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On the borders of social dialogue and silence

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Abstract - *During thirty years of Mercosur, only one transnational collective agreement was signed. In aforementioned bloc, even in a bi-national company as Itaipu, collective agreements are signed separately between the company and both Brazilian and Paraguayan labor unions. On the other hand, in the European Union, there are at least 144 transnational agreements at multinational companies' level. This study, therefore, seeks to track possible causes of this "social silence" in South America, given the apparent inability of national unions to dialogue with analogous entities from neighboring countries. This work chose, as research site, the so-called "twin cities" of Foz do Iguaçu (Brazil) and Ciudad del Este (Paraguay), urban space where the binational company Itaipu is located. This research applies the qualitative in-depth interview technique as a method, paying special attention to the experience of the interlocutors of potential transnational agreements, especially former and current union leaders from Brazil and Paraguay. Thus, in addition to find hypothesis for further studies in this field, the article seeks to test new methodologies, aimed at building innovative understanding keys, due to the challenges faced by contemporary Labour Law.*

Keywords *social dialogue; Mercosur; transnational collective agreement*

1. INTRODUCTION

This article presents the first findings of a project that aims to investigate transnational collective agreements in Mercosur, especially the causes of its absence. On March 26, 2021, Mercosur completed thirty years. Therefore, more than verifying the bloc's potential, it is time to also check its results.

From an economic point of view, the bloc has met the objectives pursued with satisfaction. Taken together, Mercosur would be the fifth largest economy in the world, with a GDP of US $ 2.79 trillion, in addition to being the main recipient of foreign direct investment

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(FDI) in the region - 47.4% of all FDI directed to South America, Central America, Mexico and the Caribbean in 2016[1].

From a social point of view, however, the bloc's outcomes are much more modest. Beyond the ineffectiveness of its social bodies and institutions, the most important labor rule of the bloc, the Mercosur Social and Labor Declaration, is not considered a binding legal source by the respective Member States. On the other hand, Member States have profound asymmetries in the legal regulation of collective labor relations. It is the so called "main asymmetry", which would explain the many other legal asymmetries between Member States[2].

It is no accident that Mercosur was able to produce only one transnational Collective Agreement, signed in 1999 between Volkswagen Argentina, Volkswagen Brasil and the respective professional unions in each of the countries. By way of comparison, albeit with difficulties, the European social dialogue was able to produce, until early 2012, transnational agreements in the scope of 144 companies, covering more than 10 million employees (noting that this estimate does not consider sectoral or intersectoral agreements)[3].

In other words, the European example suggests that legal barriers may be obstacles for transnational agreements to produce certain effects, but they do not compromise the existence of those same agreements.

In general, South American legal scholars advocate the possibility of concluding transnational Collective Agreements in Mercosur. How-

[1] MERCOSUR, *Saiba mais sobre o Mercosul*, http://www.mercosul.gov.br/saiba-mais-sobre-o-mercosu, n.d.

[2] O. MANTERO, *Problemática de las asimetrías jurídico labolares en los paises del Mercosur*, in *Derecho Laboral: revista de doctrina, jurisprudencia e informaciones sociales*, 2000, 198, 232-233.

[3] EUROPEAN OBSERVATORY OF WORKING (EUWORK), *European collective agreements*, https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/european-collective-agreementsm, 2013.

ever, the concrete absence of these arrangements in the region demonstrates that there is a gap in the understanding of this phenomenon, which forces researchers to find new keys of knowledge.

Thus, this article seeks to combine the theoretical understanding of the subject with an empirical approach, which involves listening to the actors involved in these potential agreements. For this, the technique of in-depth interview was used, listening to five workers (four Brazilians and one Paraguayan) from Itaipu Binacional, all directly or indirectly involved in the leadership of labor unions representing the company's employees. Such company, although binational and located on the border of Brazil with Paraguay, does not sign collective binational agreements, nor does it negotiate with binational unions. This phenomenon represents a relevant sample to understand the larger problem that constitutes the focus of the present work.

Based on these interviews, this article seeks to outline the first hypotheses for the lack of social dialogue in Mercosur, a phenomenon referred to in this work as silence. Furthermore, this paper intends to test the methodology of the in-depth interview in the field of Collective Labor Law, pointing out its advantages and disadvantages to improving scientific research in this area.

2. Understanding Mercosur

The Southern Common Market (Mercosur) was established by the Treaty of Asunción in 1991, with the purpose of creating a Common Market between the respective members. In 1994, the Additional Protocol to the Treaty of Asunción on the Institutional Structure of MERCOSUR (Ouro Preto Protocol) was signed. Its initial members were Argentina, Brazil, Paraguay and Uruguay. In 2012, Venezuela joined the bloc, but has been suspended since 2016. Bolivia is an Associated State in process of accession as a full member.

Currently, Mercosur represents an “imperfect” customs union, since the bloc adopts a common external tariff (TEC), while there is an extensive list of exceptions - the so-called LETEC. Despite promoting the economic development of the Member States, the bloc currently intends to be a broad integrationist process, which includes commitments to democracy, for human rights and fundamental freedoms.

Mercosur is an intergovernmental bloc, which means that its decisions depend on the consensus of Member States. There are no supranational institutions. Consequently, one of the characteristics of the bloc is its low degree of institutionalization, with few permanent bodies.

The highest-level agency of Mercosur is the Common Market Council (CMC), which drives the political conduct of the integration process and make Decisions to ensure the achievement of the bloc's objectives. The main executive body of Mercosur is the Common Market Group (GMC), which can propose projects to the Common Market Council, enforce the Decisions adopted by the CMC, as well as create, modify or extinguish bodies.

The bloc also has a Parliament, representing the peoples of the Member States, but with no authority to make rules. In short, its role is reduced to ensuring compliance with Mercosur rules; to ensure the preservation of the democratic regime in the Member States; to prepare and publish an annual report on the human rights situation in the Member States.

Mercosur can be considered a relatively successful bloc in terms of improving trade flows between Member States, which certainly brings economic benefits to them. The same cannot be said in the social sphere.

Despite Mercosur's economic-commercial purposes, two months after the signing of the Treaty of Asunción, the Ministers of Labor of

the Member States met in the city of Montevideo. On that occasion, they formally declared that it was necessary to value the labor and social aspects of Mercosur[4]. Therefore, the GMC created "Working Subgroup nº 11 - Labor issues, employment and social security" (currently SGT 10), with the task of dealing with this issue.

In parallel to this, in December 1993, the Coordination of Union Centers of the Southern Cone (CCSCS) prepared a "Charter of Fundamental Rights" project to incorporate social dimension into Mercosur. The Charter provided for binding and supranational labor regulations, with compliance mechanisms for its provisions[5]. At that time, however, there was no effort by Member State authorities to create a norm with a social dimension in the bloc.

In December 1994, the Ouro Preto Protocol created the Economic and Social Consultative Forum (FCES), a body that introduced the participation of civil society in the regional integration process, through the representation of the economic and social sectors. Despite the creation of the FCES, this body has a secondary role in the bloc, so it is much inferior, in terms of importance, to its European counterpart, the European Economic and Social Committee (EESC).

On December 10, 1998, the first and main working rule of the bloc, the Mercosur Social and Labor Declaration, was signed. The same Declaration created its application and follow-up body, the Mercosur Social and Labor Commission. The review of the Mercosur Social and Labor Declaration took place on July 17, 2015.

Prior to its approval, representatives of Governments, labor unions and companies debated the legal character of the future Declaration, especially whether it should be or not a binding rule. Basically, two

[4] M. C. PEREIRA, *A livre circulação de trabalhadores no âmbito da Comunidade Europeia e do Mercosul*, Recife, 2014, 120.

[5] A. BARBIEIRO, Y. CHALOULT, *A declaração sociolaboral do Mercosul: avanço na dimensão social?*, in *Revista Múltipla*, 1999, 5, 16-17.

legal positions can be pointed regarding this topic: a) the idea that it is a legal norm; b) the conception that it is mainly a political instrument[6].

However, since this international instrument was signed as a Declaration, the winning thesis was that it is a non-binding rule, having more political than legal character. Even so, its influence is not denied, due to its wide public dissemination and the hierarchical position of those who signed it, which is transmitted to the document itself[7]. That Declaration, therefore, could be classified under a concept of "soft law".

In its revised version, the Mercosur Social and Labor Declaration is basically divided into seven parts: 1) preamble; 2) general principles; 3) individual rights; 4) collective rights; 5) “other rights”; 6) application and follow-up; 7) transitional provisions.

The preamble contains, in summary, the recognition of the Member States of fundamental human rights. In the chapter of “general principles”, the Declaration presents definitions and fundamental commitments, such as decent work and sustainable companies.

In the chapters "individual rights", "collective rights" and "other rights", the Mercosur Social and Labor Declaration establishes an extensive set of rights, such as non-discrimination (art. 4); equal opportunities and treatment between women and men (art. 5); equal opportunities and treatment for migrant and frontier workers (art. 7); daily breaks, leave and holidays (art. 12); protection against dismissal (art. 15); freedom of association (art. 16); strike (art. 18); protection of the unemployed (art. 23); work health and safety (art. 25).

[6] H. MANSUETI, *Naturaleza jurídica y proyección institucional de la Declaración Sociolaboral del Mercosur* (Doctoral Dissertation), Universidade Católica, Buenos Aires, 2002, 118.

[7] A. PLÁ RODRÍGUEZ, *Las Perspectivas de un Derecho del Trabajo Comunitario*, in *Revista do Tribunal Superior do Trabalho*, 2000, 66, 63-83.

The application and follow-up chapter illustrates the non-punitive nature of the Declaration. In the transitional provisions, the Declaration prohibits its use to resolve commercial disputes between Member States, but it creates a kind of "social seal", by forbidding the financing of individuals and legal entities that do not observe the content of the rights expressed in the instrument.

Mercosur also has, as part of its social dimension, the Buenos Aires Charter on Social Commitment in Mercosur, on June 30, 2000; the Multilateral Social Security Agreement of the Southern Common Market; the Residence Agreement for Nationals of the Mercosur States Parties.

Despite the social rules and bodies of Mercosur, it is safe to say that this system is not functional, due to the democratic deficit within the bloc, the absence of binding rules in this field and the lack of supranational instances of control and application. Besides, there are asymmetries in the regulation of collective law in the States Parties.

3. Collective labour law in States Parties

The Collective Labor Law of the Member States of Mercosur presents profound disparities, due to the different cultural, political, social and historical influences in each country. It is the area whose harmonization, within the bloc and in Latin America itself, presents the greatest difficulties[8].

Argentine Republic has never gone through a stage of absolute prohibition of workers' associations. Despite isolated acts of repression by the labor union movement, there was never an act that forbade its existence nor classified it as a crime[9].

[8] E. Cordova, *Posibilidades de armonización de la legislación laboral latinoamericana*, in *Revista Internacional del Trabajo*, 1975, 92, 329-347.

[9] C. Etala, *Derecho colectivo del trabajo*, Astrea, Buenos Aires, 2017, 52.

The country's labor union legislation is mainly regulated by Law 23.551, which enacts the fundamental characteristics of the so-called "Argentine union model". According to this model, collective relations are regulated in detail by law[10].

Although, theoretically, labor union pluralism is possible in the country, in practice there is a unifying and monopolizing trend, nicknamed "promoted unity". In this model, the "trade union personality", i.e., the ability to represent the collective professional interest is exclusively granted to the most representative labor union. It is a system marked by the labor union monism, which is encouraged by law[11]. Due to these characteristics, the Argentine model can be considered a system of a nuanced union freedom.

Besides, labor union purposes are not restricted to the defense of economic interests, but extend to social and cultural plans, among other aimed at improving the quality of life of workers and their families[12]. Labor unions also play an active political role, maintaining regular links with political parties, taking positions in electoral disputes and supporting proselytizing campaigns[13]. The Argentine system also has a high rate of union membership, with a significant percentage of workers' affiliation with union organizations, equaling or exceeding European rates[14].

Law 14.250 establishes the form, the requirements for producing effects (among them the approval by the Ministry of Labor), the duty to respect public labor order and the level of application of collective agreements.

[10] Ibid 53.

[11] Ibid 55-56.

[12] Ibid 57.

[13] Ibid 58.

[14] Ibid 58-59.

The right to strike is guaranteed by art. 14 bis of the Constitution. In the Argentine legal system, there is no concept of strike, nor a wide regulation on it. Legal scholars defend the concept that the strike is a suspension of the employment relationship to defend the collective interests of workers[15]. It is understood that the right to strike can be invoked and exercised even if there is no law that regulates it ("operative" right), which, in any case, does not admit the inference that it is an absolute right[16].

The following types of strikes are considered illegal: occupation of factories; strikes that employ physical violence; strikes that take place prior the mandatory conciliation procedure (Law 14.786); law, multi-individual, inter-union and intra-union strikes; solidarity strikes[17].

In Brazil, the labor union movement had a delayed development, in comparison with the European historical process, given the incipient economy and the nature of the country's workforce, until based on slavery. The abolition of slavery, the enactment of the Republican Constitution - guaranteeing the right to association - and the primacy of liberal ideology provided the appropriate conditions for the development of labor union movement. At the beginning of the 20th century, several associations were created. In the same period, the first labor relations acts are enacted[18].

From the 1930s, the Collective Labor Law goes through an interventionist phase, with the implementation of a corporatist model of union organization, still in force today. The rule of the single labor union is established, with a rigid structure (unionization by category and subject to a confederative system). According to this model,

[15] Ibid 412-414.

[16] Ibid 417-418.

[17] Ibid 444-448.

[18] J. C. Brito Filho, *Direito Sindical*, LTR, São Paulo, 2009, 59.

labor union is submitted to the Government, has no political character and is devoid of autonomy. The union, in this archetype, collaborates with the Government in the harmonization of class conflicts[19].

The Consolidation of Labor Laws (CLT), from the 1940s and still in force, maintained the line of the previous corporatist legislation. The consecutive Brazilian Constitutions during its history, democratic or not, did not affect this interventionist paradigm of Labor Union Law. The Constitution of the Republic of 1988, despite preserving some corporatist features - e.g., labor union monism, mandatory union contribution, confederative system, class representation in Labor Justice, normative competence of the Labor Justice -, foresees the freedom of association, strike, collective bargaining, among others, as fundamental rights.

Brazil, thus, has not a complete freedom of association regime, given its persistent corporatist features. It is no coincidence that that Brazil has not ratified ILO Convention 87. Brazil labor union system has also the following characteristics: low degree of affiliation, labor unions confined to defend economic interests in collective bargaining, low level of politicization in the entities.

The collective bargaining process is detailed in the Brazilian legislation, in arts. 613 et seq. of the CLT. The law regulates aspects as form, deadlines and content of collective agreements.

The 1988 Constitution of Brazil, in its art. 9, guarantees the right to strike. Law No. 7.783, however, restricts the right in perspective, as it provides for a legal definition of it, establishing the interests to be defended by the strike and disciplining the form and procedure for its exercise. In the country, strikes that go beyond social or economic objectives are unlawful.

The Paraguayan labor union movement was very compromised due to the events that followed in the country, such as the "War of

[19] Ibid 59-60.

Paraguay", in the 19th century, the "Chaco War", in the 20th century, and the authoritarian Governments that dominated the country, especially in dictatorship of General Alfredo Stroessner.

Stroessner's period was marked by repression and intervention in strike movements, with the arrest of the corresponding participants and leaders. Only the labor unions recognized by the Ministry of Justice and Labor was accepted. Stroessner's Government had the purpose of keeping the unions small and weak, mainly through the pulverization of their organizations. There was also greater repression against workers' movements in companies close to the Government[20].

The final years of the Stroessner regime, whose Government was overthrown in February 1989, were marked by the recognition of several union entities. Regarding to collective bargaining, only 41 of the 202 legally recognized unions had collective agreements at the end of the Stroessner regime, as most entities were restricted to demanding compliance with labor legislation[21]. After the fall of the Stroessner dictatorship, the labor union movement grew rapidly, from 22,000 members in 1988 to 75,000 members a year later. From 15 trade union organizations in operation in 1988 to 40 in the early 1990s[22].

Although the Paraguayan labor movement gained more freedom with the end of the Stroessner regime, the unions still face several difficulties, since most entities are limited to a single company, without a national organization. This situation weakens their bargaining power. Another fragility of the Paraguayan labor movement lies on the financial area, given the unions' difficulty in obtaining regular payments

[20] R. ALEXANDER, *A history of organized labor in Uruguay and Paraguay*, Praeger Publishers, London, 2005, 134.

[21] Ibid 135-138.

[22] Ibid 138.

from their members. Most union leaders keep jobs, only performing their union activities after their regular working days[23].

Currently, freedom of association is recognized in the National Constitution (art. 96). According to the abovementioned Constitution, for the recognition of a labor union, registration with the corresponding administrative body is sufficient.

The Paraguayan Labor Code (CT) is detailed in the regulation of labor unions. It defines, for instance, level of organization, their purposes, minimum number of members, formal requirements for their creation, who can join it, content of their constitution, frequency of general meetings, attributions of general assemblies, requirements for obtaining "union personality" etc.

Art. 97 of the National Constitution gives unions the right to promote collective actions and to sign collective agreements. The Labor Code regulates collective agreements on working conditions in arts. 326 et seq. The law establishes forms of validity of the collective agreement, classifications of its clauses, contents, levels, causes of extinction etc. The legal literature understands that the law allows the flexibility of the working conditions established in a collective contract already established, through new negotiation[24].

Art. 98 of the National Constitution grants workers in the public and private sectors the right to resort to strikes in the event of a conflict of interest. The Labor Code provides for the concept of a strike.

It is understood that the strike is a constitutional right of dependent workers and the respective union organizations. The conflict must be of a collective, economic or social nature ("of interest"), aiming at improving working conditions of the interested parties[25].

[23] Ibid 140-141.

[24] J. D. Cristaldo Montaner, B. Cristaldo Rodríguez, *Legislación – Doctrina – Jurisprudencia del Trabajo: Fallos desde 2002 a 2014*, Fides, Asunción, 2015, 949.

[25] Ibid 951-952.

The country's legal literature appears to embrace a restricted concept of strike, not recognizing as lawful ones: a) demonstrations against the employer or against the Government; b) the intentional reduction in the pace of work; c) the intermittent and fractional suspension of work; d) the alternate suspension of work in several sectors, to completely paralyze the company's operation; e) the stoppage of the key sector of the company[26].

Since the end of the 19th century, Uruguay already had an urban proletariat with living conditions like those in Europe, especially regarding indecent working conditions[27].

This working class, composed mainly by European immigrants, started to organize itself in mutual aid societies and, later, in labor unions. At the end of the 19th century, Uruguay had its own union movement, constituted in the form of a federation, affiliating itself with the International Workers' Association. The strikes that broke out at the time have suffered violent repression, but no law was enacted to ban them[28].

During the presidency of José Battle y Ordóñez, at the beginning of the 20th century, the country achieved several civilizing advances, such as the separation of the Church and the State, free education at all levels and the abolition of the death penalty. Labor legislation was also enacted to protect workers, leaving Collective Labor Law free of regulation[29].

Despite the 1933 coup d'état, with the rise of President Gabriel Terra, union regulation was not carried out. In 1934 a new Constitution is

[26] Ibid 954-955.

[27] O. MANTERO, *Derecho Sindical: la organización sindical; los conflitos colectivos del Trabajo*, Fundación de Cultura Universitaria, Montevideo, 2015, 40.

[28] Ibid 40-41.

[29] Ibid 42-43.

enacted, which incorporates social clauses and includes the recognition of union freedom and the strike[30].

In June 1943, the Law on Wages Council was created, bringing up tripartite councils, by sectoral level, with the purpose of setting minimum wages and defining professional categories. These councils thus assist in the creation of unions by sectoral level, which are prevalent in the country today[31].

The country's traditional freedom of association was suspended by a coup d'état in the 1970s, but the 1980s are marked by the return of democracy, with a resumption of the high degree of representativeness of the unions of yesteryear. In the 1990s, the union movement entered a crisis, resuming satisfactory standards of defense of class interests in the 21st century[32].

Uruguay is characterized by a special appreciation of freedom of association, understood as the inhibition of state interference[33].

Art. 57 of the Constitution dictates that the law will promote the organization of unions, granting them privileges and dictating rules to recognize them as legal entities. Such article is interpreted with art. 39 of the Constitution, which constitutionally extends freedom of association for everyone[34].

The constitutional recognition of freedom of association implies that, in principle, there is no impediment to the formation of associations, whatever their object, including the union. Furthermore, an association can only be declared unlawful by law and in no case by administrative act. The union organization does not require legal or administrative recognition for its existence and functioning. Moreover, the

[30] Ibid 47.

[31] Ibid 48-49.

[32] Ibid 56-57.

[33] Ibid 93.

[34] Ibid 94-95.

Constitution considers the trade union movement as a positive form of collective expression that should be promoted. Legal personality is not required for union action. In this system, the legal obtaining of union personality should be facilitated[35].

In Uruguay, freedom of association implies assuming that the union organization is not subject to the granting of legal personality (ILO Convention 87). There is no limitation on the degree or level of organizations for collective bargaining: negotiations by industry, profession or company. The country does not provide for procedural rules of negotiation, such as registration, ratification, assembly quorum, deposit of instruments, term etc., because of its tradition of union freedom. There is a legal procedure for the so-called tripartite negotiation, within the scope of the Wages Council. Thus, only collective bargaining in the councils deserved any regulation. Uruguay's system can be called "moderate intervention"[36].

Legal scholars hold that legal minimums are not negotiable, individually or collectively[37].

In Uruguay, the right to strike is recognized in art. 57 of the Constitution of the Republic, which indicates that it is a union right. There is no regulation regarding to the right under consideration, nor as to its exercise. The workers are entitled to determine when, what and how their collective action is going to take place. The effect of being a fundamental right indicates that strike cannot be regulated by acts of the administrative authorities, but by law[38].

[35] Ibid 95.

[36] H. GHIONE, *La negociación colectiva en Uruguay*, http://www.relats.org/documentos/DERECHOBarreto.pdf, 2013.

[37] H.H. BARBAGELATA, J. ROSENBAUM, M. GARMENDIA, *El Contenido de los Convenios Colectivos*, Fundación de Cultura Universitaria, Montevideo, 1998, 72.

[38] O. MANTERO, *Derecho Sindical: la organización sindical; los conflitos colectivos del Trabajo*, Fundación de Cultura Universitaria, Montevideo, 2015, 211.

No formality is required to start a strike in the country. Failure to comply with the statutory deadline for prior notice of the strike does not make it illegal. On the other hand, political and solidarity strikes are recognized as lawful[39].

The Uruguayan model, mainly because of its history, is the most democratic of the Mercosur Member States, expressing the country's commitment to freedom of association.

4. Transnational colective agreements in Mercosur

The new forms of international production, the increasing integration of international trade, as well as the delegation of part of the national sovereignty to regional integration processes favor the flourishing of cross-border social dialogue. These initiatives also aim to combat the negative aspects of globalization. ILO welcomes cross-border social dialogue, if they result in the promotion of decent work, fundamental principles and rights at work for all employees. Such social dialogue is part of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration)[40].

Therefore, there is widespread recognition that regional integration is not restricted to commercial and economic issues, as the social dimension is a vital component of these processes. Among the existing regional integration processes in the world, the European Union's internal experience is by far the most successful among all multilateral regional agreements, in terms of promoting cross-border social dialogue[41].

[39] Ibid 220, 233-234.

[40] International Labour Office (ILO), *Diálogo social e tripartismo: Um debate recorrente sobre o objetivo estratégico do diálogo social e tripartismo, elaborado no seguimento da Declaração da OIT sobre Justiça Social para uma Globalização Justa*, Conferência Internacional do Trabalho, Geneva, 2008, 14.

[41] Ibid 40-41.

On the other hand, the cross-border social dialogue demonstrates that its use helps to protect fragile workers, such as migrants. It is worth to mention the formalized understanding between ASEAN Trade Union Council, South Asian Regional Trade Union and Arab Trade Union Confederation, in which those parts signed a memorandum of understanding to create a safe and rights-centered environment for migrant workers[42].

The problematic issues of subcontracting, disguised and triangular employment have also been the subject of cross-border social dialogue, as in the case of the Rana Plaza disaster in Bangladesh, 2013. In response to this accident, a binding Industrial Framework Safety Agreement in buildings was signed, valid for five years, between IndustriALL, UNI Global Union and several multinational companies installed in the country. This adjustment was effective in preventing other fatalities in the factories covered by the Agreement, due to fire, electrical or structural hazards. In October 2017, several service contractors from the same plants made a commitment to sign a new Agreement with IndustriALL and UNI Global Union[43].

It is usual that Transnational Framework Agreements contain commitments with fundamental principles, including those contained in ILO Conventions, conflict resolution in the workplace, collective bargaining, among others[44]. Other agreed themes include information and consultation of workers[45]; equal opportunity, safety and health in

[42] Ibid 43.

[43] Ibid 45.

[44] Ibid 44.

[45] O. RACCIATTI, J. ROSENBAUM, *Negociación colectiva internacional*, in *Revista de Trabajo*, 2006, 3, 91-126.

the workplace[46]; minimum wages, prohibition of child labor and forced labor and professional qualification[47].

The peculiarities of the border regions, in the Mercosur countries, represent favorable conditions for the emergence of collective transnational agreements. Unlike other regions of the country, workers located on the borders live in their own universe, having common historical processes, cultural identities and needs. They traditionally live away from central power and its social benefits, needing job offer and the service network of large centers. That is why it is frequent for the border populations of different countries to search of common solutions to their problems, especially in twin cities, formed by sets of urban centers separated, naturally or artificially, by the national borders of neighboring countries[48].

In these locations, companies develop activities and hire labor on both sides of the border, without binational labor unions to represent this workforce. Social problems caused by this type of relations are common, such as: a) the employment of informal indigenous labor, which includes slave workforce and territorial loss, as is the case with the Guarani-Kaiowá ethnic group in the State of Mato Grosso do Sul[49]; b) the subjection of the frontier worker to informality at work, to agrarian conflicts and exposure to economic and political

[46] T. Müller, H. Platzer, S. Rüb, *Acordos transnacionais por empresa: um novo instrumento das relações trabalhistas europeia*, https://library.fes.de/pdf-files/id/ipa/10418.pdf, 2013.

[47] A. Lima, *Negociação Coletiva como Instrumento de Incremento do Mercado de Trabalho no Âmbito do Mercosul* (Doctoral Dissertation), Pontifícia Universidade Católica de São Paulo, São Paulo, 2012, 120.

[48] E. Santos, *A igualdade jurídica do trabalhador fronteiriço*, http://genjuridico.com.br/2017/12/07/igualdade-juridica-trabalhador-fronteirico, 2017.

[49] M. Azevedo et al., *Guarani Retã: povos Guarani nas fronteiras Argentina, Brasil e Paraguai*, https://acervo.socioambiental.org/sites/default/files/publications/gid00223.pdf, 2008.

fluctuations - exchange rate variations, monetary adjustments and differences in prices of public services[50].

The border regions would thus represent a "regional integration laboratory" [51]. There, the process of integration between countries, especially the social one, should have its development more accelerated, in order to face the common problems experienced by its workers. Before waiting for solutions from distant central authorities, the most efficient way to solve problems should start from mutual collaboration between neighbors, which, in the field of Labor Law, is expressed in Collective Agreements.

At this framework, transnational collective bargaining would emerge as a tool to foster social integration, by harmonizing the national systems of the Mercosur Members States, directly regulating working conditions of cross-border workers. In this paper, it is understood that the transnational collective agreements would constitute a mean to build authentic social integration in Mercosur, "from the bottom to the top".

Despite pointing out certain difficulties, South American legal scholars hold that the conclusion of collective transnational agreements in Mercosur is viable.

A first possibility, which currently does not find resonance in the institutional structure of Mercosur, would be the creation of supranational regulation, autonomous or heteronomous, constituting the statute or legal basis for transnational collective bargaining[52].

Even without this supranational normative source, nothing would prevent the development of an autonomous and informal supranational collective bargaining, based on the international norms on

[50] A. PUCCI, *O Estatuto da Fronteira Brasil-Uruguai*, FUNAG, Brasília, 2010, 120.

[51] C. LOPES, *Direito de imigração: o Estatuto do Estrangeiro em uma perspectiva de direitos humanos*, Núria Fabris Ed., Porto Alegre, 2009, 120.

[52] Ibid 93.

freedom of association and collective bargaining, resulting from the ratification of the ILO Constitution and the Conventions of the same organization, as well as of the Mercosur Social and Labor Declaration[53].

In the absence of regulation expressed in Mercosur rules, these negotiations could take place in a variety of ways, such as the framework agreement (of the highest level and centralization), agreements at the level of joint consultative commissions, supranational sectoral collective agreements, transnational company agreements[54].

Legal literature emphasizes that, in the legal systems of the Mercosur Member States, there is no impediment to collective bargaining at the supranational level. However, there is legal discussion on some aspects, such as the relationship between social forces, subjects of negotiation and normative content. In any case, it would be recommended to approximate national laws in advance, in addition to creating a supranational body that would judge possible conflicts arising from these arrangements[55].

Legal scholars indicate, however, to a series of difficulties for the transnational collective bargaining to take place in Mercosur. We can mention, as an example, the inadequacy of the structures of union and employers' organizations for this purpose; the lack of effective negotiating will on the part of the social partners to conclude these collective agreements; the current lack of union's sufficient power to convince multinational companies to dialogue with workers' organizations; the lack of maturity in the Mercosur integration process; the existence of varying degrees of conflict, ideologization, distribution

[53] O. Racciatti, J. Rosenbaum, *Negociación colectiva internacional*, in *Revista de Trabajo*, 2006, 3, 118.

[54] O. Uriarte, *Negociación colectiva e integración*, in *Revista de la Asociación Ius et Veritas*, 1993, 7, 89-96.

[55] J. Soares Filho, *As negociações coletivas supranacionais para além da OIT e da União Européia*, in *Revista Jus Navigandi*, 2007, 1447, https://jus.com.br/artigos/10023.

of unfair wealth and social exclusion; the absence of interest from the Governments of the Members States[56].

In legal terms, technical difficulties would rest on the diversity of national legislation on collective bargaining; the absence of a unitary supranational order; the absence of a framework agreement for harmonizing the regulation of collective bargaining in the Member States.

On March 29, 1999, the metallurgical unions of ABC and Taubaté, in Brazil, and the Union of Mechanics in Automotive Transport, in Argentina, signed the first transnational collective agreement of Mercosur. Said adjustment had the participation of Volkswagen do Brasil Ltda. and Volkswagen da Argentina S.A.

In this instrument, called Collective Contract, topics such as information exchange, competitiveness, conflict resolution, worker representation in the workplace and professional qualification were addressed.

The Collective Contract considered the need to extend the understanding of capital and labor relations within the scope of Mercosur; the need for closer communication and the exchange of information between the parties; the essentiality of the dialogue to reach a complete degree of knowledge and understanding of the existing realities and peculiarities, both in Argentina and in Brazil; the potential of Mercosur.

In the final provisions, the parties undertake to continuously improve the Contract, in a dynamic and consensual way, including important issues for the permanent social dialogue in Mercosur.

[56] O. RACCIATTI, J. ROSENBAUM, *Negociación colectiva internacional*, in *Revista de Trabajo*, 2006, 3, 96-98.

The Collective Agreement expressly stated that its provisions would apply at the level of Mercosur. It was conceived, thus, as a "mercosulist" instrument.

In any case, the referred Collective Contract did not provide for clauses that would alter the individual employment contracts. Nor has it drawn economic advantages in favor of workers. Its purpose was to establish a balance of forces, by imposing limits on the power of the company[57].

After the conclusion of the abovementioned Collective Contract, Mercosur did not witness any other agreement of the same nature. It is true that, throughout the 20th century, Framework Agreements were signed between UNI Global and certain Brazilian banks. However, these adjustments did not count on the participation of companies from other Mercosur countries, nor were they restricted to the bloc's territory. Therefore, they do not have the characteristic of being "mercosulist" agreements, just like the one celebrated in 1999.

Anyway, the lack of collective transnational agreements in Mercosur comes to be supplied by initiatives of the authorities of the Member States.

In this sense, the source for resolution of labor conflicts for frontier workers has been bilateral agreements signed by neighboring countries, such as: a) the Agreement between the Governments of Brazil and Uruguay for Residence Permits, Study and Work with Brazilian and Uruguayan Border Nationals; b) the Agreement between the Governments of Brazil and Argentine on Boundary Border Locations.

[57] A. LIMA, *Negociação Coletiva Transnacional: o acordo supranacional dos metalúrgicos do Brasil e da Argentina com a Volkswagen* (Master Thesis), Universidade Metodista de Piracicaba, Piracicaba, 2006, 120.

The Agreement between the Governments of Brazil and Paraguay on Boundary Border Locations, signed 2017, still depends on legislative approval in the respective countries.

Another example was the agreement signed between the Governments of the State of Rio Grande do Sul (Brazil) and Uruguay, aiming to guarantee the rights of frontier workers[58]. In the same sense, the "Integrated Plan for the Frontier", signed by the diplomatic bodies of Brazil and Uruguay, in which they dealt with matters related to labor relations in the border area[59].

5. Itaipu Binacional: on the border of social dialogue and silence

In 1973, the military governments of Brazil and Paraguay signed a Treaty for the hydroelectric exploitation of the Paraná River's water resources. This adjustment was called the "Itaipu Treaty".

On the occasion, they instituted a binational entity called Itaipu, whose share capital would be divided between ELETROBRÁS (Centrais Elétricas Brasileiras S.A.), of Brazil, and ANDE (Administración Nacional de Eletricidad), of Paraguay. The Treaty, however, was revised in this respect, so that the Brazilian Government, through one of its financial agencies, provided credit in favor of ANDE, in an amount equivalent to the capital that it should be paid in the company on the Paraguayan side.

[58] Brazil, Rio Grande Do Sul Government, *STDS e Ministério uruguaio assinam acordo para garantir direitos dos trabalhadores fronteiriços*, https://estado.rs.gov.br/stds-e-ministerio-uruguaio-assinam-acordo-para-garantir-direitos-dos-trabalhadores-fronteiricos, 2011.

[59] Brazil, Ministry of Foreign Affairs. *Nota 154. Plano Integrado de Trabalho para a Fronteira Brasil-Uruguai*, http://www.itamaraty.gov.br/pt-BR/notas-a-imprensa/13851-plano-integrado-de-trabalho-para-a-fronteira-brasil-uruguai-2016, 2016.

The entity, according to the treaty, would be managed by a Board of Directors and an Executive Board, made up of an equal number of nationals from both countries.

According to the treaty, the energy produced would be divided equally between the two countries. In any case, each one was recognized with the right to purchase energy that was not used by the other country for its own consumption. This still happens today, as the energy on the Paraguayan side is more than enough to supply the country's needs, so that its surplus is acquired by the Brazilian side.

The financial bases of Itaipu are foreseen in "Annex C" of the same treaty, whose revision is scheduled for 2023.

Itaipu, in Tupi-Guarani, means "the stone that sings". It is the name of an island located in the Paraná River. This was indicated as a perfect site for the construction of a hydroelectric plant. The construction of the plant began in 1974. The plant was finally opened in 1982, still during the military regimes in force in Brazil and Paraguay. The company is located on the border of both countries, between the cities of Foz do Iguaçu (Brazil) and Ciudad del Este (Paraguay).

The Itaipu Treaty dealt timidly with the issue of labor relations. Article XI provided that the labor available in the two countries would, as far as possible, be used equitably. Paragraph 1 of the aforementioned article established that the signatory countries would adopt all the necessary measures so that their nationals could be employed, without distinction, in work carried out in the territory of another, related to the objective of the Treaty.

However, in 1974, both countries signed the Protocol on Labor Relations and Social Security. In the introduction of this normative document, the Governments expressed their enthusiasm for the purpose of

establishing a fair and equitable legal regime applicable to labor relations and social security for workers hired by ITAIPU.

The Protocol in question aimed to establish the legal rules applicable, in matters of Labor Law and Social Security, to Workers hired by ITAIPU, regardless of their nationality. Art. 2 of the Protocol determines that the law of the place where the individual employment contract is signed would govern several rules, among them workers' union rights.

The Protocol established a set of rights, regardless of the place where the contract was signed, such as: a) the eight-hour day, with a break for rest; b) night shift premium; d) paid weekly rest and public holidays; c) prior notice and unfair dismissal compensation; d) hazard pay; e) wage equality. The same instrument provides for the possibility of creating joint commissions, with representatives of the company and workers.

In its art. 10, the Protocol declared that ITAIPU, due to its binational nature, would not be part of any unionized employers' category. The Protocol, therefore, does not consider the possibility of a binational union entity.

Also in 1974, Brazil and Paraguay signed an Additional Protocol on Labor Relations and Social Security, with similar content of the earlier document. Its purpose, however, was regulate the employment contracts of contractors and service providers.

Although none of the Protocols provide for collective rights, such as freedom of association and collective bargaining, both assume the possibility of entering into collective agreements, as they mention these instruments to negotiate overtime premia.

The labor union movement of Itaipu binational workers, on both sides of the border, began in this context of intensive use of labor, during the construction and operational phases of the plant, over dic-

tatorial military Government's era. On the left side of the river, would be the Brazilian workers. On the right side, the Paraguayans.

The following information was provided by one of the Brazilian workers interviewed, who was part of the first installation team during the plant's construction period, in 1979.

Itaipu only started to have its own employees in 1985. Until then, labor from an entity linked to ELETROBRAS was used. These workers, called "red badges", were incorporated into the company in 1985. As a result of the formation of Itaipu's own staff, the Brazilian labor union movement began to organize itself inside the company.

In the absence of a union of its own in the city of Foz do Iguaçu, this movement was initially embraced by the union based in Curitiba, capital of the State of Paraná. In 1987, a professional association was formed. In 1989, that association turned into the electricians' union of Foz do Iguaçu (SINEFI).

At that time, because there was a military dictatorship, it was not possible to negotiate with the company's directors, due to the lack of openness for dialogue and the lack of representation of workers. The first dialogues with the company were made in 1986. At that time, workers were setting up an agenda, which was answered by the company through a letter of intent with its proposals. The understandings between employees and the company, however, until 1989, were not formalized in a written collective agreement.

The first written Collective Agreement was formalized in Brazil in 1990, when SINEFI already existed. In the same period, the first Collective Contract was also signed on the Paraguayan side, a period that coincided with the end of the military dictatorship in that country.

Since that period, workers have insisted that a single and standardized Collective Agreement should be signed, covering workers from

both countries. The company, however, has always denied this possibility. Workers also consulted lawyers to find out the possibility of this signing a single agreement, but faced legal divergences in this regard, as there are different laws in both countries.

The first collective agreements, both in Brazil and in Paraguay, were symmetrical in number of clauses. However, from 1993/1994, Paraguayan Collective Contracts began to present a greater number of clauses and benefits, in comparison to Brazilian. This gap has only been somewhat balanced since 2003.

The search for symmetry often establishes benefits for both sides, as they enable them to enjoy rights not provided for in their national legislation. In Paraguay, for example, there is no hazard pay, which is guaranteed to Itaipu workers, due to the symmetry of the Collective Agreements. The same can be said on the Brazilian side, for example, in the matter of counting vacation days, which under national legislation would be counting on calendar days, but at Itaipu the counting takes place on working days, due to the symmetry of the Collective Agreement.

The dates for reviewing and negotiating new working conditions (data-base) are different on both sides of the border: in Paraguay it happens in May; in Brazil, in November. The workers wanted to unify the "data-base", in order to have at least a simultaneous negotiation, with consequent gains to the class, but the company in no way accepted this claim.

Collective bargaining is done separately on both sides. Brazilian workers have already participated, as listeners, in the collective negotiations on the Paraguayan side. On the Brazilian side, despite the workers' request, it was never accepted that Paraguayans participate in negotiations with the company. The motivation for this separation would be to divide the class, because if Brazilians and Paraguayans got together, the negotiating force would be much greater.

There are expressions of mutual solidarity among Brazilian and Paraguayan workers. Brazilians have already participated in Paraguayan general assemblies. Strikes on one side at the border often rely on solidarity on the other.

There are differences between careers on both sides of the border. Paraguayans have a more accelerated career progression compared to Brazilians. This factor causes an awfully bad internal environment among workers. These differences, by the way, have already resulted in a strike on the Brazilian side, which was not successful.

There are also wage differences, due to the exchange rate fluctuations of each currency. Paraguayans frequently have highest wages than Brazilians, as income taxation in Brazil is heavier. Another point of friction, even among unions in each country, is the fact that there are more Paraguayan workers than Brazilians in the company.

There are currently nine labor unions on the Paraguayan side. Paraguayan unions have more advantages compared to Brazilians, although, in more recent times, the benefits of the two countries are practically equivalent. In general, Paraguayans are more radical than Brazilians in defending their rights. Brazilians are more cautious. Paraguayans have a good political conscience and a good negotiating strategy.

The Paraguayan worker interviewed also started working in Itaipu at the time of its construction, specifically from 1981, in the maintenance area. The information set out below is based on the interview with him.

The Paraguayan union in Itaipu, STEIBI, was established in March 1989, the year of the fall of the dictatorship in Paraguay. There was a strike, in July 1989, for official recognition, which effectively occurred by the country's Ministry of Labor in October 1989.

The first strike with the recognized union occurred in December 1989. Other stoppages had taken place before the union was instituted, such as the one that occurred in 1985, in which technical workers suspended activities in key sectors of the company. Even before the union was instituted in 1989, there were other small collective movements of workers on the Paraguayan side.

There was a big difference at the beginning of the Paraguayan union movement, compared to the Brazilian one. The Brazilian union was created in 1986, a time when Paraguay was unable to do this. The interviewee started the movement, but the workers were very afraid to organize a labor union, because of the dictatorship of President Alfredo Stroessener.

The Paraguayan union's negotiations with Itaipu started around July 1989, when they sent a note with their complaints. The complaints have not had a documented response. The company's responses to workers' complaints were not very satisfactory before the December 1989 strike.

With the outbreak of the strike in December 1989, negotiations began to become more frequent. The first Collective Contract took place in 1990/1991, although it was not yet sufficiently structured. As of 1992, there were formal and more expanded Collective Contracts. Also in 1992, an industrial relations committee was created, headed by representatives from the company and a group of union representatives.

At that time, there was already a demand for a single Collective Agreement for both sides, but the Paraguayan Government rejected this proposal. The idea of the workers was always to sign a single contract, because of differences in wages and benefits. It was a permanent struggle.

There was always a difference between the Paraguayan and Brazilian Collective Agreements, mainly due to the exchange rate. The Brazilians' Collective Agreements brought more benefits. The Brazilian union had an advantage, as it had a salary adjustment mechanism due to inflation. Regarding to benefits, the Paraguayans achieved practically the same number of advantages as the Brazilians.

The collective agreements of Brazil and Paraguay are celebrated on different dates. There have already been strikes to unify the dates, as this circumstance could generate differences in benefits. Itaipu denies the unification of the dates, in addition to the difficulty for the unions to close the dates.

Brazilians have never participated in negotiations on the Paraguayan side. The interviewee has already been invited to deal with a specific item dealt with in negotiation on the Brazilian side. The absence of mixed negotiations can be a communication problem.

There have already been gestures of solidarity on both sides. However, there was an occasion when problems occurred in carrying out a joint strike. While the Brazilian side remained on strike, the Paraguayan side was forced to sign a Collective Contract. This fact caused damage to the Brazilian unions, which were not successful in their strike, that lasted for a long time. This was the last opportunity for Brazilians and Paraguayans to consider doing something together. The Brazilians complained about the Paraguayans' lack of solidarity.

There are many differences in benefits between workers in the two countries. Brazilians complain about these differences. In any case, the interviewee believes that the differences in benefits would not hinder binational dialogue, as there has always been an interest in this regard, despite the distinct cultural background on both sides.

The interviewee believes that the creation of a binational union is difficult: in his view, there is a lack of ideological communion between the unions.

On the Paraguayan side, there are currently eight unions. There was and is a lot of political interference in Itaipu. The company's directors created a union to guarantee themselves. The company even signed Collective Contracts with smaller unions, without authorization from the larger union, STEIBI.

There is a lack of civic consciousness among Paraguayan workers. Paraguay's civic education is weak, which makes unionism and union formation itself difficult.

The interviews with the other Brazilian workers confirmed, for the most part, the information provided by the employee mentioned in item 5.3.1. That is, these workers mentioned 1) the unsuccessful attempt at a Binational Collective Agreement, due to the company's refusal; 2) the company's refusal to unify the "data-base"; 3) the existence of more Paraguayan workers than Brazilians in the company; 4) wage differences, to the disadvantage of Brazilian workers; 5) slower career progression on the Brazilian side; 6) the parity targeted by “binationality” was able to raise the social status of workers on both sides, by obtaining advantages not provided for in the respective national laws; 7) the internal problems generated by the isonomy violation between Brazilians and Paraguayans; 8) to a greater or lesser extent, both sides show mutual solidarity with the neighbors' demands.

Additional information provided by them follows below.

A worker, with extensive experience in binational areas of the company, highlighted the difficulty of dialogue with the Paraguayans, who defended the need for Brazilians to understand their “idiosyncrasies”. The reason for Itaipu to deny the unification of the "data-base" was the possibility that this would make the joint mobilization

of workers able to effectively paralyze the company on both sides of the border, in the event of a strike. It is a strategic position.

Social achievements in the company began in 1985, due to the humanist profile of a specific director at the time. The first collective bargaining trial at the company took place in 1986, with the initial participation of SINEFI and the engineers' union. Then, the negotiations started to count on four Brazilian unions.

From 1986 to 2003, the workers' demands used to be delivered in writing, and were also answered in writing. There was effectively no negotiation. Only afterwards the face-to-face negotiations took place, when the parties sat side by side, which was also observed on the Paraguayan side, but on different dates.

The main strikes that broke out on both sides were based on “binationality”, that is, non-compliance with parity. Other notable differences between the two sides lie in the selection criteria for admission to the company; possibility of providing more overtime on the Paraguayan side; health plan with more benefits for Paraguayans; incorporation of premia not received by Brazilians to the wages of Paraguayans.

Paraguay “does not pay the bill”, so to speak, creating benefits for its workers that would be paid by the Brazilian cashier. As long as the cashier is unique, Paraguayans are not willing to lose benefits: that would be the “idiosyncrasy” mentioned.

There have already been attempts at binational labor union or binational entities. However, this never happened because Brazilians do not fully trust Paraguayans. Brazilian solidarity did not have reciprocity. An example mentioned was that of a certain round of negotiation, in which a benefit was withdrawn on the Brazilian side, with the promise that the same would be done in Paraguay. However, even before the arrival of the "data-base" on the Paraguayan side, a Col-

lective Agreement was signed in Paraguay in which there was no loss of rights. Because of this and other factors that generate distrust, attempts at binational meetings have been halted.

The interviewee thinks that legal issues are also detrimental to joint assemblies.

Because Paraguay is a small country, Itaipu has a much greater weight than in Brazil. The Paraguayan side has more dominance on its national interests and those of its workers. In Paraguay, the Paraguayan worker from Itaipu is seen as an elite.

Paraguayan union movements are passionate and focused on sovereignty. Brazil is seen as an imperialist country. The nationalist discourse is large in Paraguay. In Brazil, there is a more individualistic behavior in terms of professional issues - Brazilians forget that most benefits are collective, such as health insurance, public transportation and profit sharing.

Another Brazilian worker interviewed, with experience in union management, informed that the negotiations between the two sides are not equal, because, depending on the profile of the board, the dialogues may be more difficult or not. On some occasions, the negotiation length in Brazil has been much longer than in Paraguay. Paraguayan unions seem to have less difficulty to negotiate with their board. The vision of the Paraguayan board is more linked to sovereignty. As Paraguayan politics is fragile in their relations, union representatives have more political weight. Paraguayan union leaders were even received by the country's President - on the Brazilian side, it is difficult to get even an audience with a company director.

Furthermore, Itaipu is not as important for Brazil as it is for Paraguay. For the latter, the energy issue is a matter of sovereignty. Paraguayans do not accept feeling inferior to Brazilians, a view

shared by workers and Paraguayan boards, who see that their nationals must be at least equal or superior to Brazilians.

Despite efforts to balance Collective Agreements since 2003, there is a current tendency for them to diverge again, to the disadvantage of Brazilians. Differences on both sides, especially in wages, are caused by structural issues. There is also a lack of political will to understand the question of the salary table, which was the object of the biggest strike that occurred on the Brazilian side. Moreover, changing this table would generate friction with management on the Paraguayan side.

Finally, another interviewee, a highly qualified Brazilian worker, said that he did not see a shared interest between Paraguayan and Brazilian workers. Although there was an interest in harmonizing the agendas, there were no joint meetings, mainly because the company did not accept dialogues between unions in different countries. The interviewee also does not believe it is possible to create a binational union.

6. Itaipu Binacional: a few reflections on a relevant sample

In a unique, complex and unstable universe, as is the case of the Transnational Collective Agreements, this paper chose Itaipu Binacional as a sample to carry out its purpose. In addition to being in the border region, already referred to in this work as a "regional integration laboratory", Itaipu synthesizes typical characteristics of Latin American peoples: the coexistence of authoritarianism with the relentless search for improving the social condition of workers.

As already exposed throughout this work, the Collective Labor Law of the Mercosur Member States has marked differences, making such systems unique, as they belong to different cultural, historical and political traditions. However, there is something in common in the

Collective Labor Law of the Member States: the fact that freedom of association was directly undermined by the autocratic Governments that have plagued the corresponding countries in the 20th century.

This appears to be the case with Itaipu Binacional, a company created by dictatorial military Governments, with share capital paid by state companies from both countries, using this condition to deny the possibility of unionizing as employers.

The reports collected from the interviews are a testament to these conditions. In the first moment of the company's history, collective bargaining was denied and even the existence of union entities was jeopardized. In a second moment, the negotiations existed, but in a formalized way, without representatives of the company and workers being able to talk side by side. Finally, negotiations started to be opened, but always in a separate way. There could be no joint dialogue with representatives of Brazilian and Paraguayan workers. Nor could these negotiations take place at the same time.

With Mercosur, in the absence of a more institutionalized regional bloc, the strength of the Governments of the Members States prevails, which can, according to their will, direct their policies towards acts favorable or not to the full freedom of association advocated by the ILO.

In this sense, Itaipu's policy is not only presented as anti-union. For the purposes of this article, it also represents an anti-social integration policy. After all, according to the interviewees' reports, the company's policy is a relevant factor preventing the conclusion of Transnational Collective Agreements, a demand claimed by its own workers.

But other factors appear to be important in this universe.

The unevenness of benefits between employees on both sides, including wage differences, represented an important factor, according

to the interviewees, to reduce the ties of solidarity between Brazilian and Paraguayan workers. The difference in the profile of unionism, much influenced by different cultures, also seemed to be an important element to distance the links between union movements in both countries.

In any case, the example of Itaipu did not just point out plausible hypotheses for the failure of social dialogue in Mercosur. In addition, this sampling seems to indicate a path to be followed for future transnational negotiations, even outside Latin America.

Itaipu's experience demonstrates that it is possible to raise the idea of “binationality” (or “multinationality”, depending on the level of discussion) to a notion of "isonomy", "parity", "equality". Furthermore, the case of Itaipu is an example of how agreements aimed at this “binationality” (or parity) have the effect of raising the social status of workers on all sides of the discussion, by establishing better working conditions than those provided for in national legislation, as effectively happened with Paraguayans and Brazilians.

One last point, regarding the knowledge of Labor Law, is worth mentioning: although the legal literature gives great weight to the legal restrictions for the conclusion of Transnational Collective Agreements in Mercosur, this factor was hardly mentioned by the workers interviewed. This apparent distance between the production of legal literature and the testimony of the interviewees seems to confirm a historical characteristic of union movements: such movements are not subordinated to legal preconditions. On the contrary, it is the law that often adapt to the collective strength of the labor union movement.

Briefly, for the limits of this work, which used a small sample to obtain its hypotheses, the in-depth interview is satisfactory, as long as the resulting reports are carefully analyzed and compared with other normative and historical sources.

More than facilitating the indication of hypotheses, empirical work, such as that undertaken in this article, may point out some limitations of the bibliographic research itself, when it is disconnected from the reality it intends to describe.

Even so, empirical work can and should be used in conjunction with bibliographic research, including to test the validity of the arguments of the legal scholars in formulating hypotheses about a certain phenomenon.

7. Conclusion

In conclusion, based on the bibliographic and empirical research carried out in this article, here are some hypotheses for the lack of Transnational Collective Agreements in Mercosur:

1) Mercosur had, so far, no relevance in fostering transnational Collective Agreements in Member States - at no time was the bloc mentioned by the interviewees as a positive or negative factor in the celebration of these adjustments;

2) In the absence of an institution to take control of this situation, Member States have a decisive influence on the promotion of freedom of association, within or beyond their territories;

3) As a reflection of these circumstances, the companies, which have the power to manage the work of its employees, also plays an important role in driving policies favorable or not to freedom of association;

4) In addition to the company's behavior, favorable or not to the existence of collective transnational agreements, the violation of isonomy among workers from different countries, who work in equal conditions, contributes to the breaking of the bonds of solidarity essential for cross-border social dialogue;

5) Cultural differences, which extend to labor unions in neighboring countries, can characterize factors of disagreement between said entities, with mutual distrust and loss of harmony for future articulated movements;

6) The Itaipu case demonstrates that “binationality” has the potential to become synonymous with "isonomy", including in multinational companies, in order to raise the social condition of workers driven by this idea.

Besides, although jurists usually assign a lot of importance to formal issues, the phenomenon of the labor union movement has an indomitable nature, so that it is not necessarily conditioned to legal problems to develop. On the contrary, it is the law that frequently adapt to it. Empirical research, based on the technique of in-depth interview, more than finding the right answers, can indicate the occasionally wrong ones pointed out by the bibliographic research in explaining practical problems. Both methodologies should humbly work together.

After these brief conclusions, we hope to have contributed finding the first keys to understanding the social silence in Mercosur. Let that silence becomes the cross-border dialogue needed by workers and yet to come.

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