



SPECIAL REPORT

# Mercosur Crisis: Venezuela's Temporary Presidency

Buenos Aires-Sao Paulo, September 2016

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ideas

LLORENTE & CUENCA

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## I. INTRODUCTION

Mercosur is experiencing one of the most complex political crises since it was founded 25 years ago. It is clear the Southern Cone is changing at the political level; Following Mauricio Macri's victory in Argentina and Dilma Rousseff's impeachment, which has left Michel Temer as president of Brazil, we face a shift in the region's political orientation and a new consolidation in the power structure. Brazil, which used to be the greatest regional actor, has been affected by the impact of Rousseff's dismissal at both externally and internally. Rousseff was accused of carrying out fiscal maneuvers to disguise the report of her administration's public accounts in 2014 and 2015 in order to ensure her re-election.

Facing this situation, Latin America was torn between supporting or rejecting the process, which led to internal divisions within Mercosur. In the first group is Argentina, which described Rousseff's trial as a "constitutional process," and in the latter is Venezuela, which considered the Brazilian Senate's decision a coup. Meanwhile, Uruguay has expressed its doubts about the process without exactly calling it a "coup."

At the international level, we must add Uruguay's July 29 decision to abandon the bloc's mandate at the end of its current presidential semester. At that moment, Venezuela, the country that was supposed to take over following the alphabetical order provided for the presidency's rotation, announced it was taking command even though there was no transfer ceremony, such as the traditional presidential summit, and despite opposition from Argentina, Brazil and Paraguay, which still consider the presidency vacant.

Argentina, Brazil and Paraguay complain that Caracas has not complied with Venezuela's membership agreement and question the Caribbean country's quality of democracy, which is why they consider Mercosur's leadership currently vacant. In this context, they ignore how the actions taken by Venezuela may impact Mercosur.

Thus, the bloc is now immersed in an institutional paralysis. At the moment, there is a debate about the primacy of strict formal aspects of international law and good practices<sup>1</sup> versus the current political context and ideological convenience of its members.

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<sup>1</sup> There was no formal transfer since there was no meeting of the Council, presidential summit (which is the usual transfer procedure) or communication from the rest of the member countries. Another argument is that Venezuela has failed to comply with all the prerequisites to become a permanent member of the economic bloc.

**“Argentina’s, Paraguay’s and Brazil’s governments believe there is a “hole” in Mercosur’s mandate”**

## 2. FORMAL ASPECTS VERSUS POLITICAL ASPECTS

According to Mercosur’s founding treaty and the Ouro Preto treaty, temporary presidency should occur on two conditions: for a time span of six months and by alphabetical order. In article 5, the Ouro Preto’s protocol highlights that “the presidency of the Council of the common market is exercised by rotation of the member states, in alphabetical order, for a period of six months.”

Likewise, internal decisions are taken through consensus, which means that as long as one of the member disagrees, the situation will not be resolved. Argentina’s, Paraguay’s and Brazil’s governments believe there is a “hole” in Mercosur’s mandate because, according to them, there was no consensus in the election that, by right, it would belong to the Bolivarian nation.

What is behind the debate? In economic terms, we could infer that the three neighbors are looking for a way to grab hold of the regional bloc at a time when Mercosur and the European Union are negotiating the finishing touches for a Free Trade Agreement, and this quarter will be key in the negotiation process.

Mauricio Macri (Argentina) and Michel Temer (Brazil), from the bloc’s main countries, want to change the line of action adopted by the economic bloc over the past 12 years during the governments of Luiz Inácio Lula da Silva and Dilma Rousseff, an action which is considered more political than commercial. Stopping Venezuela from assuming Mercosur’s presidency is the first step in this direction.

Moreover, the heads of state of what the Venezuelan leader, Nicolas Maduro, calls the “Triple Alliance” question the Caribbean country’s quality of democracy. During his electoral campaign, Argentina’s President Mauricio Macri, accompanied by Lilian Tintori (wife of Venezuelan political prisoner Leopoldo Lopez), announced that, if elected, he would apply the “democratic clause” in the case of Venezuela. Upon taking office, the Argentinian president reaffirmed his statement.

## 3. HEMISPHERIC VERSUS REGIONAL RELATIONS

With a focus on developing ties with regional and international partners, Argentina appears and is perceived in Europe to be a key player in the reactivation of regionalism and multilateralism. This is reflected in visits from

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the European Commission's senior officials in months, the most recent of which took place Aug. 22, when President of the European Parliament Martin Schulz met with Mauricio Macri and other national leaders and governmental officials.

This visit adds to those of other officials from the EU's executive body, such as that of Federica Mogherini, high representative for Foreign Affairs and Security Policy and vice president of the Commission, as well as members of the executive board of the European Parliament's Foreign Affairs Committee. Additionally, they attended meetings with the Argentinian president, along with Chancellor Susana Malcorra, held with the European Union's authorities July as part of their Brussels tour.

The European bloc seems to have found a stable partner in the new Mauricio Macri administration, not only in regard to other parts of the world, but also in regard to his regional partners, and even more so in the uncertain context caused by the critical situation Mercosur is going through and Temer's government in Brazil, the other regional power.

The purpose of these meetings is to streamline mechanisms to advance the materialization

of an agreement between Mercosur and the European Union that has been postponed for 20 years, while also studying alternatives to boost investment and employment. The main objective in the short term is to finalize commercial negotiations between both blocs.

In this regard, during his visit Schulz highlighted Argentina's role in reviving the decision-making process in order to further negotiations and achieve a partnership that includes free trade between the two international organizations. Nevertheless, in order to realize the agreement, two conditions must be met: Mercosur's member states need to align themselves and define a new direction for the bloc, and the European bloc must steer toward a new resolution, moving beyond opposition from some of its member states (related to the heterogeneous position of EU countries regarding the protection of their markets, particularly in agriculture).

The European Union must consider either negotiating as a bloc or reaching an agreement with the caveats each member state desires in regard to each specific point. These decisions are at the mercy of the political will at a moment when the bloc should redefine its international relations following Great Britain's announcement to exit the EU.

**“The government of Brazil also wants to change the rule that trade negotiations are preferably done through the World Trade Organization (WTO)”**

In achieving the aforementioned objectives, it is worth noting the visits from European Investment Bank (EIB) Vice President Roman Escolano in September, and from the Internal Market, Industry, Entrepreneurship and SMEs Commissioner Elzbieta Biekowska in December. Meanwhile, Argentina is waiting for the United States' endorsement to become a member of the Organization for Economic Co-operation and Development (OECD), a group of countries in which South America is represented only by Chile. The Ministers of Foreign Affairs and Finance, Susana Malcorra and Alfonso Prat-Gay respectively, requested this incorporation in June.

However, the United States government is reluctant to accept new members. So far, it has been backed by the United Kingdom, France, Italy, Portugal, Chile and Mexico. Normally, the membership process takes at least three years and must be accepted by the 35 countries that compose the group, as well as the European Union, so Argentina also needs the support of the member states.

The situation will be defined in early October once the International Monetary Fund's (IMF) mission has gone to Buenos Aires. It is predicted that, through the revision of article IV, the censure that has weighed on the country since early of 2013 due to the

distortion of data on economic growth and inflation will be lifted.

Likewise, once Dilma Rousseff's impeachment process has concluded, Brazil's government wants to begin the debate to review the rule that any trade agreement concluded by the Mercosur's countries requires consensus among all the members of the economic bloc.

In Temer's government's evaluation, this mechanism has prevented commercial negotiations between Brazil and the rest of the world. The government of Brazil also wants to change the rule that trade negotiations are preferably done through the World Trade Organization (WTO). Along with Macri, Brazil hopes to count on the support from Paraguay's President, businessman Horacio Cartes, to move forward with these changes inside Mercosur.

#### **4. WHAT HAPPENS TO THE “DEMOCRATIC CLAUSE”?**

Protocol states the clause can be applied “in case of a breakdown in the democratic order in any” of the member states of the regional bloc. The application of the norm includes measures ranging from the “suspension of the right to participate in Mercosur's various bodies” to the termination of the “rights and obligations arising from these processes.”

**“The Organization of American States (OAS), a group of 15 countries (including Uruguay), urged Venezuelan authorities to continue the recall referendum”**

The document explains that, in case of a breakdown of democratic order, the rest of the bloc members “will promote the relevant consultations among themselves and with the affected state” and, if these conversations fail, that the countries “will consider the nature and scope of the measures to be applied, taking into account the seriousness of the situation.”

It so happens there was no consensus within the bloc on whether to apply the clause to Venezuela. The proposal was refused by Uruguay, and given that the measure can only be applied through consensus of the states that compose the bloc, it is unlikely to flourish. For this reason, Brazil, Paraguay and Argentina are pushing to prevent Maduro from becoming the president of the regional bloc until he gives way to the recall referendum demanded by the opposition.

### **5. THE FOCUS OF THE DEBATE: HUMAN RIGHTS AND THE QUALITY OF DEMOCRACY**

The hemispheric powerhouse, United States, typically observes the situation in the southern continent but only gets involved with caution.

This week, spokesperson for the U.S. State Department Elizabeth Trudeau urged Nicolas Maduro’s government to free the leader of *Voluntad Popular*, Leopoldo Lopez. The Organization of American States (OAS), a group of 15 countries (including Uruguay), urged Venezuelan authorities to continue the recall referendum process against the current president “without delay.” The group of countries expressed their expectations that the consultation “will contribute to a quick and effective resolution of the current economic, social and political difficulties” in Venezuela.

At the same time, President of the National Electoral Council (CNE) Tibisay Lucena announced that the collection of the 4 million signatures needed to begin the recall will take place at the end of October, which would prevent the recall referendum from being held in 2016 as the opposition demands. If the referendum is carried out before Jan. 10, 2017, and Maduro loses, there will be elections. However, if it is held after that date and the president is removed from office, he will be replaced by Vice President Aristóbulo Istúriz Almeida.<sup>2</sup>

<sup>2</sup> It must be a freely appointed public official who can be removed by the President of the Republic. He cannot be related to the president. He can also be removed by more than two thirds of the National Assembly through a vote of no-confidence. If, during the six-year presidential term, no-confidence motions against more than three vice-presidents are approved, the president will be entitled to dissolve the Parliament.

**“A Venezuelan collapse would have repercussions for the entire northern part of South America, especially for Colombia, with the United States engaged in its peace process”**

The beginning of the Olympic Games was the excuse for Mercosur's founding presidents, with the exception of Uruguay, to reunite—presumably to address the Venezuelan crisis—while taking advantage of U.S. Secretary of State John Kerry's visit to Argentina and Brazil. Mercosur's situation was one of the topics at the meeting between Brazil's then acting president, Michel Temer, Brazil's Foreign Minister Jose Serra and Kerry during the opening ceremony in Rio de Janeiro.

It is also necessary to emphasize two more factors that affect use of the democratic clause. A Venezuelan collapse would have repercussions for the entire northern part of South America, especially for Colombia, with the United States engaged in its peace process. Moreover, if disturbances were to arise in the Venezuelan capital, the current United States Republican presidential candidate, Donald Trump, would have another argument against the international policies of his rivals.

## **6. THE NEED FOR CONSENSUS**

Facing this situation of eventual acephalia in the bloc, an alternative was suggested: create a committee of ambassadors from Mercosur's member states to assume the rotating presidency instead of Venezuela until it is Argentina's turn to lead. While the situation is new, it would not be the first time a situation outside of what has been established for the transfer of regional leadership has occurred.

Let us remember that in 2013–2014, when Paraguay was suspended from the bloc—allowing Venezuela to join<sup>3</sup>—the Caribbean country was at the head of Mercosur for one year. One of the reasons was that the presidents failed to meet so the bloc's leadership was not transferred. Meanwhile, Venezuela continued to lead Mercosur without the formality of the process being questioned, which shows that, in those days, politics prevailed over statutes.

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<sup>3</sup> In 2013, Paraguay, which had been suspended from in 2012 Mercosur because of former President Fernando Lugo's removal following a political process in Parliament, had not yet joined the bloc. Presidents Cristina Fernandez de Kirchner from Argentina and Dilma Rousseff from Brazil made the decision to suspend Paraguay, ratified by Uruguay's President Jose Mujica. That shift allowed Venezuela to enter Mercosur as a full member.

**“Uruguay stood firm in its stance despite the pressure it received from Brazil, Paraguay and Argentina, preventing the suspension from becoming effective”**

Two years later, with Uruguay's decision to transfer the presidency, Venezuela has faced resistance from its regional partners to assume command. Argentina, Brazil and Paraguay argue that, on top of the biannual and alphabetical rotation, the decision must be made “by consensus,” something that seems very difficult to achieve today.

As part of this institutional paralysis, delegates from the founding countries are looking for other arguments to legally justify the inability of Maduro's country to lead. At a meeting Aug. 12, coordinators from Argentina, Brazil and Paraguay analyzed Venezuela's level of compliance with Mercosur's regulations.

Specialists from the governments of Paraguay, Argentina and Brazil examined the 400 rules and 50 agreements the country must meet in order to become a full member of Mercosur, rules that expired Aug. 12. Failure to comply with any of those commitments would mean Venezuela's removal as a member of the international organization. The situation was supposed to be settled Aug. 23, when the national coordinators of the bloc got together to find a solution to the controversial Venezuelan presidency. However, Uruguay's

firm position once again left coordinators without consensus and, consequently, Paraguay was not able to achieve Venezuela's exclusion (the result it expected) and complete removal from bloc leadership. Uruguay stood firm in its stance despite the pressure it received from Brazil, Paraguay and Argentina, preventing the suspension from becoming effective.

After a tough meeting, it concluded without any progress and the decision was postponed for a few months. The idea to defer the decision until December was considered, giving Venezuela time to meet the demands stated in the bloc's membership protocol or leaving room to convene a recall referendum. For now, while the leaderless state persists, a “calendar of meetings” has been designed to address the partners' issues of interest.

Likewise, Venezuela's strategy was to call for a new coordinators meeting a day later. The meeting would not allow the bloc to achieve any consensus since Uruguay and Bolivia would be the only countries in attendance, but it would set a precedent of his intention to make use of his status as temporary president of the bloc, further exposing the division that lies within.

<sup>4</sup> <http://www.itamaraty.gov.br/pt-BR/notas-a-imprensa/14596-estado-da-implementacao-do-protocolo-de-adesao-da-venezuela-ao-mercosul>



**“Another proposal being evaluated is the ability to lower Venezuela’s position within the organization to prevent Maduro from assuming office”**

According to a statement from Brazil's Foreign Ministry,<sup>4</sup> to date the Caribbean country has yet to adopt important agreements such as ALADI's No. 18 Economic Complementation (ACE); 2002's Residency Agreement for Nationals of Mercosur member states; and 2005's Commitment for the Promotion and Protection of Mercosur's Human Rights.<sup>5</sup>

Aug. 17, after meeting with the leaders of Venezuela's opposition, Brazilian Minister of Foreign Affairs Jose Serra once again confirmed the country did not meet the requirements to join the trade bloc, including its violation of human rights. He also added that Brazil is negotiating a plan with other countries for the bloc's work to be carried out before January, when Argentina will be assuming the presidency. Another proposal being evaluated is the ability to lower Venezuela's position within the organization to prevent Maduro from assuming office.

Meanwhile, Venezuela's deadline to formally assume Mercosur's presidency is over. At the same time, the Caribbean country denies having failed to meet its commitments and insists

the country has matched, and in most cases surpassed, other member states in incorporating the bloc's regulatory framework.

Likewise, the Bolivarian Republic of Venezuela accuses Argentina, Brazil and Paraguay of forming a “Triple Alliance”<sup>6</sup> to attack the country, placing “prevailing neoliberal political and ideological preferences over the interests of peoples and their integration processes.”

While the regional bloc's three founding countries try to find a solution to guarantee the integration system functions regularly, Venezuela has already assumed the transfer. The Ministry of People's Power for Venezuela's Foreign Affairs has published the preliminary schedule of activities for the remainder of 2016, in which Caracas is hosting most of the meetings and activities.

## 7. THE ROLE OF MEDIATOR

Building resistance against Venezuela's continuation, Brazil's and Paraguay's delegates have increased pressure on Buenos Aires and Montevideo, seeking to raise additional arguments to assault the legitimacy

<sup>5</sup> It is noted that in September 2013, Venezuela left the Inter-American Court of Human Rights. Thereafter, the Court had no jurisdiction over Caracas.

<sup>6</sup> In reference to the coalition formed by Argentina, Brazil and Uruguay against Paraguay during the War known as Triple Alliance, which took place in the 19th century.

**“Argentinian Chancellor Susana Malcorra issued statements to the press confirming progress has been made in putting together a mechanism that allows the Vatican to intervene to unfreeze the regional bloc”**

of Venezuela's presidency. Meanwhile, appealing to one of the principles that inspire states to settle their disputes in a peaceful manner,<sup>7</sup> Argentina is looking at the possibility of papal mediation in the matter.

In mid-August, Argentinian Chancellor Susana Malcorra issued statements to the press confirming progress has been made in putting together a mechanism that allows the Vatican to intervene to unfreeze the regional bloc. The intention is to get the Pope to mediate, with Francisco acting as an intermediary to achieve a dialogue between Venezuela's government and the opposition. Were he to accept, he, as the mediator, would be empowered to propose a non-mandatory basis for agreement for all parties involved. Taking into account each party's position, he would present a proposal to settle the dispute between them and reach an agreement based on that proposal.

Following the recent rapprochement between the United States and Cuba, the Pope could reassume a leading role in regional diplomacy. If realized, it would mark the second time Southern Cone countries have embraced papal

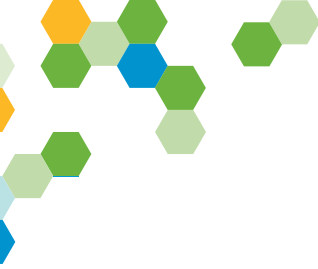
mediation since 1978, when Pope John Paul II resolved the border conflict in the Beagle Channel between Argentina and Chile.

Although the Holy See has expressed its willingness to contribute to the dialogue, it has yet to formally receive a formal request to mediate the conflict, either through the Nunciature or the Secretary of State, according to the Holy See's spokesperson, P. Federico Lombardi, in late July.

However, given the uncertainty about which nation should assume control and from what date, the alternative of having a third neutral power to resolve the bloc's institutional paralysis is strengthened. Thus, the final decision will not have a political cost for any member states, most of all Argentina, where Macri would rid himself of the burden of having to take a tougher position.

Currently, the founding states (with the exception of Uruguay) have maintained their position of disregarding Venezuela as a valid partner for the bloc, which is why they chose to move forward, without Venezuela's participation, in negotiations with the European Union and

<sup>7</sup> According to public international law, sovereign states can resort to negotiation, good practices, mediation, investigation, conciliation, arbitration, judicial settlement or regional and universal international organizations to settle their conflicts in a peaceful manner. The parties can choose any of the mechanisms in place for the peaceful resolution of their controversies, without any of them prevailing over the other.



**“The founding states (with the exception of Uruguay) have maintained their position of disregarding Venezuela as a as a valid partner for the bloc”**

the Pacific Alliance. In this sense, at the coordinators' latest meeting, Uruguay was elected to lead the negotiations with the European bloc, while Paraguay was in charge of the efforts to join the Pacific bloc. This way, Venezuela holds Mercosur's symbolic presidency, while Montevideo remains as the headquarters.

To conclude, the current state of affairs seems to present three future scenarios for achieving a way out of this

impasse: validate Venezuela's noncompliance with the bloc's membership protocol, thus achieving its exclusion; wait three more months until it is Argentina's turn to assume leadership of the organization; or formally invoke the mediation of the Holy See in this conflict.

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