ establishes “the validation of degrees at technical level to any student of the educational system in order to permit the continuation of studies”¹³⁷. The entrance to technical level is only permitted for those students that completed basic education in their own countries and must be subjected to the same selective process of the State where the student is envisaging taking the course”.¹³⁸ The following articles describe the admission conditions and the terms of validation exclusively for the continuation of studies.

¹³⁶ CMC Decision MERCOSUR/CMC/DEC N°07/95 (ANNEX 2).

¹³⁷ Idem., Article 2.

¹³⁸ Idem., Article 3.

Based on the premise that “education is a fundamental factor in the regional integration process”, Mercosur decides that “courses of high education will be recognised by all member States”¹³⁹. Likewise, in order to permit a continuous education, “certificates of course conclusion issued by an official institution will be valid in all other member States. Technical studies that have not been completed will be also accredited, thereby allowing course conclusion in another member State. Studies will be completed using an equivalency table to determine the student educational level”.

The second Protocol concerning Higher education was approved by the Decision MERCOSUR/CMC/DEC N° 4/95 in the city of Asunción (Paraguay), on the 5th of December 1995: “Protocol of educational integration for the continuation of post graduation studies in the universities of MERCOSUR State parties” (Annex 2). This is a much more detailed protocol, setting the minimum considered as an university degree: “graduation degrees will only be considered if composed by a minimum of four-year course and 2700 hours of classes”¹⁴⁰, “this title validation is strictly directed to the continuation of academic work and not for labour permit”¹⁴¹, the following articles explain the procedures to be taken in order to obtain the validation.

The third Protocol of higher education was approved by Decision MERCOSUR/CMC/DEC N° 9/96 in the city of Fortaleza (Brazil), on the 17th of December, 1996: “Protocol of Educational Integration for post graduation studies in Human Resources between MERCOSUR State parties” (Annex 3). This Protocol is likely to be the most complete and detailed one. It specially concerns the validation of post-graduation level for the continuation of doctorate studies and for the common effort towards the establishment of professional training for human resources”. The Protocol is valid for the professions considered “valuable to the development process of the region”¹⁴². The Protocol highlights Mercosur interest in “scientific and technological development”¹⁴³ as well as the “commitment of the States towards cooperation in the development of projects concerning this area”. It is the first time that financial resources are mentioned in an education Protocol¹⁴⁴, ensuring that the signatory parts will “make

¹³⁹ MERCOSUR/CMC/DEC N° 007/95 (ANNEX 2).

¹⁴⁰ Article 2 of MERCOSUR/CMC/DEC N° 4/95 (ANNEX 3)

¹⁴¹ Idem., Article 3.

¹⁴² Article 2 of MERCOSUR/CMC/DEC N° 9/96 (ANNEX 4)

¹⁴³ Idem., Article 3.

¹⁴⁴ Article 7 of MERCOSUR/CMC/DEC N° 9/96 (ANNEX 4)

joint efforts to guarantee the necessary financial resources in order to achieve the targets of the projects as well as to ensure the international supports for this objective”.

The fourth Mercosur instrument concerning higher education is the “Agreement of University Degrees Admission and Academic Activities in MERCOSUR State parties”¹⁴⁵, approved by the Decision MERCOSUR/CMC/DEC N°4/99, in the city of Asunción (Paraguay), on the 14th of Jun 1999 (Annex 4). Here again, the agreement establishes the minimum requirements to validate a university degree, the same way it was established in the second Protocol: “graduation degrees will only be considered if composed by a minimum of four year course and 2700 hours of classes. Specialisation degrees of post-graduation (such as master degrees and doctorate) must have a minimum hours charge higher than 360 hours”¹⁴⁶. “The post-graduation degrees must be validated by the legislation of the State parties”¹⁴⁷. “The validation of Post-graduate degrees is strictly valid for the exercise of researches or teaching in the referred institutions”¹⁴⁸. The following articles explain the procedures to be taken in order to obtain the validation as well as the duty of States to communicate the official recognised courses and eventual changes that may occur after the adherence to this Protocol.

Finally, the same Protocol was signed by Bolivia and Chile in the city of Asunción (Paraguay), on the 28th of Mai 1999: “Agreement of University Degrees Admission and Academic Activities in MERCOSUR States Parties, Bolivia and Chile”¹⁴⁹. The agreement has the same content (articles); the only difference is the adherence of the two additional countries (Annex 6).

5.3.3. Achievements:

The education Sector of Mercosur made an auto-evaluation of its seven years of existence. The auto-evaluation mentions its satisfaction in reaching important advances and stresses the following lines:

¹⁴⁵ MERCOSUR/CMC/DEC N°4/99 (ANNEX 5)

¹⁴⁶ Idem., Article 2.

¹⁴⁷ Idem., Article 3.

¹⁴⁸ Article 5 of MERCOSUR/CMC/DEC N°4/99 (ANNEX 5)

¹⁴⁹ Approved by the Decision MERCOSUR/CMC/DEC N° 5/99 (ANNEX 6)

- 1- Approval of protocols that facilitate the recognition and validation of studies as well as the free circulation of students;
- 2- Achievement in preliminary curricula adjustment of basic education concerning the implementation of the official languages of the MERCOSUR and the teaching of its history and geography;
- 3- Approval of protocols to facilitate the exchange of basic education students and the formation of human resources at postgraduate level;
- 4- Creation of the Information and Communication System of the Educational Sector of MERCOSUR;
- 5- Design of a mechanism of university degrees validation.

5.4. Some considerations

These last two chapters show the efforts made by the regional integration process to include education agreements in order to incorporate, not only mechanisms to allow the transit of students, but also the preoccupation of the regional integration process to include a “social dimension” in its guidelines.

In a paper elaborated by Felipe Gomez¹⁵⁰ concerning the importance of education, he makes valuable reflection about the main role that education plays in the development process and Human Development.

Development is linked to international “social Justice” (as referred to in Asunción treaty Preamble) and the respect of Human Rights.

The United Nations Decade for Human Rights Education, 1995-2005¹⁵¹, calls “all Governments to contribute to the implementation of the Plan of Action and to step up their efforts to eradicate illiteracy.” Further on, it highlights the need to “direct education towards the full development of the human person and to the strengthening of

¹⁵⁰ Isa Gomez, Felipe, *La Educación para el desarrollo Humano*, in Javier Beltrán de Heredia y Cerain (eds.), *Educación y Desarrollo, América Latina ante el siglo XXI: problemas y perspectivas*, Bilbao, Universidad de Deusto, 2000, p.259-280.

¹⁵¹ Report of the Secretary-General, A/49/261-E/1994/110/ Add.1

respect for human rights and fundamental freedoms”.¹⁵² It also “urges governmental and non-governmental educational agencies to intensify their efforts”¹⁵³.

In this sense, MERCOSUR countries have a big gap between the low quality of basic education and a very competitive structure for the insertion into public universities that are free most of the time. The contradiction is obviously excluding the most vulnerable groups to higher education access (even though the concern is stated in the third Triennial plan). If there is no quality at the basic level, there will be no chances to participate in the higher ones.

According to Gomez¹⁵⁴, one of the major problems in South America is the quality of the basic education *per se* and its teacher’s technical training (as well as the low salaries offered in public schools). A qualified professional training of the teachers enables students to have a solid and competitive education. Therefore, citizens would have real equal chances in the field of university access. This is a fundamental step to be taken in order to walk towards a real economical development as well as human development. Mercosur States have already had this preoccupation for post-graduation level.

According to the UNDP 2003 report¹⁵⁵ Latin America is in a “Dead point progress”, insofar as the less favoured people can barely subsist while a small portion of the population increases its income. In the last decade, there has been a growing gap between the income of the poorest population and the richer one. “In many Latin American countries, the inequality is extremely high. If the rooted inequality remains, direct effects will continue on Human Development and social instability (including the violence rates increase).”

According to the CEPAL¹⁵⁶, “High levels of inequality of income distribution in the region have persisted in the 90s even in countries with very high growth rates. This situation is a reflection of the ability of the 10% richest to hold or increase their share of total income and the tendency of the 40% poorest to remain at the same level or even

¹⁵² General Assembly of the United Nations resolution A/RES/49/184., paragraph 5, NY, 6 March 1995.

¹⁵³ Idem., paragraph 6.

¹⁵⁴ Isa Gomez, Felipe, *La Educación para el desarrollo Humano*, in Javier Beltrán de Heredia y Cerain (eds.), *Educación y Desarrollo, América Latina ante el siglo XXI: problemas y perspectivas*, Bilbao, Universidad de Deusto, 2000, p.259-280.

¹⁵⁵ PNUD, *Informe sobre el desarrollo humano 2003*, Los objetivos del desarrollo del Milenio: un pacto entre las naciones para eliminar la pobreza, NY, PNUD, 2003, p.37-40.

¹⁵⁶ CEPAL, *Panorama Social de América Latina 1996*, Santiago de Chile, CEPAL, 1996, p. 41.

suffer a decrease. The middle of the 1980s and 1990s reveals an increase in the inequality of income distribution in most countries."

In 1995, Brazilian President Fernando Henrique Cardoso, said: "The Brazilian government believes that strengthening multiple alliances - first with the other MERCOSUR member countries, then with South American countries in general - is very important". Then he called the attention of the Latin America leaders stating that they must realise that "the legions of poor people in their nations, represent a ticking social time bomb". For Cardoso, as well as the other MERCOSUR presidents and those countries seeking to create closer ties to the trade bloc, regional free trade offers a realistic method of dismantling this bomb. The critical problem that all Latin American governments must solve is how to generate the quality and quantity of economic development that might create a widespread employment capable of addressing the region's socio-economic illness. Hemispheric governments chronically must cope with a lack of physical and social infrastructure, in addition to a significantly less educated population than is found in the developed world.

Even though inequalities are huge and an internal effort is necessary, Mercosur countries are facing other different problems and having external influence in their market and politics that can not step aside. In the next chapter I will briefly analyse those possible problems, such as the introduction of education as a tradable service by the WTO. Mercosur has the possibility to negotiate as a trade group and must consider the imperative importance of a free education for all.

6. THE THREAT OF THE GATS AND EDUCATION AS A TRADE SERVICE

“The loss of autonomy turns the State incapable of protecting effectively the country from chain effects or external actors”.
JÜRGEN HABERMAS¹⁵⁷

6.1. Brief Contextualization

In order to understand the threat of the “tradable education” of the GATS and its link with Human Rights and Mercosur, I will first, briefly contextualize the topic of this chapter making a short introduction of the GATS.

For nearly 50 years, the General Agreement on Tariffs and Trade (GATT) was the only “agreement” for international trade rules. Finally, a formal institution was created in 1994, during the Uruguay Round.

The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. These rules are included in the WTO agreements, negotiated and signed by the world’s trading nations and ratified in their parliaments. The goal of the agreements, according to WTO, is “to help producers of goods and services, exporters, and importers conduct their business”¹⁵⁸.

WTO includes three "pillar" agreements regulating international trade¹⁵⁹:

1. The General Agreement on Tariffs and Trade 1994 (GATT 1994)

The GATT 1994 is an updated version of the original GATT, revised and refined before its incorporation into the WTO framework. The GATT regulates trade in goods, and is complemented by a host of smaller agreements that also apply to trade in goods. The GATT reflects many of the developments that occurred under the original GATT since 1947. Therefore, it is the most developed of the three "pillar" agreements.

¹⁵⁷ In the Brazilian newspaper, *Folha de Sao Paulo*, 18th of July, 1999.

¹⁵⁸ At www.wto.org

¹⁵⁹ Defined during the Marrakech Agreement at www.wto.org

2. The General Agreement on Trade in Services (GATS)

The GATS is a new international trade agreement, setting out the rules for trade in services, (including the education sector). The GATS is the relevant WTO agreement for this work. The purpose of GATS is to facilitate an increase in trade liberalization across many services sectors. The WTO negotiations under GATS pose significant danger for the campaign to realize universal education for all.

3. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

TRIPS sets out the rules for the protection of intellectual property rights that affect international trade in goods and services. WTO negotiations under TRIPS have had a high profile over the last couple of years. This is due to the attempt of developing countries to negotiate trade rules that would permit them to provide life-saving medicines, including for the HIV/AIDS pandemic, at affordable prices (as it happened in Brazil).

The interesting part for us is the WTO General Agreement on Trade in Services since it is the one that targets education as a tradable service.

According to WTO¹⁶⁰, services are “the largest and most dynamic component of both developed and developing countries economies”. They also serve as “crucial inputs into the production of most goods”.

The introduction of education among the tradable services started to be discussed in 1995, but it has caught an increasing attention once the deadline for proposals concerning the progressive liberalization of education concludes this year (2005).

In principle, GATS Agreement sets up the minimum standards to be implemented by each WTO members, allowing States to adopt measures to protect public sectors and promote socio-economic development, as we will see in detail further on.

In its implementation, GATS seeks a very different light. Indeed, GATS can affect the enjoyment of the right to education, in particular through its effect on the liberalization of educational services.

¹⁶⁰ WTO information is available at www.wto.org

6.2.GATS and Education

The trend of the negotiations in the WTO about the General Agreement on Trade in Services is the liberalisation of trade in education services.

The treaty's objective is to liberalise the trade in a set of services as much as possible. The GATS treaty includes both horizontal (i.e. binding for all sectors) and vertical (i.e. binding for specific sectors) obligations of the member States and has the character of international law, which can be enforced by the Dispute Settlement Body of the WTO.

Countries are encouraged to schedule sectors for specific commitments, which imply a stricter set of rules. These rules include unlimited market access and the "national treatment", which means that all service suppliers have to be treated equally to the national ones.

The GATS has been drafted to facilitate the trade in services (such as education) through the acceptance of four modes of service supply: (i) cross border supply, (ii) consumption abroad, (iii) commercial presence and (iv) presence of natural persons¹⁶¹. States must set a schedule (after negotiations) on which services to open up and specify terms, conditions and limitations on market access¹⁶².

Even though education is one of the less committed sectors under the GATS, States must regulate access to education.

Human Rights approach to international trade in general and to the trade in services in particular, is advocated by the UN High Commissioner of Human Rights. It is indispensable to cope with any potential problems that the liberalization of the trade in education services might bring¹⁶³.

¹⁶¹ Art.1 of GATS.

¹⁶² Coomans, Fons and Hallo de Wolf, Antenor, *Privatisation of education and the right to education*, in De Feyter, Koen and Gómez Felipe (eds.), *Privatisation and Human Rights*, Oxford, Intersentia,, 2005, pp.250-251.

¹⁶³ Coomans, Fons and Hallo de Wolf, Antenor, *Privatisation of education and the right to education*, in De Feyter, Koen and Gómez Felipe (eds.), *Privatisation and Human Rights*, Oxford, Intersentia,, 2005, pp.252.

6.2.1. Five sub-sectors of education

The GATS divides education services into 5 sub sectors:

- 1- Primary education: including both, primary and preschool education.
- 2- Secondary education: including all general and higher secondary schooling, technical and all technical and vocational training below the university level. Note that under international human rights law, the primary and secondary education sectors constitute "compulsory" education.
- 3- Higher education: including all post-secondary education, particularly education leading to a university degree or its equivalent, and sub-degree technical and vocational training.
- 4- Adult education: including education for adults outside the regular school or university infrastructure – e.g. day or evening language classes.
- 5- Other education services: this is a "catch-all" category that includes all other types of education. This sub sector has not clearly been defined.

WTO members make commitments in each of the sub-sectors separately. We must keep in mind that the current international trade involving higher education is wider than the one for primary education.

As mentioned before, actual substantive negotiations have not yet begun. However, the Doha Development Agenda¹⁶⁴ contains an ambitious deadline for the conclusion of these negotiations: 2005. Undoubtedly, members will come under intensifying pressure

¹⁶⁴ DOHA WTO MINISTERIAL DECLARATION (WT/MIN(01)/DEC/1) adopted on the 14th of November, 2001. Article 15 establishes the dates as follows: "The negotiations on trade in services shall be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries. We recognize the work already undertaken in the negotiations, initiated in January 2000 under Article XIX of the General Agreement on Trade in Services, and the large number of proposals submitted by members on a wide range of sectors and several horizontal issues, as well as on movement of natural persons. We reaffirm the Guidelines and Procedures for the Negotiations adopted by the Council for Trade in Services on 28 March 2001 as the basis for continuing the negotiations, with a view to achieving the objectives of the General Agreement on Trade in Services, as stipulated in the Preamble, Article IV and Article XIX of that Agreement. Participants shall submit initial requests for specific commitments by 30 June 2002 and initial offers by 31 March 2003". At www.wto.org.

to enter specific liberalization commitments for their education sectors as this deadline rapidly approaches.

6.2.2. GATS and Human Rights

According to Tomasevski¹⁶⁵, one of the problems with GATS from a human rights perspective relates to the broad definition of “services.” Numerous, varied services sectors are covered under GATS, including education. Other sectors include: energy, environmental, financial and telecommunication services. All these sectors have a human rights dimension; therefore, the tension between international human rights law and international trade law is likely to develop as GATS negotiation progress goes on.

There is an important exception in the GATS: it does not extend to services provided “in the exercise of governmental authority.”¹⁶⁶

The Special Rapporteur “has documented the practice of charging fees in public primary education which should be free. Impoverishment of public education often leads to parental choice which is not free in every sense of this world. Similarly, the choice of individual countries is constrained by debt servicing. The tension between progressive realization of the right to education and progressive liberalization of trade in education services, needs an effective human rights strategy.”¹⁶⁷

As the Special Rapporteur of the right to education has noted in her annual reports¹⁶⁸, “education acquired a double, mutually contradictory, legal status in the 90s when it became a traded service. Primary and/or compulsory education continues as a public service in the majority of countries, albeit not free in many, while post-compulsory education is not a right in most countries but sold and purchased in change of a “price”. “The commitments under the GATS have affirmed the Government's obligation to preserve compulsory education as a free public service and the corresponding individual

¹⁶⁵ Tomasevski, special Rapporteur of the right to education. Previous reports: E/CN.4/1999/49, E/CN.4/2000/6, E/CN.4/2001/52, E/CN.4/2002/60 and E/CN.4/2003/9.

¹⁶⁶ Articles 1(3)(b) and (c) of GATS.

¹⁶⁷ Report E/CN.4/2004/45 submitted by the Special Rapporteur on the right to education, Katarina Tomasevski to the UN Economic and Social Council, on the 26th of December, 2003.

¹⁶⁸ E/CN.4/2003/9, paragraphs. 18-19, E/CN.4/2002/60, paras. 19-21, E/CN.4/2001/52, paras. 55-59, E/CN.4/2000/6, paragraphs. 70-71.

entitlement”. Tomaszewski also expresses her worries about increasing global consensus about the need for all children to complete primary education and prioritise education as a free public service. Primary education is compulsory and free in most of the countries but secondary school isn't. Since primary education refers only to the first phase of schooling, thereby implicitly, the right to secondary and university education is negated.

The special Rapporteur continues her opinion in this issue showing a particularly worrisome trend: silence about the length of schooling in global education strategies because "primary education" can be defined as merely three years of schooling. The International Labour Organization (ILO) sets the school-leaving age at 16 in 1946, corresponding to the minimum age for employment. The absence of an affirmation of secondary and university education as rights in global education strategy documents of the past decade, threatens these rights with their full and unchallenged transformation into traded services.

6.3. Some Concerns

According to Wrana Pannizzi¹⁶⁹, the main proposals concerning the education liberalization, up to this date, are presented by developed non-European countries (such as New Zealand, USA, Japan, and Australia). According to their proposals, the education services must be free traded, with tariff reduction and better market access conditions. “The liberalization of education services would imply the insertion of foreign groups as educational actors as well as e-learning in all the WTO members. This and many other free trade measures would imply the “tradable education”.

During UNESCO World Conference on Higher Education + 5 (WCHC+5), held in Paris, in June 2003, the concern about the liberalization of education as a tradable service in the WTO was the centre of discussion among the 400 education specialists and 120 State authorities.

¹⁶⁹ President of the Brazilian association of National Higher Education Institutions (Andines) at www.revistadigital.com.br/tendencias

Komlavi Seddoh¹⁷⁰ called the attention upon the present States, recalling that “education should be provided by the State, even though the private sector collaboration is welcomed. We believe that the measures of liberalization proposed by GATS will only deepen the gap between the richest and the poorest”. Further on, he stresses that “accepting the WTO proposal would imply the acceptance that education will no longer be a public service and will no longer be accessible for all. It would also imply the acceptance that education will stop being a duty of the State and become a service controlled by the Market”

Other authorities expressed their concerns during this meeting based on the lack of available information on the country negotiations, because the negotiations are bilateral and are carried out by officials from the ministries of trade or finance, and not by education authorities.

¹⁷⁰ Director of the UNESCO Division of Higher Education and former Minister of Education of Senegal.

CONCLUSION

In conclusion, I would like to briefly summarise the weaknesses as well as the potentialities of three main aspects: education as a human right, Mercosur educational Structure and its compliance with HR and finally the future threats of tradable education

1. Human Rights

The content of this study presents the fundamental importance of education for the development process, specifically in Mercosur countries as a way to confront subsequent human rights violations. We reached the conclusion that education is not merely a right; it is a vehicle to accomplish other fundamental rights and freedoms. Especial attention must be drawn to the right to education, especially in Mercosur countries where changes are still possible and a raise of awareness in this matter is crucial for a real development process.

On one hand, it is very satisfactory to notice all the efforts made towards the full realization of the right to education since the beginning of the UN system creation, contained in numerous international and regional treaties as well as in important plans of action and global targets (e.g. Millennium Development goals, UN decade of education for all and Dakar World Education Forum 2000: Education for All).

On the other hand, the present author pointed at the preoccupation towards the different implementation of “enforceable” CPR and “progressive” ESCR as well as the lack of efficient mechanisms to enforce the real implementation of the right to education, which is highly necessary for the development of the person and for a development contemplating the competitiveness with the developed countries. The different applicability of the rights contained in the two Covenants in Mercosur context, where the major HR violations are intimately linked to ESCR, entails a clear perception that the indivisibility of Human Rights is far from being real.

2. Mercosur, education and human rights.

I would like to recall the mentioned difficulties I had on accessing the academic as well as institutional material related to education negotiations in Mercosur. This is a clear

prove that education is not part of Mercosur priorities and it is not being discussed or even given access to.

By incorporating a free trade of goods, services and persons, Mercosur incorporates the preoccupation towards a social dimension. We have noticed through this thesis, the efforts made by Mercosur towards the inclusion of some fundamental rights such as the Mercosur social and labour charter and the current discussion about the inclusion of a Mercosur Human Rights Clause.

The Protocols and efforts made towards the recognition of basic education are very important in a context of free transit of people. Indeed, those workers who pass the border with their families in order to work, may be sure that the education of their children is recognised and will be continued. Concerning the content of this validation (very poor if compared to the detailed validation of high education), the only structural change made in the basic education, is the inclusion of a regional perspective in history and geography courses as well as the introduction of the second foreign language in basic education curricula (Spanish or Portuguese). These provisions are not visible yet in the educational system that presents other urgent weaknesses than the incorporation of foreign languages.

Another Mercosur target is to create a “regional conscience”. This target is evidently important for the regional integration. Indeed, Mercosur countries have much in common and their citizens should acknowledge their similarities and start feeling part of a common region. The preoccupation of qualified education is constantly repeated in the Ministerial Meetings as well as in the Triennial plans. It is very important to achieve this objective, since the regional integration is aiming the human development of the region. Quality of basic education must be targeted aggressively and jointly in order to confront the abundant and huge problems that the member States have regarding the quality of basic public education.

Before proceeding with the conclusions concerning the applicability of the right to education by Mercosur, it is important to remind that the countries in the region have different quality education levels. A possible solution to increase education quality is through a joint effort, incorporating positive experiences of Uruguay and Argentina into Brazil and Paraguay. This could lead to a real educational and solid integration.

I will now analyse Mercosur Educational Sector decisions in light of the “4 A scheme”:

Availability: A proper infrastructure in the educational system is not even mentioned in the triennial plans nor even in the signed protocols. Quality of education is a worry that recently appears in the third triennial Plan but that is already very present in the protocols and actions taken towards higher education (graduation, post-graduation and technical professional training). It is obvious that the availability of education is not incorporated in the regional agreements, even if all the countries are obliged to fulfill essential feature of education.

Accessibility: Accessibility is also not contained in the regional agreements (or it is only partly incorporated). On one hand, it could be argued that by validating the school certificates in order to provide the continuation of studies, State parties are doing an important effort towards accessibility to their public educational systems. But on the other hand, once again, most of the protocols target Higher education; and the physical access to those universities that are only attained by a minority, as well as the economical access (therefore, in my opinion, being extremely discriminatory).

Adaptability: This is the only education essential feature that is fully provided in Mercosur educational decisions: Education has a flexible curricula reflecting contemporary needs (such as the introduction of Spanish and Portuguese as the official second language and the integration of a regional perspective in history and geography books) as well as the professional training of teachers for this purpose.

Acceptability: Once again, Mercosur has only taken this into consideration regarding Higher education, by carefully analysing the content of four experimental degrees validation, trying to achieve a data base of the content of the curricula, form and substance and compare it among the other member states. Tables of equivalence for basic education did not have so much attention and tables of equivalence for school validation were quickly approved without a long process of cooperation among the educational sector of the countries to carefully analyse the similarities, differences and future changes in order to give a minimum standard in the basic level. On the other hand, we can say that acceptability is fulfilled in the sense that there is an incorporation of pluralist curricula and a worrisome to provide an education that is appropriate culturally.

I would like to remind that, according to international and regional human rights instruments, higher education must be accessible to all in the basis of merits, unfortunately, most of Mercosur countries have the opposite practice. Qualified free higher education (graduation, post-graduation, etc) is accessible to few (those who can afford a qualified basic private education and therefore those that are not in a vulnerable position.). Deficiencies cannot be exported and seen as a solution. A deeper approach to education in the region must be implemented.

According to the UDHR “education should be directed to the full development of human personality and to strengthen the respect of Human Rights and freedoms”, meaning that education must target those that are not “educated” and not the people that have already obtained full human development! (Post graduation level)

Even though some criticise the introduction of a Human Rights clause due to its duplication and probable overlapping with the existing international and regional systems, I believe it is a very important step to show their concern with HR protection in the implications of a regional trade market, but it is also a very important way to walk towards the construction of a free market with a social dimension. Obviously, a Human Rights clause or compromise would be a lot more efficient with the creation of a monitoring body to have a real implementation of the rights.

One of the identified future challenges we have foreseen is the new attempt to create the South American Community of Nations. The creation of an American Community of Nations will bring huge additional differences in the education sector. Efforts towards a better education must be taken at once and must be contemplated in the future block from the beginning. If the real intention of the regional integration is to build a real development, (not a mere conglomeration of economical factors that are certainly not the only basis of the crisis of those countries), joint efforts must be done for a parallel social development.

Efforts in education between the two blocs already started with the annexation of MERCOSUR to the Andres Bello educational agreement of the Andinean Community. But once again, we are talking about a graduation and pos-graduation level, and, as we have seen, only a small portion of the population has access to it, provoking once and again the inequality game at a regional level.

3. GATS

Finally, I concluded this thesis with the awareness of external threats to education such as the current WTO negotiations concerning education as a tradable service (GATS) and how this can deepen the inequalities presented inside the countries.

This work highlights important concerns regarding GATS agreements based on the lack of available information about the negotiations, since negotiations are bilateral and are carried out by officials from the ministries of trade or finance, and not by education authorities.

The present author recalled that if there are private and foreign actors in the national education “service”, it would shift the State obligation to provide education to the private “affordable” actor. This could bring enormous consequences since it can amount to a loss of sovereignty (although the primary stakeholder of the right to education according to international instruments is the State!). Free, compulsory education must be provided by the State and it should not transfer its human rights responsibilities to market “regulation”. The State must control the conduct of private parties ensuring that privatisation in the area of education meets the requirements of availability, accessibility, adaptability and acceptability of education.

This idea is reinforced by the Maastricht guidelines recognising that a failure of the State to take into account its international legal obligations in the field of economic, social and cultural rights when entering agreements with other States, international organisations or multilateral corporations constitutes a violation of Human Rights. In this sense, the State parties of Mercosur should seriously consider the importance of the negotiations in the WTO concerning education as a tradable service and make joint regional efforts in order to have better chances to avoid extra problems and deeper breaches of inequalities in the region.

In conclusion, measures must be taken at international and regional level in order to have a real implementation of the indivisibility of human rights and State parties must be aware of their obligation towards the full realisation of the right to education in the WTO Negotiation table. WTO and Mercosur negotiations must be more transparent. Future steps must be taken to include civil society, non governmental actors and education sector in the drafting of future regional instruments as well as for WTO negotiations. In addition, consultation access to current negotiations would be very constructive for both: the population and Mercosur.

Mercosur countries display a similar record of human rights violations urging for a change. For that purpose, there is a need to re-think South American integration taking into account non-economic aspects. Such an approach would promote implementation of the core content of the right to development. The idea of a solidarity integration (referred by Fernando Henrique Cardoso) where neighbour countries share successful experiences and put efforts together in order to introduce social justice, and fight conflicts together, could finally build a new generation with the strong combination of equal opportunities for all, a commonly planned infrastructure and social policies at the regional level that may contribute to raise the political leverage of the whole region within the current international system. South America is perceived as a “hopeful continent” where great efforts are being done towards the realisation of Human Rights, despite of all the deficiencies and challenges mentioned above. A monitoring body of the implementation of the right to education in Mercosur could also be an important asset and viewed its very young existence, the structure is constantly being modified and these concerns can be introduced and reoriented in the educational sector policies.

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Abbreviations

IACHR	Inter-American Commission of Human Rights
AC	Andinean Community
ACHR	American Convention on Human Rights
ALADI	Latin American Integration Association
CACM	Central American Common Market
CARICOM	Caribbean Community and Common Market
CCR	Mercosur Regional Coordinating Committee
CCRU	Committee on Conventions and Recommendations (UNESCO)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEPAL	Comisión Económica de la ONU para América Latina y el Caribe (in english ECLAC)
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CMC	Mercosur Common Market Council
CMG	Mercosur Common Market Group
CRC	Convention on the Rights of the Child
CRCA-BE	Mercosur Commissions of Area Coordination (Basic education)
CRCA-HE	Mercosur Commissions of Area Coordination (Higher education)
CRCA-TE	Mercosur Commissions of Area Coordination (Technical education)
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECLAC	UN Economic Commission for Latin America and the Caribbean
EU	European Union
G3	Group of three
GATS	The General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GGP	Mercosur Project Manager Groups
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant of Economic, Social and Cultural Rights
ILO	International Labour Organisation

IMF	International Monetary Fund
INEP	Brazilian National Institute of Educational Studies and Research
MERCOSUR	Southern Common Market
NAFTA	North America Free Trade Agreement
NGO	Non Governmental Organisation
OAS	Organisation of American States
OECD	Organisation for Economic Cooperation and Development
OP	Optional Protocol
RME	Mercosur Ministerial Educational Meeting
SEM	Mercosur Education Sector
TRIPs	Agreement on Trade-Related Aspects of Intellectual Property Rights
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNDP	UN Development Programme
UNESCO	UN Educational, Scientific and Cultural organisation
UNICEF	United Nations Children Fund
WB	World Bank
WHO	World Health Organisation
WTO	World Trade Organization

ANNEXES

ANNEX 1: MERCOSUR/CMC/DEC. N° 04/94

Mercado Común del Sur (MERCOSUR)

DECISIONES DEL CONSEJO DEL MERCADO COMÚN

MERCOSUR/CMC/DEC. N° 04/94: PROTOCOLO DE INTEGRACION EDUCATIVA Y RECONOCIMIENTO DE CERTIFICADOS, TITULOS Y ESTUDIOS DE NIVEL PRIMARIO Y MEDIO NO TECNICO

VISTO: El Artículo 1 del Tratado de Asunción, las Decisiones N° 4/91, 5/91 y 7/91 del Consejo del Mercado Común, la Resolución N° 39/94 del Grupo Mercado Común.

CONSIDERANDO:

Que la necesidad de llegar a un acuerdo común en lo relativo al reconocimiento y equiparación de los estudios primarios y medios no técnicos, cursados en cualquiera de los cuatro Estados Partes del MERCOSUR, específicamente en lo que concierne a su validez académica.

EL CONSEJO DEL MERCADO COMÚN DECIDE:

Artículo 1. Aprobar el "Protocolo de Integración Educativa y Reconocimiento de Certificados, Títulos y Estudios de Nivel Primario y Medio No Técnico" suscrito por los Ministros de Educación del MERCOSUR que figura como Anexo a la presente Decisión.

PROTOCOLO DE INTEGRACION EDUCATIVA Y RECONOCIMIENTO DE CERTIFICADOS, TITULOS Y ESTUDIOS DE NIVEL PRIMARIO Y MEDIO NO TECNICO

Los Gobiernos de la República Argentina, de la República Federativa del Brasil, de la República del Paraguay y de la República Oriental del Uruguay, en adelante denominados Estados Partes,

En virtud de los principios y objetivos enunciados en el Tratado de Asunción suscrito el 26 de marzo de 1991;

Conscientes de que la Educación es un actor fundamental en el escenario de los procesos de integración regional;

Previendo que los sistemas educativos deben dar respuesta a los desafíos planteados por las transformaciones productivas, los avances científicos y técnicos y la consolidación de la democracia en un contexto de creciente integración entre los países de la región;

Animados por la convicción de que resulta fundamental promover el desarrollo cultural por medio de un proceso de integración armónico y dinámico, tendiente a facilitar la circulación del conocimiento entre los países integrantes del MERCOSUR;

Inspirados por la voluntad de consolidar los factores comunes de la identidad, la historia y el patrimonio cultural de los pueblos;

Considerando la necesidad de llegar a un acuerdo común en lo relativo al reconocimiento y equiparación de los estudios primarios y medios no técnicos, cursados en cualquiera de los cuatro países integrantes del MERCOSUR, específicamente en lo que concierne a su validez académica.

En el presente Protocolo se conviene en considerar que el mismo abarca los Niveles Primario Medio no Técnicos, o sus denominaciones equivalentes en cada país.

Acuerdan:

ARTICULO 1°

Los Estados Partes reconocerán los estudios de educación primaria y media no técnica, y otorgar validez a los certificados que los acrediten expedidos por las instituciones oficialmente reconocidas por cada uno de los Estados Partes, en las mismas condiciones que el país de origen establece para los cursantes o egresados de dichas instituciones.

Dicho reconocimiento se realizará a los efectos de la prosecución de estudios, de acuerdo a la Tabla de Equivalencias que figura como Anexo I y que se considera parte integrante del presente Protocolo.

Para garantizar la implementación de este Protocolo, la Reunión de Ministros de Educación del MERCOSUR propenderá a la incorporación de contenidos curriculares mínimos de Historia y Geografía de cada uno de los Estados Partes, organizados a través de instrumentos y procedimientos acordados por las autoridades competentes de cada uno de los Países signatarios.

ARTICULO 2°

Los estudios de los niveles primario o medio no técnico realizados en forma incompleta en cualquiera de los Estados Partes serán reconocidos en los otros a fin de permitir la prosecución de los mismos.

Este reconocimiento se efectuará sobre la base de la Tabla de Equivalencias aludida en el párrafo 2 del artículo 1, la que podrá ser complementada oportunamente por una tabla adicional que permitirá equiparar las distintas situaciones académicas originadas por la aplicación de los regímenes de evaluación y promoción de cada uno de los Estados Partes.

ARTICULO 3°

Con el objeto de establecer las denominaciones equivalentes de los niveles de educación en cada uno de los Estados Partes, armonizar los mecanismos administrativos que faciliten el desarrollo de lo establecido, crear mecanismos que favorezcan la adaptación de los estudiantes en el país receptor, resolver aquellas situaciones que no fuesen contempladas por las Tablas de Equivalencias y velar por el cumplimiento del presente Protocolo, se constituirá una Comisión Regional Técnica, que podrá reunirse cada vez que por lo menos dos de los Estados Partes lo consideren necesario.

Dicha Comisión Regional Técnica estará constituida por las delegaciones de los Ministerios de Educación de cada uno de los Estados Partes, quedando la coordinación de la misma a cargo de las áreas competentes de las respectivas Cancillerías, estableciéndose los lugares de reunión en forma rotativa dentro de los territorios de cada uno de los Estados Partes.

ARTICULO 4°

Cada uno de los Estados Partes deberá informar a los demás sobre cualquier clase de cambio en su Sistema Educativo.

ARTICULO 5°

En el caso de que entre los Estados Partes existiesen convenios o acuerdos bilaterales con disposiciones más favorables sobre la materia, dichos Estados Partes podrán invocar la aplicación de las disposiciones que consideren más ventajosas.

ARTICULO 6°

Las controversias que surjan entre los Estados Partes con motivo de la aplicación, interpretación o incumplimiento de las disposiciones contenidas en el presente Protocolo, serán resueltas mediante negociaciones diplomáticas directas.

Si mediante tales negociaciones no se alcanzara un acuerdo o si la controversia fuera solucionada sólo en parte, se aplicarán los procedimientos previstos en el Sistema de Solución de Controversias vigente entre los Estados Partes del Tratado de Asunción.

ARTICULO 7°

El presente protocolo, parte integrante del Tratado de Asunción, entrará en vigor (30) treinta días después del depósito del segundo instrumento de ratificación con relación a los dos primeros Estados Partes que lo ratifiquen.

Para los demás signatarios entrará en vigor el trigésimo día posterior al depósito del respectivo instrumento de ratificación, y en el orden en que fueron depositadas las ratificaciones.

ARTICULO 8°

El presente Protocolo podrá ser revisado de común acuerdo a propuesta de uno de los Estados Partes.

La adhesión por parte de un Estado al Tratado de Asunción implicará **ipso iure** la adhesión al presente Protocolo.

ARTICULO 9°

El Gobierno de la República del Paraguay será el depositario del presente Protocolo y de los instrumentos de ratificación y enviará copias debidamente autenticadas de los mismos a los Gobiernos de los demás Estados Partes.

Asimismo, el Gobierno de la República del Paraguay notificará a los Gobiernos de los demás Estados Partes la fecha de entrada en vigor del presente Protocolo y la fecha de depósito de los instrumentos de ratificación.

Hecho en la ciudad de Buenos Aires, a los cinco días del mes de agosto de 1994, en un original en los idiomas español y portugués, siendo ambos textos igualmente auténticos.

ANEXO I

TABELA COMPARATIVA DE ANOS DE ESCOLARIDADE

	ARGENTINA		BRASIL		PARAGUAI		URUGUAI
1°	Primário	1°	Fundamental	1°	Primário	1°	Primário
2°	“	2°	“	2°	“	2°	“
3°	“	3°	“	3°	“	3°	“
4°	“	4°	“	4°	“	4°	“
5°	“	5°	“	5°	“	5°	“
6°	“	6°	“	6°	“	6°	“
7°	“	7°	“	1°	Básico Médio	1°	C. Básico Sec.
1°	Secundário	8°	“	2°	“ “	2°	“ “
2°	“	1°	Médio	3°	“ “	3°	“ “
3°	“	2°	“	4°	“Bachillerato”	1°	Bachillerato
4°	“	3°	“ “Bach.”	5°	“	2°	“
5°	“			6°	“	3°	“

12 anos	11 anos	12 anos	12 anos
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ANNEX 2: MERCOSUR/CMC/DEC. N° 07/95

Mercado Común del Sur (MERCOSUR)

DECISIONES DEL CONSEJO DEL MERCADO COMÚN

MERCOSUR/CMC/DEC. N° 07/95: PROTOCOLO DE INTEGRACION EDUCATIVA Y REVALIDA DE DIPLOMAS, CERTIFICADOS, TITULOS Y RECONOCIMIENTO DE ESTUDIOS DE NIVEL MEDIO TECNICO

VISTO: El Tratado de Asunción y sus Protocolos Adicionales, las Decisiones. N° 4/91, 5/91, y 7/91 del Consejo del Mercado Común, la Resolución N° 18/95 del Grupo Mercado Común

CONSIDERANDO

La necesidad de llegar a un acuerdo en lo relativo al reconocimiento y equiparación de los estudios de nivel medio técnico cursados en cualquiera de los Estados Partes del MERCOSUR, específicamente en lo que concierne a su validez académica;

EL CONSEJO DEL MERCADO COMUN DECIDE:

ARTICULO 1.

Aprobar el "Protocolo de Integración Educativa y Revalida de Diplomas Certificados, Títulos y Reconocimiento de Estudios de Nivel Medio Técnico" que consta como Anexo a la presente Decisión.

PROTOCOLO DE INTEGRACION EDUCATIVA Y REVALIDA DE DIPLOMAS, CERTIFICADOS, TITULOS Y RECONOCIMIENTO DE ESTUDIOS DE NIVEL MEDIO TECNICO

Los gobiernos de la República Argentina, de la República Federativa del Brasil de la República del Paraguay, de la República Oriental del Uruguay, en adelante denominados Estados Partes.

En virtud de los principios y objetivos enunciados en el Tratado de Asunción suscripto el 26 de marzo de 1991 y considerando:

Que la educación debe dar respuesta a los desafíos planteados por las transformaciones productivas, los avances científicos y tecnológicos y la consolidación de la democracia en un contexto de creciente integración entre los países de la Región;

Que es fundamental promover el desarrollo cultural por medio de un proceso de integración armónico y dinámico que facilite la circulación de conocimientos en los países integrantes del MERCOSUR;

Que se ha señalado la necesidad de promover un intercambio que favorezca el desarrollo científico-tecnológico de los países integrantes del MERCOSUR;

Que existe la voluntad de consolidar los factores comunes de la identidad, la historia y el patrimonio cultural de los pueblos;

Que por lo tanto resulta prioritario llegar a acuerdos comunes en lo relativo reconocimiento y reválida de los estudios de nivel medio técnico cursados en cualquiera de los cuatro países integrantes del MERCOSUR.

Los Estados Partes acuerdan:

ARTICULO PRIMERO

Del reconocimiento de estudios y reválida de diplomas, certificados y títulos.

Los Estados Partes reconocerán los estudios de nivel medio técnico y revalidarán los diplomas, certificados y títulos expedidos por las instituciones educativas oficialmente reconocidas por cada uno de los Estados Partes, en las mismas condiciones que el país de origen establece para los cursantes o egresados de dichas instituciones.

ARTICULO SEGUNDO

De la reválida de diplomas, certificados y títulos.

La reválida de diplomas, certificados y títulos se realizará de acuerdo con los siguientes criterios:

2.01.- La reválida del título de nivel medio técnico se otorgará al egresado del sistema de educación formal, público o privado, avalado por resolución oficial.

2.02.- La reválida se hará a los efectos de la prosecución de estudios, de acuerdo con la Tabla de Equivalencia para Estudios de Nivel Medio Técnico

2.03.- A fin de asegurar el conocimiento de las leyes y normas vigentes en cada país para el ejercicio de la profesión, la institución responsable del otorgamiento de la reválida proporcionará el instructivo correspondiente.

El mismo deberá ser elaborado a nivel oficial y tendrá las características de un "MÓDULO INFORMATIVO COMPLEMENTARIO".

Los módulos serán elaborados en cada país sobre la base de los núcleos temáticos acordados. (Anexo II).

2.04.- Los Estados Partes deberán actualizar la Tabla de Equivalencias para Estudios de Nivel Medio Técnico y el Módulo Informativo Complementario (Anexos I y II), toda vez que haya modificaciones en los sistemas educativos de cada país.

ARTICULO TERCERO

De las posibilidades de ingreso a los estudios de nivel medio-técnico.

Los Estados Partes reconocerán los estudios realizados y posibilitarán el ingreso a los aspirantes, que hayan concluido la educación general básica o el ciclo básico de la escuela media en Argentina, la enseñanza fundamental en Brasil, la educación escolar básica o la etapa básica del nivel medio en Paraguay y el ciclo básico de la educación media en el Uruguay.

El aspirante deberá ajustarse a los requisitos que en cada país correspondan, para la obtención de la vacante que en cada caso corresponda.

ARTICULO CUARTO

Del reconocimiento de estudios realizados en forma incompleta.

Los Estados Partes reconocerán los estudios realizados en forma incompleta, a fin de permitir la prosecución de los mismos de acuerdo con los criterios explicitados en el Anexo III.

ARTICULO QUINTO

De las condiciones del traslado.

La solicitud de traslado debidamente fundamentada será considerada para cualquiera de los años o cursos que integran los estudios del nivel medio técnico.

Para el otorgamiento del traslado se tendrán en cuenta los criterios explicitados en el Anexo IV.

ARTICULO SEXTO

De los casos no considerados, con el objeto de facilitar el desarrollo de los procedimientos administrativos, crear mecanismos que favorezcan la adaptación de los estudiantes en el país receptor, asegurar el cumplimiento de este Protocolo y resolver las situaciones no contempladas en el mismo, se constituirá una Comisión Técnica Regional que podrá reunirse toda vez que por lo menos dos de los Estados Partes lo soliciten.

La Comisión Técnica Regional estará integrada por representantes oficiales del área técnica de cada uno de los Estados Partes. Asimismo, podrá actuar de nexo ante los sectores competentes de sus respectivas cancillerías.

ARTICULO SEPTIMO

De los acuerdos bilaterales.

En el caso de que entre los Estados Partes existiesen convenios o acuerdos bilaterales con disposiciones más favorables sobre la materia, dichos Estados Partes podrán invocar la aplicación de las disposiciones que consideren más ventajosas.

ARTICULO OCTAVO

De la solución de las controversias.

Las controversias que surjan entre los Estados Partes con motivo de la aplicación, interpretación o incumplimiento de las disposiciones contenidas en presente protocolo, serán resueltas mediante negociaciones directas entre los organismos competentes. Si mediante tales negociaciones no se alcanzaren un acuerdo o si la controversia fuera solucionada sólo en parte, se aplicarán los procedimientos previstos en el Sistema de Controversias vigente entre los Estados Partes del Tratado de Asunción.

ARTICULO NOVENO

De la revisión de los anexos

Los Anexos I, II, III y IV que acompañan el presente Protocolo serán revisados evaluados toda vez que, por lo menos, dos de los Estados Partes lo consideren necesario.

A tal efecto se constituirá la Comisión Técnica Regional de Educación Tecnológica y Formación Profesional que propondrá los ajustes y actualizaciones pertinentes al Comité Regional para su consideración y aprobación.

Los ajustes y modificaciones que se generen en los Anexos I, II, III y IV tendrán vigencia una vez ratificados por la firma de los Ministros de Educación de los cuatro Estados Partes.

ARTICULO DECIMO

Del plazo de vigencia.

El presente Protocolo, parte integrante del Tratado de Asunción entrará en vigor para los dos primeros estados que lo ratifiquen (30) treinta días después del depósito del segundo instrumento.

Para los demás signatarios entrará en vigencia en el trigésimo día después del depósito del respectivo instrumento de ratificación en el orden en que fueren depositadas las ratificaciones.

ARTICULO UNDECIMO

De la adhesión al Protocolo.

La adhesión por parte de un Estado al Tratado de Asunción implicará ipso jure adhesión al presente Protocolo.

ARTICULO DUODECIMO

Del depositario.

El gobierno de la República del Paraguay será el depositario del presente Protocolo y de los instrumentos de ratificación y enviará copias debidamente autenticadas de los mismos a los gobiernos de los demás Estados Partes. Asimismo el Gobierno de la República notificará a los Gobiernos de los demás Estados Partes la fecha de entrada en vigor del presente Protocolo y la fecha depósito de los instrumentos de ratificación.

El presente Protocolo podrá ser revisado de común acuerdo a propuesta de por lo menos dos de los Estados Partes.

Hecho en la Ciudad de Asunción, a los cinco días del mes de agosto del año mil novecientos noventa y cinco, en dos originales, en los idiomas español y portugués, siendo ambos textos igualmente auténticos.

Por la República Argentina Guido Di Tella

Por la República Federativa del Brasil Luiz Felipe Lampreia

Por la República del Paraguay Luis María Ramirez Boettner

Por la República Oriental del Uruguay Alvaro Ramos

ANNEX 3: MERCOSUR/CMC/DEC. N° 04/95

Mercado Común del Sur (MERCOSUR)

DECISIONES DEL CONSEJO DEL MERCADO COMÚN

MERCOSUR/CMC/DEC. N° 04/95: PROTOCOLO DE INTEGRACION EDUCATIVA SOBRE RECONOCIMIENTO DE TITULOS UNIVERSITARIOS PARA LA PROSECUCION DE ESTUDIOS DE POST-GRADO EN LAS UNIVERSIDADES DE LOS PAISES DEL MERCOSUR

VISTO: El Tratado de Asunción y sus Protocolos Adicionales, las Decisiones. N° 4/91, 5/91, y 7/91 del Consejo del Mercado Común, la Resolución N° 18/95 del Grupo Mercado Común.

CONSIDERANDO

La necesidad de llegar a un acuerdo común en lo relativo al reconocimiento de títulos universitarios de las Universidades de los Estados Partes del Tratado de Asunción, específicamente en lo que concierne a su validez académica, que posibilite la prosecución de Estudios de Post-Grado en instituciones superiores o universitarias de los Países del MERCOSUR;

EL CONSEJO DEL MERCADO COMUN DECIDE:

ARTICULO 1. Aprobar el "Protocolo de Integración Educativa sobre Reconocimiento de títulos universitarios, para la prosecución de estudios de Post-Grado en la universidades de los países del Mercosur, que consta como Anexo a la presente Decisión.

PROTOCOLO DE INTEGRACION EDUCATIVA SOBRE RECONOCIMIENTO DE TITULOS UNIVERSITARIOS PARA LA PROSECUCION DE ESTUDIOS DE POST-GRADO EN LAS UNIVERSIDADES DE LOS PAISES DEL MERCOSUR

Los Gobiernos de la República del Paraguay, de la República Argentina, de la República Federativa del Brasil y de la República Oriental del Uruguay, en adelante denominados Estados Partes, basados en los principios, fines y objetivos del Tratados Asunción, suscripto el 26 de marzo de 1991; y

Considerando:

Que la educación tiene un papel fundamental para que la integración regional consolide, en la medida en que genera y transmite valores, conocimientos científico-tecnológicos, constituyéndose en medio eficaz de modernización de los Estados Partes.

Que es fundamental promover cada vez más el desarrollo científico y tecnológico de la región, intercambiando conocimientos a través de la investigación científica común.

Que fue asumido el compromiso en el Plan Trienal para el Sector Educación, Pr II.4, de promover en el orden regional la formación de una base de conocimiento de recursos humanos e infraestructura institucional de apoyo para la toma de decisiones estratégicas del MERCOSUR.

Que se ha señalado la importancia de implementar políticas de cooperación en instituciones de educación superior de los cuatro países.

Que en el Acta de la VII Reunión de Ministros de Educación, realizada en Ouro (Brasil), con fecha 9 de diciembre de 1994, se recomendó la suscripción de títulos universitarios de grado al solo efecto de continuar estudios de post-grado.

Acuerdan:**Artículo Primero**

Los Estados Partes, a través de sus organismos competentes reconocerán los títulos universitarios de grado otorgados por las Universidades reconocidas de cada país a efecto de la prosecución de estudios de post-grado.

Artículo Segundo

A los efectos del presente Protocolo, se consideran títulos de grado, aquellos cursos que tienen un mínimo de cuatro años o dos mil setecientas horas cursada.

Artículo Tercero

El ingreso de alumnos extranjeros en los cursos de post-grado se regirá por lo requisitos de admisión aplicados por las instituciones de educación superior a nacionales.

Artículo Cuarto

Los Títulos de post-grado sometidos al régimen que establece el presente Protocolo reconocidos al solo efecto académico por los organismos competentes de cada Estado Parte. Estos títulos de por sí no habilitarán para el ejercicio profesional.

Artículo Quinto

A los efectos del reconocimiento de los títulos de grado, el interesado deberá obtener diploma correspondiente, así como la documentación que acredite lo expuesto en Segundo. La autoridad competente podrá requerir la presentación de la documentación necesaria para identificar a qué título corresponde, en el país que efectúa el reconocimiento presentado.

Cuando no exista título equivalente en el país que efectúa el reconocimiento, adecuación de la formación del candidato al post-grado de conformidad con lo admisión, con la finalidad de autorizar su inscripción, en caso que corresponda. En todos los casos, la documentación debe presentarse con la debida autenticación universitaria y consular.

Artículo Sexto

Cada Estado Parte se compromete a informar a los restantes cuáles son las Universidades e Institutos de Educación Superior reconocidos que están comprendidos en el presente Protocolo.

Artículo Séptimo

En el caso de que entre los Estados Partes existiesen convenios o acuerdos bilaterales disposiciones más favorables acerca de la materia, dichos Estados Partes podrán hacer aplicación de las disposiciones que consideren más ventajosas.

Artículo Octavo

Una Comisión Regional Técnica será constituida para resolver, por medio de *mea culpa*, las situaciones dudosas y aquellas no contempladas en el presente Protocolo.

Artículo Noveno

Las controversias que surjan con motivo de la aplicación, el incumplimiento de contenidas en este Protocolo serán resueltas mediante negociaciones directas e instituciones correspondientes.

Si mediante tales negociaciones no se alcanzare un acuerdo o si la controversia solucionada solo en parte, se aplicarán los procedimientos previstos en el sistema de controversias vigentes en el Mercosur.

Artículo Décimo

El presente Protocolo, parte integrante del Tratado de Asunción, entrará en vigencia días después del depósito del segundo instrumento de ratificación en relación primeros Estados Partes que lo ratifiquen.

Para los demás signatarios entrará en vigor el trigésimo día posterior al depósito del instrumento de ratificación y en el ordenen que fueran depositados los mismos.

Artículo Undécimo

El presente Protocolo podrá ser revisado de común acuerdo a propuesta de uno de los Estados Partes.

Artículo Duodécimo

La adhesión por parte de un Estado al Tratado de Asunción implicará *ipso jure* presente Protocolo.

Artículo Décimo Tercero

La República del Paraguay será depositaria del presente Protocolo y de los instrumentos de ratificación, y enviará copias debidamente autenticadas de los mismos a los de los Estados Partes.

El Gobierno de la República del Paraguay notificará a los demás Estados Partes entrada en vigor del presente Protocolo y de la fecha del depósito de los instrumentos de ratificación.

Hecho en la ciudad de Asunción, República del Paraguay, a los cinco días del mes de diciembre del año mil novecientos noventa y cinco, en un original en español y otro en portugués ambos textos igualmente auténticos.

ANNEX 4: MERCOSUR/CMC/DEC. N° 09/96

Mercado Comum do Sul (MERCOSUL)

DECISISOES DO CONSELHO DO MERCADO COMUM

MERCOSUR/CMC/DEC N° 09/96 : PROTOCOLO DE INTEGRAÇÃO EDUCACIONAL PARA A FORMAÇÃO DE RECURSOS HUMANOS NO NÍVEL DE PÓS-GRADUAÇÃO ENTRE OS ESTADOS PARTES DO MERCOSUL

TENDO EM VISTA: O Tratado de Assunção, o Protocolo de Ouro Preto, a Decisão N° 1/95 do Conselho do Mercado Comum e a Ata N° 8/95 da Reunião de Ministros da Educação do Mercosul

CONSIDERANDO:

A importância de estabelecer o intercâmbio e a cooperação entre instituições de nível superior do Mercosul para a formação recursos humanos no nível de pós-graduação.

O CONSELHO DO MERCADO COMUM DECIDE:

Art. 1 - Aprovar o "Protocolo de Integração Educacional para a Formação de Recursos Humanos no Nível de Pós-Graduação entre os Estados Partes do Mercosul", que figura no Anexo e forma parte da presente Decisão, em idioma Português e Espanhol.

XI CMC - Fortaleza, 17/12/96

PROTOCOLO DE INTEGRAÇÃO EDUCACIONAL PARA A FORMAÇÃO DE RECURSOS HUMANOS NO NÍVEL DE PÓS-GRADUAÇÃO ENTRE OS PAÍSES MEMBROS DO MERCOSUL

Os governos da República Oriental do Uruguai, da República Argentina, da República Federativa do Brasil e da República do Paraguai, a seguir denominados “Estados Partes”, em virtude dos princípios, fins e objetivos do Tratado de Assunção, assinado em 26 de março de 1991,

Considerando:

Que a educação tem papel fundamental no processo de integração regional.

Que o intercâmbio e a cooperação entre as instituições de ensino superior é o caminho ideal para a melhoria da formação e da capacitação científica, tecnológica e cultural e para a modernização dos Estados Partes.

Que é necessária a promoção do desenvolvimento harmônico e dinâmico da Região, nos campos científico e tecnológico, como resposta aos desafios impostos pela nova realidade econômica e social do continente.

Que se assumiu o compromisso, no Plano Trienal para o setor educação, Programas I.3 e II.4, com a formação e a capacitação de recursos humanos de alto nível, com o desenvolvimento da pós-graduação nos quatro países e com o apoio a pesquisas conjuntas de interesse do MERCOSUL,

Acordam:

ARTIGO 1

Definir como objetivos do presente Protocolo:

A formação e o aperfeiçoamento de docentes universitários e pesquisadores com o objetivo de consolidar e ampliar a pós-graduação na Região.

A criação de um sistema de intercâmbio entre as instituições, pelo qual os docentes e pesquisadores, trabalhando em áreas comuns de pesquisa, propiciem a formação de recursos humanos, no âmbito de projetos específicos.

A troca de informações científicas e tecnológicas, de documentação especializada e de publicações.

O estabelecimento de critérios e padrões comuns de avaliação da pós-graduação.

ARTIGO 2

A fim de alcançar os objetivos do artigo primeiro, as partes apoiarão:

A cooperação entre grupos de pesquisa e ensino que, bilateral ou multilateralmente, estejam trabalhando em projetos comuns de pesquisa em áreas de interesse regional, com destaque à formação em nível de doutoramento.

A consolidação de núcleos avançados de desenvolvimento científico e tecnológico, visando à formação de recursos humanos.

Os esforços de adaptação de programas de pós-graduação já existentes na Região, visando à formação comparável ou mesmo equivalente.

A implantação de cursos de especialização em áreas consideradas estratégicas para o desenvolvimento da Região.

ARTIGO 3

As partes se empenharão, igualmente, em promover projetos temáticos amplos, de caráter integrador, a serem executados bilateral ou multilateralmente. Os mesmos serão definidos por documentos oficiais específicos, devendo enfatizar a formação de recursos humanos, assim como o desenvolvimento da ciência e da tecnologia de interesse regional.

ARTIGO 4

A programação geral e o acompanhamento das ações resultantes do presente Protocolo estarão a cargo de uma Comissão Técnica Regional *ad hoc* de Pós-graduação, integrada por representantes dos Estados Membros.

ARTIGO 5

A responsabilidade pela supervisão e pela execução das ações desenvolvidas no âmbito deste Protocolo estarão a cargo, na Argentina, da Secretaria de Políticas Universitárias do Ministério da Cultura e Educação, no Brasil, da Fundação Coordenação de Aperfeiçoamento de Pessoal de Nível Superior - CAPES do Ministério da Educação e do Desporto, no Paraguai, da Universidad Nacional de Asunción e do Ministério da Educação e Culto, e no Uruguai, da Universidad de la Republica e da Diretoria de Educação do Ministério da Educação e Cultura, integrantes da Comissão Técnica *ad hoc* mencionada no artigo quarto.

ARTIGO 6

A implementação das ações indicadas no artigo segundo deverá ser objeto, em cada caso, de projetos conjuntos específicos, elaborados pelas entidades participantes dos mesmos e devidamente aprovados pelas entidades referidas no artigo quinto.

Em cada projeto resultante deste Protocolo, deverão ser definidas as regras concernentes à divulgação de informações, confidencialidade, responsabilidade e direitos de propriedade.

ARTIGO 7

As partes envidarão esforços para garantir os recursos financeiros necessários à implementação dos projetos, procurando obter, neste sentido, também o apoio de organismos internacionais.

ARTIGO 8

Em caso de existência, entre Estados Partes, de acordos ou convênios bilaterais com disposições mais favoráveis sobre a matéria, os referidos Estados Partes poderão invocar a aplicação daqueles dispositivos que considerarem mais vantajosos.

ARTIGO 9

As controvérsias que surjam, entre os Estados Partes, em decorrência da aplicação, interpretação ou do não cumprimento das disposições contidas no presente Protocolo serão resolvidas mediante negociações diplomáticas diretas.

Se, mediante tais negociações, não se alcançar um acordo ou se a controvérsia for solucionada apenas em parte, serão aplicados os procedimentos previstos no Sistema de Solução de Controvérsias vigente entre os Estados Partes do Tratado de Assunção.

ARTIGO 10

O presente Protocolo, parte integrante do Tratado de Assunção, entrará em vigor, para os dois primeiros Estados que o ratifiquem 30 (trinta) dias após o depósito do segundo instrumento de ratificação. Para os demais signatários, entrará em vigência no trigésimo dia após o depósito do respectivo instrumento de ratificação e na ordem em que forem depositadas as ratificações.

ARTIGO 11

O presente Protocolo poderá ser revisto de comum acordo, por proposta de um dos Estados Partes.

ARTIGO 12

A adesão por parte de um Estado ao Tratado de Assunção implicará, *ipso iure*, a adesão ao presente Protocolo.

ARTIGO 13

O Governo da República do Paraguai será o depositário do presente Protocolo, bem como dos instrumentos de ratificação, e enviará cópias devidamente autenticadas dos mesmos aos Governos dos demais Estados Partes.

Da mesma forma, o Governo da República do Paraguai notificará os Governos dos demais Estados Partes sobre a data de entrada em vigor do presente Protocolo, e a data de depósito dos instrumentos de ratificação.

Feito na cidade de Fortaleza, aos dezessete dias do mês de dezembro de mil novecentos de noventa e seis, em um original nos idiomas espanhol e português, sendo ambos os textos igualmente autênticos.

ANNEX 5: MERCOSUR/CMC/DEC. N° 04/99

ACUERDO DE ADMISION DE TITULOS Y GRADOS UNIVERSITARIOS PARA EL EJERCICIO DE ACTIVIDADES ACADEMICAS EN LOS ESTADOS PARTES DEL MERCOSUR

VISTO: El Tratado de Asunción, el Protocolo de Ouro Preto, las Decisiones N° 3/97, N° 26/97 y N° 11/98 del Consejo del Mercado Común y la Resolución N° 43/99 del Grupo Mercado Común.

CONSIDERANDO:

Que es necesario establecer instrumentos jurídicos que orienten la definición de políticas y estrategias comunes para el desarrollo de la educación regional.

Que los Estados Partes reconocen la necesidad de establecer mecanismos que faciliten el ejercicio de actividades académicas en la región.

Que en la Primera Reunión de Ministros de Educación de los Estados Partes del MERCOSUR se acordó un texto sustitutivo del "Protocolo de Admisión de Títulos y Grados Universitarios para el Ejercicio de Actividades Académicas en los Estados Partes del MERCOSUR", firmado en la ciudad de Asunción el 11 de junio de 1997 y de su anexo suscrito en Montevideo el 15 de diciembre de 1997.

Que en consecuencia es necesario sustituir las Decisiones N° 3/97, N° 26/97 y N° 11/98.

EL CONSEJO DEL MERCADO COMUN
DECIDE:

Art. 1 Aprobar el "Acuerdo de Admisión de Títulos y Grados Universitarios para el Ejercicio de Actividades Académicas en los Estados Partes del MERCOSUR", en sus versiones en español y portugués, que consta como Anexo y forma parte de la presente Decisión.

Art. 2 Dejar sin efecto las Decisiones CMC N° 3/97, N° 26/97 y N° 11/98.

XVI CMC – Asunción, 15/VI/99

**ACUERDO DE ADMISION DE TITULOS Y GRADOS UNIVERSITARIOS
PARA EL EJERCICIO DE ACTIVIDADES ACADEMICAS EN LOS ESTADOS
PARTES DEL MERCOSUR**

Los Gobiernos de la República Argentina, de la República Federativa de Brasil, de la República del Paraguay y de la República Oriental del Uruguay, en adelante denominados "Estados Partes", en virtud de los principios, fines y objetivos del Tratado de Asunción, suscrito el 26 de marzo de 1991,

CONSIDERANDO:

Que la educación tiene un papel central para que el proceso de integración regional se consolide;

Que la promoción del desarrollo armónico de la Región, en el campo científico-tecnológico, es fundamental para responder a los desafíos impuestos por la nueva realidad socio-económica del continente;

Que el intercambio de académicos entre las instituciones de educación superior de la Región se constituye en mecanismo eficaz para el mejoramiento de la formación y de la capacitación científica, tecnológica y cultural, y para la modernización de los Estados Partes;

Que del Acta de la X Reunión de Ministros de Educación de los Países Signatarios del Tratado del Mercado Común del Sur, realizado en Buenos Aires, Argentina el día veinte de junio de mil novecientos noventa y seis, surge la recomendación de preparar un Protocolo sobre admisión de títulos y grados universitarios para el ejercicio de actividades académicas en las instituciones universitarias de la Región;

Que la conformación de propuestas regionales en esa área debe estar pautada por la preocupación constante en salvaguarda de los patrones de calidad vigentes en cada país, y por la búsqueda de mecanismos capaces de asimilar la dinámica que caracteriza a los sistemas educativos de los Países de la Región, y que responden a su continuo perfeccionamiento;

ACUERDAN:

Artículo 1

Los Estados Parte, a través de sus organismos competentes admitirán, al solo efecto del ejercicio de actividades de docencia e investigación en las Instituciones de Educación Superior en Brasil, en las Universidades e Institutos Superiores en Paraguay, en las Instituciones Universitarias en Argentina y Uruguay, los títulos de grado y de post grado reconocidos y acreditados en los Estados Partes, de acuerdo a los procedimientos y criterios a ser establecidos para la implementación de este Acuerdo.

Artículo 2

A los efectos previstos en el presente Acuerdo, se consideran títulos de grado aquellos obtenidos en cursos con una duración mínima de cuatro años y dos mil setecientas horas

cursadas, y títulos de post grado tanto a los cursos de especialización con una carga horaria presencial no inferior a las trescientas sesenta horas, como a los grados académicos de maestría y doctorado.

Artículo 3

Los títulos de grado y post grado referidos en el artículo anterior deberán estar debidamente validados por la legislación vigente en los Estados Partes.

Artículo 4

A los fines establecidos en el Artículo Primero, los postulantes de los Estados Partes del Mercosur deberán someterse a las mismas exigencias previstas para los nacionales del Estado Parte en que pretenden ejercer actividades académicas.

Artículo 5

La admisión otorgada en virtud de lo establecido en el Artículo Primero de este Acuerdo solamente conferirá derecho al ejercicio de las actividades de docencia e investigación en las instituciones en él referidas. El reconocimiento de títulos para cualquier otro efecto que no sea el allí establecido, deberá regirse por las normas específicas de los Estados Partes.

Artículo 6

El interesado en solicitar la admisión en los términos previstos en el Artículo Primero, debe presentar toda la documentación que pruebe las condiciones exigidas en el presente Acuerdo. Para identificar, en el país que concede la admisión, a qué título o grado corresponde la denominación que consta en el diploma, se podrá requerir la presentación de documentación complementaria, debidamente legalizada en los términos de la reglamentación a que se refiere el Artículo Primero.

Artículo 7

Cada Estado Parte se compromete a mantener informados a los demás sobre cuáles son las instituciones con sus respectivas carreras reconocidas y acreditadas. El Sistema de Información y Comunicación del Mercosur proporcionará información sobre las agencias acreditadoras de los países, los criterios de evaluación, y las carreras acreditadas.

Artículo 8

En caso de existencia entre los Estados Parte, de acuerdos o convenios bilaterales con disposiciones más favorables sobre la materia, éstos podrán invocar la aplicación de aquellos términos que consideren más ventajosos.

Artículo 9

El presente Acuerdo, celebrado en el marco del Tratado de Asunción, entrará en vigor para los dos primeros Estados que lo ratifiquen, treinta días después del depósito del segundo instrumento de ratificación y, para los demás signatarios, a los treinta días del depósito respectivo y en el orden en que fueron depositadas las ratificaciones.

Artículo 10

El presente Acuerdo podrá ser revisado de común acuerdo, a propuesta de uno de los Estados Partes.

Artículo 11

El Gobierno de la República del Paraguay será el depositario del presente Acuerdo, así como de los instrumentos de ratificación, y enviará copias debidamente autenticadas de los mismos a los Gobiernos de los demás Estados Parte. Asimismo, notificará a éstos la fecha del depósito de los instrumentos de ratificación y la entrada en vigencia del presente Acuerdo.

Artículo 12

La Reunión de Ministros de Educación emitirá recomendaciones generales para la implementación de este Acuerdo.

Artículo 13

El presente Acuerdo sustituye al "Protocolo de Admisión de Títulos y Grados Universitarios para el Ejercicio de Actividades Académicas en los Estados Partes del MERCOSUR", firmado el 11 de junio de 1997 en Asunción y su anexo, suscrito el 15 de diciembre de 1997 en Montevideo.

Hecho en la ciudad de Asunción, capital de la República del Paraguay, a los catorce días del mes de junio del año mil novecientos noventa y nueve, en tres originales en idioma español y uno en idioma portugués siendo los textos igualmente auténticos.

Por el Gobierno de la República Argentina
Guido Di Tella

Por el Gobierno de la República del Paraguay
Miguel Abdón Saguier

Por el Gobierno de la República Federativa del
Brasil
Luiz Felipe Palmeira Lampreia

Por el Gobierno de la República Oriental del
Uruguay
Didier Operti

ANNEX 6: MERCOSUR/CMC/DEC. N° 05/99

Acordo de Admissão de Títulos e Graus Universitários para o Exercício de Atividades Acadêmicas nos Países Membros do Mercosul, na República da Bolívia e na República do Chile

Os Governos da República da Argentina, da República Federativa do Brasil, da República do Paraguai e da República Oriental do Uruguai, Estados Partes do Mercado Comum do Sul (MERCOSUL), da República da Bolívia e da República do Chile, a seguir denominados "Estados Partes" do presente Protocolo,

Considerando

Os princípios, fins e objetivos do Tratado de Assunção, assinado em vinte e seis de março de mil novecentos e noventa e um, entre a República da Argentina, a República Federativa do Brasil, a República do Paraguai e a República Oriental do Uruguai e o Protocolo de Ouro Preto, assinado em dezessete de dezembro de mil novecentos e noventa e quatro, por estes mesmos Estados Partes;

O Acordo de Complementação Econômica N° 36, subscrito entre o MERCOSUL e a República da Bolívia, o Acordo de Complementação Econômica N° 35, subscrito entre o MERCOSUL a República do Chile e as Decisões do Conselho do Mercado Comum do Sul N° 14/96 "Participação de Terceiros Países Associados em Reuniões do Mercosul" e N° 12/97 "Participação do Chile em Reuniões do Mercosul";

Que a educação tem papel central para que o processo de integração regional se consolide;

Que a promoção do desenvolvimento harmônico da Região, nos campos científico e tecnológico, é fundamental para responder aos desafios impostos pela nova realidade sócio-econômica do continente;

Que o intercâmbio de acadêmicos entre as instituições de ensino superior da Região apresenta-se como mecanismo eficaz para a melhoria da formação e da capacitação científica, tecnológica e cultural e para a modernização dos Estados Partes;

Que da ata da X Reunião de Ministros da Educação dos Países Signatários do Tratado do Mercado Comum do Sul, realizada em Buenos Aires, Argentina, no dia vinte de junho de mil novecentos e noventa e seis, constou a recomendação de que se preparasse um Protocolo sobre a admissão de títulos e graus universitários para o exercício de atividades acadêmicas nas instituições universitárias da Região;

Que a conformação de propostas regionais nessa área deve ser pautada pela preocupação constante em salvaguardar os padrões de qualidade vigentes em cada País e pela busca de mecanismos capazes de assimilar a dinâmica que caracteriza os sistemas educacionais dos Países da Região, que correspondem ao seu contínuo aperfeiçoamento;

Acordam:

Artigo Primeiro

Os Estados Partes, por meio de seus organismos competentes, admitirão, unicamente para o exercício de atividades de docência e pesquisa nas instituições de ensino superior no Brasil e no Chile, nas universidades e institutos superiores no Paraguai, nas instituições universitárias na Argentina, no Uruguai e na Bolívia, os títulos de graduação e de pós-graduação reconhecidos e credenciados nos Estados Partes, segundo procedimentos e critérios a serem estabelecidos para a implementação deste Protocolo.

Artigo Segundo

Para os fins previstos no presente Protocolo, consideram-se títulos de graduação aqueles obtidos em cursos com duração mínima de quatro anos e duas mil e setecentas horas cursadas, e títulos de pós-graduação tanto os cursos de especialização com carga horária presencial não inferior a trezentas e sessenta horas, quanto os graus acadêmicos de mestrado e doutorado.

Artigo Terceiro

Os títulos de graduação e pós-graduação referidos no artigo anterior deverão estar devidamente validados pela legislação vigente nos Estados Partes.

Artigo Quarto

Para os fins previstos no Artigo Primeiro, os postulantes dos Estados Partes deverão submeter-se às mesmas exigências previstas para os nacionais do Estado Parte em que pretendem exercer atividades acadêmicas.

Artigo Quinto

A admissão outorgada em virtude do estabelecido no Artigo Primeiro deste Protocolo somente conferirá direito ao exercício das atividades de docência e pesquisa nas instituições nele referidas, devendo o reconhecimento de títulos para qualquer outro efeito que não o ali estabelecido, reger-se pelas normas específicas dos Estados Partes.

Artigo Sexto

O interessado em solicitar a admissão nos termos previstos no Artigo Primeiro deve apresentar toda a documentação que comprove as condições exigidas no Presente Protocolo. Para identificar, no país que concede a admissão, a que título ou grau corresponde a denominação que consta no diploma, poder-se-á requerer a apresentação de documentação complementar devidamente legalizada nos termos da regulamentação a que se refere o Artigo Primeiro.

Artigo Sétimo

Cada Estado Parte se compromete a manter informados os demais sobre quais são as instituições com seus respectivos cursos reconhecidos e credenciados. O Sistema de Informação e Comunicação do Mercosul proporcionará informação sobre as agências credenciadoras dos Países, os critérios de avaliação e os cursos credenciados.

Artigo Oitavo

Em caso de existência, entre os Estados Partes, de acordos ou convênios bilaterais com disposições mais favoráveis sobre a matéria, estes poderão invocar a aplicação daqueles dispositivos que considerarem mais vantajosos.

Artigo Nono

As controvérsias que surjam entre os Estados Partes, em decorrência da aplicação, interpretação ou do não cumprimento das disposições contidas no presente Protocolo, serão resolvidas mediante negociações diplomáticas diretas. Se, mediante tais negociações, não se alcançar um acordo ou se a controvérsia for solucionada apenas em parte, serão aplicados os procedimentos previstos no Sistema de Solução de Controvérsias vigente entre os Estados Partes do Tratado de Assunção.

Artigo Décimo

O presente Protocolo, parte integrante do Tratado de Assunção, entrará em vigor, para os dois primeiros Estados que o ratifiquem 30 (trinta) dias após o depósito do segundo instrumento de ratificação. Para os demais signatários, aos trinta dias do depósito respectivo e na ordem em que forem depositadas as ratificações.

Artigo Onze

O presente Protocolo poderá ser revisto de comum acordo, por proposta de um dos Estados Partes.

Artigo Doze

A adesão por parte de um Estado ao Tratado de Assunção implicará, *ipso iure*, a adesão ao presente Protocolo.

Artigo Treze

O Governo da República do Paraguai será o depositário do presente Protocolo, bem como dos instrumentos de ratificação e enviará cópias devidamente autenticadas dos mesmos aos Governos dos demais Estados Partes. Da mesma forma, notificará a estes a data de depósito dos instrumentos de ratificação e a entrada em vigor do presente Protocolo.

Artigo Quatorze

A reunião de Ministros de Educação emitirá recomendações gerais para a implementação deste Protocolo.

Feito na cidade de Assunção, capital da República do Paraguai, aos vinte e oito dias do mês de maio de mil novecentos e noventa e nove, em cinco originais no idioma Espanhol e um no idioma Português, sendo os textos igualmente autênticos.

MINISTROS DE EDUCACION

ANNEX 7: Memorando de entendimento

Memorando de entendimento sobre a implementação de um mecanismo experimental de credenciamento de cursos para o reconhecimento de títulos de graduação universitária nos países do MERCOSUL

Os Ministros de Educação da República Argentina, da República Federativa do Brasil, da República do Paraguai e da República Oriental do Uruguai, e com a participação dos Ministros de Educação da República do Chile e da República da Bolívia, Estados Associados ao MERCOSUL, em virtude dos princípios, fins e objetivos do Tratado de Assunção, subscrito em março de 1991, e Considerando que a melhoria da qualidade educacional constitui um elemento substancial para a consolidação do processo de integração regional; que o favorecimento da mobilidade das pessoas no conjunto da região constitui um objetivo prioritário para o empreendimento de integração; e que um sistema de credenciamento de cursos, como mecanismo para reconhecimento de títulos de graduação facilitará, paralelamente, o deslocamento de pessoas entre os países da região e propenderá a estimular a qualidade educacional, ao favorecer a comparabilidade dos processos de formação em termos de qualidade acadêmica, concordam em assinar o presente Memorando de Entendimento, orientado no sentido de estabelecer um mecanismo de credenciamento de cursos para o reconhecimento de títulos de graduação universitários no Mercosul, sustentado nas seguintes bases:

Princípios Gerais

1. O credenciamento é o processo mediante o qual se outorga validade pública, de acordo com as normas legais nacionais, aos títulos universitários, garantindo que os cursos correspondentes cumpram com requisitos de qualidade previamente estabelecidos no âmbito regional.

Este processo estará baseado em mecanismos de avaliação que permitam garantir a devida formação dos titulados.

2. A implementação deste mecanismo respeitará as legislações de cada país.

3. Será respeitada a autonomia das instituições universitárias.

4. O credenciamento referir-se-á a cursos indicados pela Reunião de Ministros, que contem com reconhecimento oficial e dos quais já existam graduados.

5. Será feito segundo critérios e parâmetros de qualidade comuns para cada curso, acordados pela Reunião de Ministros. Para tanto, esta conformará uma comissão consultiva de especialistas por área. Cada comissão apresentará uma proposta, que será objeto de consulta junto aos setores interessados na área.

6. A adesão ao mecanismo de credenciamento será voluntária e poderão solicitá-la unicamente instituições reconhecidas no país de origem e habilitadas para outorgar os títulos dos cursos de que se trata, conforme sua normativa legal interna.

7. A solicitação de credenciamento do curso deverá estar acompanhada de um relatório institucional e de auto-avaliação, preparado segundo normas preestabelecidas.

8. No processo de credenciamento, deverá solicitar-se o parecer de um Comitê de Pares, que levará em conta os critérios e parâmetros de qualidade fixados. A composição do Comitê de Pares para a avaliação de cada curso contemplará a participação de ao menos um especialista de cada um dos países do Mercosul.

9. O credenciamento será periódico. Para cada curso selecionado, a Reunião de Ministros indicará o período de validade do credenciamento, segundo recomendação da comissão consultiva de especialistas correspondente.

10. Os efeitos do credenciamento serão válidos em todos os Estados Partes.

II

Crítérios para a determinação dos cursos

Este mecanismo será aplicado, em caráter experimental e gradual, a carreiras que requeiram título universitário ou equivalente legal como condição para o exercício da profissão.

III

Procedimento para o credenciamento

1. O credenciamento dos cursos será feito por Agência Nacional de Credenciamento, que reúna as seguintes características:

a) Que seja uma pessoa de direito público, reconhecida de conformidade com as disposições legais e constitucionais vigentes em seu país de origem.

b) Que tenha caráter coletivo em sua conformação.

c) Cujas composição garanta a idoneidade de seus membros e a autonomia de suas decisões

d) Que seja indicada à Reunião de Ministros pelo Estado Parte que representa.

2. Será solicitado para curso determinado pela instituição responsável pelo mesmo, segundo os princípios gerais estabelecidos neste documento.

3. A Agência Nacional de Credenciamento analisará a solicitação apresentada e outorgará ou denegará o credenciamento, segundo os critérios e parâmetros comuns, o relatório de auto-avaliação e seu procedimento de trabalho.

4. A opinião dos membros do Comitê de Pares, quando unânime, terá caráter vinculante para a decisão da Agência Nacional de Credenciamento.

5. O Comitê de Pares deverá considerar, em seu parecer, os resultados obtidos em outros processos de credenciamento pelo curso em questão.

6. O processo de avaliação compreenderá o curso em sua totalidade, incluindo os programas, corpo docente, biblioteca, infra-estrutura de serviços, laboratórios, dentre outros aspectos.

7. A resolução que denegue o credenciamento de um curso não será passível de recurso, salvaguardado o direito da instituição interessada de solicitar a nulidade do processo, conforme a legislação nacional.

8. A resolução que outorgue o credenciamento poderá ser impugnada, pela parte interessada, no caso de manifesto descumprimento dos procedimentos, critérios e parâmetros estabelecidos, correspondendo à Reunião de Ministros resolver a questão com base em juízo fundamentado, emitido por uma Comissão de Especialistas convocada para tanto.

9. A resolução que outorgue o credenciamento de um curso será comunicada à Reunião de Ministros.

10. O Sistema de Informação e Comunicação do Mercosul fornecerá informação sobre as agências credenciadoras, os critérios de credenciamento e os cursos credenciados.

11. A informação e publicidade das regras e resoluções deverá referir-se somente aos cursos credenciados.

12. O primeiro credenciamento não deverá exceder cinco anos e os subsequentes terão duração definida em cada caso. Quando se requeira um novo credenciamento, entender-se-á que o concedido anteriormente continua vigente até a nova resolução, sempre que a instituição tenha apresentado a documentação pertinente em forma e tempo hábeis.

13. A resolução que denegue o credenciamento distinguirá entre os cursos que apresentam insuficiências reparáveis, isto é, que podem voltar a ser apresentados a qualquer momento, uma vez cumpridas as condições necessárias, e aqueles cuja apresentação não poderá ser reiterada antes do prazo de um ano.

14. Os Estados Partes comprometem-se a facilitar projetos de monitoração e cooperação entre as Agências Credenciadoras Nacionais. Para tanto, estabelecer-se-á a Reunião de Agências de Credenciamento do Mercosul, que se reunirá pelo menos uma vez por ano.

15. Essa Reunião implementará um procedimento para avaliar o funcionamento do mecanismo de credenciamento de cursos, informando seus resultados à Reunião de Ministros.

16. A Reunião de Ministros determinará as demais medidas necessárias para o funcionamento do presente mecanismo de credenciamento.

IV

Alcances e implicações do credenciamento

1. Os Estados Partes, por meio de seus organismos competentes, reconhecerão os títulos de graduação universitária outorgados por instituições de nível superior, cujos cursos tenham sido credenciados conforme este mecanismo.

2. reconhecimento acadêmico dos títulos de graduação universitários que seja outorgado em virtude do estabelecido no presente documento não conferirá, per se, direito ao exercício da profissão.

3. Quando se outorga o credenciamento, este produzirá efeitos a partir do ano acadêmico em que se apresentou a solicitação. Tais efeitos, em regra geral estender-se-ão aos títulos obtidos por quem tenha iniciado o curso durante aquele ano acadêmico e o tenha concluído já estando o curso credenciado.

A Reunião de Ministros estabelecerá o regime de exceção a essa regra e os critérios para sua aplicação por parte das Agências Nacionais de Credenciamento.

3. Para os efeitos do presente mecanismo de credenciamento, serão considerados títulos de graduação universitários, ou equivalentes, aqueles reconhecidos como tais pela normativa jurídica nacional dos Estados Partes.

4. Feito na cidade de Buenos Aires, República Argentina, aos dezanove dias do mês de junho de mil novecentos e noventa e oito.

Susana Beatriz de Cibe

Ministra de Estado

Ministério de Cultura e Educação da Argentina

Heloisa Vilhena de Araújo

Chefe da Assessoria Internacional

Ministério da Educação do Brasil

Vicente Sarubbi Zaldivar

Ministro de Estado

Ministério de Educação e Culto do Paraguai

Samuel Lichtensztejn

Ministro de Estado

Ministério de Educação e Cultura do Uruguai

Pelos Estados Associados:

Jose Pablo Arellano Marín

Ministro de Estado

Ministério da Educação do Chile

Tito Hoz de Vila Quiroga

Ministro de Estado

Ministério de Educação, Cultura e Desporto da Bolívia