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Chapter 11

Legitimacy and Democracy in Regional Integration Organizations: Closing or Widening the Gap?

Andrea Ribeiro Hoffmann and Anna van der Vleuten

The Puzzle

As stated in Chapter 1, our major aim in this book was to explore the connections between RIOs, legitimacy and democracy. In particular, we asked whether the creation and development of RIOs has contributed to widening or closing the gap which exists between citizens and policy makers as a result of the processes of regionalization and globalization.

We have argued that the regional level and RIOs have peculiarities which make them an interesting object of study within the debate about legitimacy and democracy beyond the nation state. Unlike global and functional international organizations, RIOs are based around a certain territory, and a certain identity which gives meaning to this territory. This construction of a region consisting of territory and ideas encourages people living in the region to identify with the RIO and its policies. Furthermore, RIOs are not single-issue organizations but have a broad mission, which implies that regional governance can cut across all policy domains previously controlled by national decision makers.

We found that literature on legitimacy and democracy in RIOs has hitherto focused mostly on economic performance, or exclusively on one particular RIO: the European Union, which, in turn, is conceptualized not as a ‘normal’ RIO, but as a *sui generis* actor. This raised the question of whether it is possible to speak about RIOs in the same way that we speak about states: can we treat them as a homogeneous group in spite of the differences between them? And what does this mean for the validity and generalizability of our conclusions? In this regard, we acknowledge the differences between the EU and other RIOs, but we take the view that they are, nevertheless, all RIOs; the difference between them is not ontological, but rather of degree – the degree of scope and depth of cooperation and integration, the degree of institutionalization, the degree of supranationality, and state of development. Even excluding the EU, RIOs vary significantly: ASEAN, the SADC, Caricom and Mercosur do not all share the same objectives or the same type and level of institutionalization and they are in different stages of development. The point here is that the defining aspect of RIOs is not their degree of supranationality, but rather their territorially limited area, their claim to a common identity, and the broad scope
of their mission and activities. The degree of institutionalization and the range of aims and policies of a specific RIO do not change our basic assumption that ‘all social systems have to have some mechanism that gives them legitimacy’ (Chapter 1). They only differ as regards the specific mechanisms available for realizing input, control and output legitimacy. Although we do not categorize each RIO we deal with in terms of the aspects mentioned above, from the cases studied in the chapters of this book, we can argue that institutional differences become relevant when investigating legitimacy and democracy insofar as they influence the possibility of representation and participation, and the effectiveness of policymaking. Differences in policy output will influence the relevance of the legitimacy question: if an RIO is unable to make any decisions, it will surely suffer from a lack of output legitimacy, and this will eclipse its probable lack of input and control legitimacy.

With all these considerations in mind, let us return to the questions we asked in Chapter 1:

1. Given the ‘state-oriented’ concepts of legitimacy and democracy, what do the concepts of legitimacy and democracy mean in non-national political systems such as regional integration organizations?
2. To what extent do RIOs display input legitimacy, control legitimacy and output legitimacy?
3. To what extent do regional parliaments and subnational state actors contribute to closing the legitimacy/democracy gap?
4. To what extent do non-state actors (civil society) contribute to closing the legitimacy/democracy gap?
5. Do RIOs display output legitimacy in the sense that they strengthen democracy in their member states?

The reasoning behind these questions was, first of all, that we must know what we are talking about when we refer to democracy and legitimacy in a regional political system, and that we must have an idea about how to measure these concepts for empirical purposes within a comparative framework. To address this question, we looked firstly at the channels of representation and participation created by RIO member states themselves, such as regional parliamentary bodies and sub-national state actors. Secondly, we examined the channels of representation and participation for non-state actors created by civil society, including business and sectoral interest groups, and incorporated to a greater or lesser extent into each RIO. In Table 11.1 we give an overview of the relevant questions, and the chapters of this volume which have addressed them.

**The Outcomes**

Based on the studies developed by the contributors to this volume, what can we say about the questions we raised?
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Regarding the first question, Berry Tholen and Juliana Erthal contributed to the elucidation of the concepts of legitimacy and democracy, and more particularly their role at the regional level. In Chapter 2, Tholen elaborated a definition of regional legitimacy drawing strongly from Fritz Scharpf, but focusing more strictly on the functional aspects of legitimacy in order to distance himself from the national level, and therefore adding a third type of legitimacy, namely control legitimacy, alongside input and output legitimacy.

Input legitimacy is defined as the de facto representation and participation of civil society in the decision making processes of RIOs in order to develop well-informed policies. What is important here is that the mere existence of formal channels of participation is not enough. Parliamentary bodies, for instance, contribute to input legitimacy only if they are open to all societal voices and debates are public. In corporatist and pluralist structures, the focus is on non-governmental organizations and the opportunities they have to participate in decision making. Again, these actors can only contribute to input legitimacy if they are able to bring many different voices into the public debate, which depends on their practical capability to organize, the freedom of organization and speech, and the existence and openness of institutional arrangements at RIO level to deliberate publicly.

With regard to control legitimacy, arrangements typically concern checks on executive powers, and involve judicial review and parliamentary or corporatist control. Regarding parliamentary arrangements, the criteria for evaluation are the powers and competencies of parliamentary bodies, and their capacity to turn to a court. For non-parliamentary mechanisms, the criteria concern the accreditation of non-state actors, and not only formal, but also their effective capacity to influence policy-making.

Finally, the criteria for evaluation of output legitimacy of a RIO refer to its role in upgrading the common interest. The common interest can involve economic issues such as growth and the distribution of wealth, but as Tholen points out, it may also involve the strengthening of democracy itself as the main objective. RIOs will therefore enjoy output legitimacy, not only if they produce economic benefits but also if they effectively contribute to the promotion of civic participation within the political systems of the member states, if their actions lead to guarantees of individual rights within their region, if the citizens of member states are empowered to stand up for their rights and interests by means of participatory arrangements and a legal system, and if there are mechanisms to sanction member states in the case of a threat of or an effective breach of democratic rules.

Having thus defined regional-level legitimacy, Chapter 3 proceeds with a further elaboration of the concept of regional democracy based mainly on Robert Dahl’s definition of (national) democracy and polyarchy, and Guillermo O’Donnell’s definition of (national) delegative democracy. Dahl’s definition is, as Erthal calls it, a ‘minimal concept of regional democracy’. It focuses on the political dimension of democracy, and on the representation (not direct participation) of citizens in the exercise of political power. Erthal also highlights the importance of the possibility of public contestation for regional democracy. This concept is based on the goals
of populist democracy, popular sovereignty and political equality, and the rule of majority, advanced by Dahl. In addition, it takes into consideration the maturity and consolidation of democratic institutions, as advanced by O’Donnell. The main argument is that a RIO should not be judged against ideal models of (regional) democracies, but against real regional democracies, as implied in Dahl’s definition of *polyarchy*. RIOs, just like national political systems, cannot simply be classified as democratic or not, but rather, must have their level of democracy carefully assessed. Additionally, any assessment of the quality of democracy within a RIO should include its level of institutionalization and consolidation. Erthal’s argument leads to the conclusion that, firstly, given the young age of RIOs in comparison to nation-states, one should not expect RIO institutions to be as democratic as nation-states, and secondly that RIOs can potentially be democratized: they are not ‘condemned’ to be democratically deficient.

The second question: indicators

The second question – to what extent RIOs display input, control and output legitimacy mechanisms? – was addressed by Bob Reinalda in Chapter 4. He agrees with Ruth Grant and Robert Keohane, as opposed to the view of Robert Dahl and much regionalization literature, that the legitimacy of a RIO is not confined to the output dimension, and that the input and control legitimacy of a RIO can also be assessed. Reinalda has elaborated a broad set of indicators of RIO legitimacy for use in empirical studies. This contribution can be seen, therefore, as a bridge between the conceptual discussion in the preceding chapters and the qualitative analysis of the effective legitimacy of RIOs in the later chapters.

Reinalda has made an extensive inventory of RIOs, indicating the presence or absence of each of the mechanisms which could allow input, control and output legitimacy. He shows that it is possible to assess the legitimacy of RIOs along comparative lines. His data indicates that, among the 31 RIOs analysed, 15 have mechanisms which have the potential to contribute to input legitimacy (13 scoring ‘weak’; 2 scoring ‘present’; 0 scoring ‘strong’), 12 have the potential to contribute to control legitimacy (5; 4; 3) and 23 to output legitimacy (8; 10; 5). This chapter thus is a basis for an evaluation of the effective legitimacy of RIOs as compared to their potential legitimacy. Qualitative studies can use this inventory of RIOs and their mechanisms as a springboard for further research in order to check the extent to which these mechanisms are used in reality, and whether they actually work. This is done in the studies presented in the following Parts of the volume, guided by questions three, four and five.

The third question: regional parliaments and subnational state actors

The third question, concerning the role of regional parliaments and subnational state actors, is explored in Chapters 5 and 6. As emphasized earlier, parliamentary bodies are viewed as potential contributors to input and control legitimacy. Their existence and formal powers are basic requirements, but their transparency and openness to civil society are important variables as well. Andrés Malamud and Luís de Sousa
investigate the characteristics of such bodies in the EU and a selected group of Latin American RIOs: the European Parliament (EU), Parlatino, Parlacen (SICA), Parlandino (CAN) and Mercosur Parliament (Mercosur). They evaluate the extent to which these five parliaments have actually met the conditions for contributing to input and control legitimacy.

Regarding input legitimacy, they conclude that the record is poor since only in the European Parliament are parliamentarians directly elected. The Mercosur Parliament is supposed to have direct elections only in 2011. None of the Latin American parliaments are accountable to citizens, nor do they have legislative power. Regarding control legitimacy, Parlacen is the only Latin American institution capable of monitoring other regional bodies. The authors also offer an explanation for the significant qualitative difference found between the EP and the four Latin American parliaments, which is based on five variables: time (institutional maturity), sequence (the EP being the only to follow the ‘Monnet method’ – function preceding form, and incrementalism), the level of economic integration (from free trade area to common market), the strength and stability of domestic institutions and, finally, the type of domestic regime (parliamentary or presidential). Based on these variables, a profile was made of the ‘legitimacy potential’ of regional parliaments in the other regions also studied in the chapter.

In Chapter 6, Marcelo Medeiros explores the participation of sub-national state actors in the process of decision-making in Mercosur, also referring to the European Union. He attributes much importance to sub-national state actors, arguing that they can play an important role in the legitimacy of RIOs. Medeiros shows how these actors have strengthened their participation both at the national level of Mercosur’s main member states (Argentina and Brazil) and directly at the regional level. The participation of subnational actors has the potential to enhance the legitimacy of Mercosur, the same way that decentralization in Argentina and Brazil has contributed to democratization and an increase in efficiency, with a positive impact upon input, control and output legitimacy of domestic regimes (as long as the increase in power of subnational actors is accompanied by mechanisms of control). Medeiros suggests that if subnational state actors manage to increase their influence at the regional level, this may also have a positive impact upon Mercosur legitimacy.

The fourth question: non-state actors

The fourth question, about the involvement of non-state actors, is addressed in Chapters 7 and 8. A main concern of this book is the question of to what extent the participation of non-state actors in RIOs can contribute to a closing of the gap between citizens and policy-makers as a result of the processes of globalization and regionalization. Using different sources (primary documents and interviews), Michelle Ratton Sanchez and Gerda van Roonendaal were able to establish whether non-state actors have had a *de facto* impact on the input and control legitimacy of RIOs. They worked with broad definitions of non-state actors in Mercosur and Caricom, respectively.

Ratton Sanchez concludes that Mercosur’s regulations concerning the participation of non-state actors offer the opportunity for input and control legitimacy
mechanisms. However, this RIO fails to implement the objectives stated as a result of the confusing and restrictive terminology it uses to identify eligible actors, and the lack of regulation concerning procedures for participation and mechanisms for inclusion. Moreover, Mercosur bodies have the power to define when, where, how and who will be consulted, which causes a bias in the contribution of civil society. The lack of transparency is another major factor undermining Mercosur’s capacity to foster a *de facto* participation of non-state actors, and any potential positive effect on its legitimacy.

Van Roozendaal investigates both the direct participation of non-state actors at the regional level, and their indirect participation via the national level. On the regional level, despite Caricom’s commitment to strengthen the involvement of non-state actors, this involvement has remained limited. On the national level, only one member state was investigated, Barbados, being the country with the most developed social system of the Caribbean. Barbados’s relatively advanced domestic system does not, however, seem to play an important role concerning Caricom’s policies. Van Roozendaal’s main conclusion is therefore that Caricom has failed to integrate non-state actors. She formulates four reasons for this failure: the lack of funds and capacity on the part of the RIO, the lack of political will and the strong emphasis on sovereignty on the part of most governments, and finally, the lack of public understanding on the part of the population about Caricom.

*The fifth question: links between regional and domestic democracy*

Finally, the fifth question, about the role of RIOs in strengthening democracy in their member states, was addressed by the Chapters 9 and 10. In addition, the link between domestic and regional democracy was dealt with in the last section of Chapter 3.

In the latter, Erthal explores the relationship between regional democracy and the national democracies of member states. She bases her argument on the study conducted by Steven Fish, who concluded that the presence of strong national legislatures correlates to a strong level of democracy. Following Fish’s argument, Erthal investigates whether there is any correlation between the level of democracy of member states and the strength of regional legislatures. Using the Freedom House democracy index to assess the level of democracy in the member states of seven RIOs (the same RIOs discussed in this volume: the Andean Community, ASEAN, SICA, Caricom, the EU, Mercosur and the SADC), Erthal finds a positive correlation between domestic democracy and regional democracy.

These conclusions reinforce the observations made by Malamud and De Sousa in Chapter 5, that domestic institutions constitute an important factor influencing the strength and legitimacy of regional (parliamentary) institutions. While Erthal assessed the relationship between formal democratic institutions at the national and regional levels, Malamud and De Sousa explored more extensively the role which regional parliamentary institutions can play in strengthening domestic democracies and vice versa.

In Chapter 9, Anna van der Vleuten calls attention to the point that having instruments to intervene in the case of threats or ruptures of democracy does not imply that a RIO will necessarily act when facing a crisis. She investigated why
ASEAN and SADC sometimes intervened to ‘preserve or promote democracy’, and sometimes not. She argues, based on these cases, that RIOs intervene in cases where intervention serves the geopolitical, domestic political or material interests of the regional major power, or where external pressure raises the ideological or economic costs of non-intervention.

In Chapter 10, Andrea Ribeiro Hoffmann focused on the process of institutionalization of political conditionality within RIOs, and one particular mechanism by which RIOs can intervene in their member states when they face a rupture of democracy, or the threat of one: the so-called democratic clauses. She found that in the case of the EU, the process of enlargement and the crisis in Austria played a major role explaining the creation of the mechanism. In the case of Mercosur, the crises in Paraguay were the main driving force behind it. Next, Ribeiro Hoffmann explored the impact of the use of the democratic clause upon the quality of democracy in Austria and Paraguay. She concludes that its impact was very limited.

Chapters 9 and 10 offer complementary analyses, exploring the potential of RIOs to contribute to the realization of basic values like democracy and rule of law in their member states, and which can be attributed, therefore, to output legitimacy. The main conclusion is that RIOs cannot be taken for granted as positive instruments for ensuring and promoting democracy in member states. Despite their potential contribution, RIOs will not always intervene when needed, and when they do, their intervention may rather strengthen any status quo regime regardless of its democratic credentials and their impact on national regimes may be limited.

Conclusion: the Gap

This volume deals with different aspects of the legitimacy/democracy issue in regional governance and offers qualitative analyses of different RIOs in different regions of the world. Table 11.1 gives an overview of the chapters and their substantive and geographical focus. Although the book has not presented qualitative analyses for all aspects of all RIOs, when read in combination, the chapters enable the reader to grasp the meaning and interconnectedness of the aspects studied.

In fact, one aspect of the concept of legitimacy that we emphasize in this book is precisely the interconnectedness of input, control and output legitimacy among RIOs. We argue that these three aspects are intrinsically linked. For that reason, any conception of the legitimacy of RIOs which is based exclusively on only one aspect of legitimacy, such as output legitimacy, will be limited and probably biased. By acknowledging the interconnectedness of the three aspects, it is possible to see how important it is to analyze, on the one hand, the role of parliamentary bodies and subnational state actors, and, on the other hand, the role of non-state actors in the process of policy-making of RIOs. We do not think there is a single ‘formula’ indicating how much of each of these aspects is needed in order to ‘classify’ a RIO as sufficiently legitimate. Such an assessment needs to be made on a case-by-case basis.

In addition, to say that we can compare RIOs is not to say that the same formula is valid for all of them. Different constituencies will accord different levels of
legitimacy to the RIOs they take part in according to the kind of political culture they are embedded in. This political culture, in turn, will have developed within the framework of nation states – some over the past 500 years, in the case of several European states, others for a much shorter period, such as most African and Southeast Asian states which were decolonized only last century. For this reason, an important aspect of the legitimacy of RIOs is their role in strengthening the democratic values of its member states.

We have explored the question of whether RIOs widen or close the gap which has opened between citizens and policy makers, as a result of the processes of globalization and regionalization. There is no easy, general answer to the question, but our most important finding is that it is the domestic level which is crucial in this respect, not the regional level in itself. The quality of regional parliamentary arrangements reflects the quality of domestic democracy. State sovereignty and the concentration of power in the hands of central governments at the national level are major obstacles to the participation of subnational state actors and non-state actors. Participation by non-state actors at the regional level is connected to the development of civil society in RIOs member states. The effectiveness of democratic clauses and regional interventions is closely related to the strength of democratic institutions and democratic identity at the domestic level. From this, it follows that the shift from national to regional governance is likely to widen the legitimacy gap in those RIOs where domestic democracy is relatively weak already.

Here it becomes clear how limited it is to consider only the economic output of RIOs as a legitimizing argument. How can we say a RIO is legitimate because of its economic benefits, if it widens the gap between policy makers and their constituents or has a negative effect on the level or quality of democracy among its member states? In our view, all these aspects must be taken into consideration if we want to make a serious assessment of the relationship between RIOs, legitimacy and democracy. We believe that the conceptual and empirical analysis developed in this book has made a contribution in that regard.