

## European Union and Mercosur Association Agreement through a TWAIL Perspective

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**Abstract:** Despite the majority doctrine identifying the existence of two generations of the Third World Approach to International Law - TWAIL I e II, in our studies at Universidade Federal de Minas Gerais – UFMG, in Brazil, we started to work within the perspective of the third generation of TWAIL - TWAIL III - capable of being built from the paradigm shift of the international system at the beginning of the 21st. century, especially in a post-2008 crisis context, in which the countries of the Global North find themselves in a long period of financial recovery, in the face of the rise of emerging economies and, of course, the publication, in English only, of the Draft Association Agreement between the European Union and MERCOSUR. This reality reflects in adaptations in the dynamics of international relations, especially on the capacity-responsibility dichotomy which is still not present in the EU-Mercosur Association Agreement.

**Key Word:** TWAIL; New World Order; International law; Integration Blocs; EU-Mercosur Association Agreement.

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### I. INTRODUCTION

I must begin this article with a categorical statement: the building of contemporary international law today and, within it, of the European Union – Mercosur integration, goes through a paradigm reconstruction process.

Such reconstruction permeates the decolonization movement, which, by bringing independence to several European colonies, starts questioning the role of International Law as an instrument that perpetuates a situation of domination over the new States, which has come to be identified as TWAIL, an acronym of Third World Approaches on International Law, as self-defined in its Joint Declaration, adopted in 1997 as:

*“a network of scholars engaged in international legal studies and interested in formulating and disseminating critical approaches to the power relations that constitute and are constituted by the current world order...and based on the unified recognition that we need to democratize international legal studies in at least two senses:*

*(i) challenge the international law privilege of European and North American voices; and*

*(ii) formulate a substantive critique of the policy and knowledge of dominant international law, insofar as it has helped to reproduce structures that marginalize and dominate third world peoples.”*

In this sense, two groups of Twailers are usually identified, separated by a division, in a certain way, chronological, but also present methodological elements and inclusion of new debates:

(i) **TWAIL I**, which comprises the post-World War II Afro-Asian decolonization period, centered on the figure of the sovereign state; and,

(ii) **TWAIL II**, from the late 1990s and its Conference on Third World legal studies at Harvard Law School, whose centrality of studies resided in the individual, in addition to initiating debates on the political context of knowledge and of International Law as a Product of Colonialism.

In our studies at Universidade Federal de Minas Gerais – UFMG, in Brazil, we started to work within the perspective of a “Third Generation” of TWAIL - TWAIL III - capable of being built from the paradigm shift of

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the international system at the beginning of the 21<sup>st</sup>. century, especially in a post-2008 crisis context, in which the countries of the Global North find themselves in a long period of financial recovery, in the face of the rise of emerging economies and, of course, the publication, in English only, of the Draft Association Agreement between the European Union and MERCOSUR. This reality reflects in adaptations in the dynamics of international relations.

For TWAIL scholarship, the new international context seeks to advance the position of criticizing the false neutrality of International Law, placing post-colonial studies as a central element and recognizing the need to understand all international fields of study in an interconnected way, for example, Human rights, public health, drug patents, financial system, and economic integration.

In this sense, the process of globalization has had deleterious effects on the well-being of people in general and, with due proportions, ends up ratifying an International Society consistent with the legitimation and maintenance of unequal processes and structures through the growing North-South division and reflected in unequal economic treaties, such as the European Union – Mercosur Association Agreement.

## **II. MERCOSUR as a Third World Integration's Bloc**

Third World is understood here as the set of states that, in addition to the Latin American ones that obtained their independence in the 19<sup>th</sup>. century, are based on the principles of democracy and people's self-determination that supported the process of Afro-Asian decolonization, the Bandung Conference, the creation - within the UN General Assembly -, of the United Nations Conference on Trade and Development (UNCTAD), the defense of a New International Economic Order (NIEO) and the current opposition of the North-South axis, presenting demands and associated reflections not only to the rich-poor dichotomy, but to the right to development, freedom, political autonomy, sovereignty, a social agenda against poverty and, above all, equal and equally beneficial relations between integration blocs.

Belong to the Third World those former European colonies that were part of the decolonization process started at the end of the Second World War, but, going back in time and space, also the Latin American States which were excluded, since their political independence, from the process of economic development and, in this sense, the member states of the Southern Common Market - MERCOSUR.

Thus, despite the theoretical discussion about the use of this term for states such as Brazil, India, Taiwan, Bolivia, or Uganda, its relevance is still remarkable within new rhetoric marked by the increasingly evident disparities between the 'third worlds', from the abstract universalism, "globalization" and the end of the cold war (GALLIE, 2008).

In fact, what these States have in common is the fact that their economies are relatively underdeveloped compared to those of their former colonial powers, which has led them to enter into Trade Agreements that, in most cases, are largely favorable to the European partner, as they contain clauses that incorporate trade standards from that integration bloc.

## **III. Trade Agreements and the false neutrality of classical International Law**

TWAIL has sought to effectively criticize the classical International Law, proposing a set of strategies aimed to create a New International Order based on social justice and respect for the sovereignty and peoples' self-determination and seeking to ward off the threat of "recolonization" that haunts them.

In this sense, sees International Law as having been developed at a time when Third World states were still under the yoke of colonialism and therefore unable to participate in its development.

Bhupinder Chimni, exposes such "recolonization" both in the sense of reconstituting the relationship between domestic law and international law - in order to undermine the autonomy of Third World States and to the disadvantage of their peoples -, the international expansion of property rights' scope - applied by States without having the authority to assume the task of redistributing income and resources -, as well as the relocation of sovereign economic powers in international trade and financial institutions and finally, the inability of Third World States to resist the overwhelming ideological domination of the First World.

As a result, International Law, through the conclusion of Trade Agreements, prescribes rules that deliberately ignore the phenomena of uneven development in favor of prescribing uniform global standards - in this case, European standards -, as a reflex of the importance and dominance of its economy over the economy of the Mercosur States.

Furthermore, international law develops its own meaning of "democratic State" and, displacing sovereign economic forces within international institutions, limits the possibility of Mercosur countries to implement independent autonomous development. In this way, seeks to accommodate the interests of the transnational ruling elite that has an unprecedented influence on the definition of global policies and laws.

Thus, TWAIL extols the old idea, which has withstood the passage of time, that the dominant social forces in society maintain their dominance not with the use of force, but by having their worldview accepted as

natural by those over whom its domination is exercised, associated with rationality, neutrality, objectivity, and justice (CHIMNI, 2006).

Therefore, International Law through the celebration of Association Agreements - such as the European Union and the Mercosur Association Agreement -, legitimizes and translates a certain set of dominant ideas into rules and places meaning at the service of power.

In other words, it represents a culture that reflects the Eurocentric matrix through which global problems are addressed, analyzed, and solved. This culture is shaped and framed by the time's dominant ideas. Today, these ideas include a particular understanding of "global governance" and accompany conceptions of state, development (or non-development), and rights.

In this sense, the process through which research in international law is shaped is multifaceted, and in it, the academic institutions of the North, with their prestige and power, play a key role. These institutions, in association with state agencies – as the German Deutscher Akademischer Austauschdienst (DAAD) –, and transnational companies from different sectors - such as Volkswagen and Roche -, greatly influence the global research agenda. In this gear, Third World students tend to extract their opinion from books and magazines published in the North, promoting not only a technology "financed" by their large transnational corporations, but reflecting an ideology that extols this Eurocentric cultural pseudo-domain.

That is why TWAIL claims to be fundamental that Third World internationalists refuse to reproduce without question a suspect knowledge from the point of view of the interests of their peoples, replicating, in Bourdieu's words, cultural imperialism. In fact, cultural imperialism never imposes itself better than when it is served by progressive intellectuals who, in their discourse, seem to be above any suspicion of promoting the hegemonic interests of the country against which they wield the weapons of social criticism (BOURDIEU; WACQUANT, 1999).

And, with redoubled care, even the current international discourse on Human Rights and deriving from it an environmental and economic development perspective, is, in fact, being manipulated to promote and legitimize neoliberal objectives reflecting a Europeanized vision through a "capacity-responsibility" dichotomy.

This dichotomy can be easily contextualized in the following excerpts in the draft of the EU-Mercosur Association Agreement:

*EU-Mercosur Association Agreement (Draft)*

**CHAPTER [XX]**

**INTELLECTUAL PROPERTY**

**Section A – General Provisions and Principles**

*Article X.2 – Objectives*

The objectives of this Chapter are to:

- a) Facilitate **access, production and commercialization** of innovative and creative products and foster trade and investment between the Parties contributing to a more **sustainable, equitable and inclusive** economy for the Parties;

**CURRENT PAYMENTS AND CAPITAL MOVEMENTS**

*Article 1 - Capital Account*

With regard to transactions on the capital and financial account of the balance of payments, from the entry into force of the Agreement, the Parties shall allow the **free movement of capital** relating to direct investments made in accordance with the laws of the host country and investments established in accordance with the provisions of Chapter [...] Trade in Services and Establishment, and the **liquidation or repatriation of these capitals** and of any profit stemming therefrom.

**CHAPTER**

**TRADE AND SUSTAINABLE DEVELOPMENT**

*Article 1 - Objectives and Scope*

1. The objective of this Chapter is to **enhance the integration of sustainable development in the Parties' trade and investment relationship**, notably by establishing principles and actions concerning **labour and environmental aspects** of sustainable development of specific relevance in a trade and investment context.

As it is included in the first articles of the aforementioned chapters, related to definition, objectives, and scope, both its importance and the subtlety used by European negotiators to, under the mask of false neutrality, establish guiding criteria for a bilateral relationship that imposing unequal and more favorable rights to them. Or is anyone naive enough to assume that the production of innovative and creative products, made possible by the free movement of capital and respecting labour and environmental aspects, is as fully possible for Brazil, Argentina, Paraguay, and Uruguay as what is it for Germany, France, Denmark or Sweden?

It is in this sense that I identify the third generation of TWAIL, focused on the interdependence of themes of International Law and reflected in a series of themes subject to negotiation in the Association Agreement between the European Union and Mercosur.

The capacity-responsibility perspective will allow us, for example, to recognize how the international financial system should be understood as an integral part of International Law, with a direct impact on other protected international legal interests, such as human rights, the environment, worker protection, public health and, thus, assuming its share of responsibility for the inability of so many to implement them efficiently.

And it will be within this perspective because it is contrary or opposed to the alleged neutrality and universality of the discourse of International Law, that, in a critical way, the TWAIL is able to recognize the flaws and specify the fundamental points of the necessary legal reform in the way to reflects the wish of all the International Society and, finally, get it rid of the Eurocentric ties that have prevented it from acting in favor of human universality.

#### **IV. Conclusion**

The economic and political independence of the Third World is being undermined by the policies and laws dictated by the First World, by its institutions, companies, and even NGOs something that is clearly manifested in the current perspective of the New International Order and that we can, for example, identify in the integrationist discourse.

In this sense, we, scholars of International Law, have to be aware not only of the lack of participation of Mercosur States in the establishment of rules in the global economy but, above all, must be in tune with contemporary debates, contributing with an analysis that necessarily leads to taking into account the role of its Member States and bearing in mind the need for a strong and unison political-economic and cultural positioning in the most varied negotiation forums.

Furthermore, the solution of contemporary problems should be focused not only on our ability, or lack of, to solve them.

It is urgent to take into account, perhaps even to a greater extent, the responsibility of those who for centuries subjected us to their imperialist and colonizing designs so that the continuous discourse focused on 'capacity' instead of 'responsibility' does not become an unfair transfer of burdens by the European developed States to the Mercosulians.

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