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

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2 authors, including:

Anna van der Vleuten
Radboud University Nijmegen

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CLOSING OR WIDENING THE GAP
Non-State Actors in International Law, Politics and Governance Series

Series Editors
Dr Math Noortmann, Erasmus University, Rotterdam, The Netherlands; Dr Bob Reinalda, Radboud University Nijmegen, The Netherlands; Professor Dr Bas Arts, Wageningen University and Research Centre (WUR), The Netherlands

The proliferation of non-state actors in the international system over the last three decades has increased the need for a broader theoretical analysis and empirical validation. The series explores the capabilities and impact of non-state actors, such as privately-based transnational corporations, non-governmental organizations (NGOs), international criminal organizations, and liberation movements, as well as intergovernmental organizations (in which NGO’s often participate). The series seeks to address this need and to deepen the knowledge and understanding of non-state actors by scholars, practitioners and students in the fields of international law, politics and governance. By emphasizing legal, political and governance aspects of non-state actors’ activities at the international (global or regional) level, the series intends to transcend traditional disciplinary and organizational boundaries.

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

Edited by
ANDREA RIBEIRO HOFFMANN
Pontificia Universidade Católica do Rio de Janeiro, Brazil
ANNA VAN DER VLEUTEN
Radboud University Nijmegen, Institute for Management Research, The Netherlands

ASHGATE
Contents

List of Figures and Tables vii
List of Contributors ix
Foreword by Philippe Schmitter xi
Series Editor’s Preface xvii
Acknowledgements xix
List of Abbreviations xxi

Part 1 Introduction

1 Legitimacy, Democracy and RIOs: Where is the Gap?
   Anna van der Vleuten and Andrea Ribeiro Hoffmann 3

Part 2 Defining and Assessing Legitimacy and Democracy in RIOs

2 RIOs, Legitimacy and Democracy. A Conceptual Clarification
   Berry Tholen 17

3 Discussing Regional Democracy
   Juliana Erthal 33

4 The Question of Input, Control and Output Legitimacy in
   Economic RIOs
   Bob Reinalda 49

Part 3 RIOs, Regional Parliaments and Subnational State Actors

5 Regional Parliaments in Europe and Latin America: Between
   Empowerment and Irrelevance
   Andrés Malamud and Luis de Sousa 85

6 Subnational State Actors and their Roles in Regional Governance
   Marcelo A. Medeiros 103

Part 4 RIOs, Legitimacy and Non-State Actors

7 Is There Any Room for Input and Control Legitimacy by Civil
   Society in Mercosur?
   Michelle Ratton Sanchez 117
Closing or Widening the Gap?

8 The Contribution of Non-state Actors to the Legitimacy of the Caricom
Gerda van Roozendaal

Part 5 RIOs and the Member States: Legitimacy and Democracy

9 Contrastong Cases: Explaining Interventions by SADC and ASEAN
Anna van der Vleuten

10 Political Conditionality and Democratic Clauses in the EU and
Mercosur
Andrea Ribeiro Hoffmann

Part 6 Conclusion

11 Legitimacy and Democracy in Regional Integration Organizations:
Closing or Widening the Gap?
Andrea Ribeiro Hoffmann and Anna van der Vleuten

Index
# List of Figures and Tables

<table>
<thead>
<tr>
<th>Table</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table 3.1</td>
<td>Regional democracy</td>
<td>41</td>
</tr>
<tr>
<td>Table 3.2</td>
<td>Regional and domestic democracy compared</td>
<td>46</td>
</tr>
<tr>
<td>Table 4.1</td>
<td>Characteristics of 31 Regional Organizations</td>
<td>57</td>
</tr>
<tr>
<td>Table 4.2</td>
<td>Input Legitimacy in 31 Regional Organizations</td>
<td>63</td>
</tr>
<tr>
<td>Table 4.3</td>
<td>Control Legitimacy in 31 Regional Organizations</td>
<td>69</td>
</tr>
<tr>
<td>Table 4.4</td>
<td>Output Legitimacy in 31 Regional Organizations</td>
<td>75</td>
</tr>
<tr>
<td>Table 4.5</td>
<td>Legitimacy Indicators According to Kinds of Regional Cooperation</td>
<td>87</td>
</tr>
<tr>
<td>Table 5.1</td>
<td>Comparative Features of Five Regional Parliaments</td>
<td>98</td>
</tr>
<tr>
<td>Figure 7.1</td>
<td>Mercosur Organization Chart</td>
<td>119</td>
</tr>
<tr>
<td>Table 7.1</td>
<td>Members of the ESAF National Sections</td>
<td>123</td>
</tr>
<tr>
<td>Table 7.2</td>
<td>Participation in an ESAF meeting (2004)</td>
<td>125</td>
</tr>
<tr>
<td>Table 7.3</td>
<td>Recommendations versus Consultation</td>
<td>128</td>
</tr>
<tr>
<td>Table 7.4</td>
<td>ESAF Recommendations versus CMG Comments</td>
<td>129</td>
</tr>
<tr>
<td>Table 7.5</td>
<td>Input and control legitimacy potential level</td>
<td>130</td>
</tr>
<tr>
<td>Figure 8.1</td>
<td>Determinants and Results of the Roles of Non-state Actors</td>
<td>138</td>
</tr>
<tr>
<td>Table 9.1</td>
<td>SADC Member States and Democracy</td>
<td>160</td>
</tr>
<tr>
<td>Table 9.2</td>
<td>ASEAN Member States and Democracy</td>
<td>165</td>
</tr>
<tr>
<td>Table 11.1</td>
<td>Overview of questions and chapters</td>
<td>195</td>
</tr>
</tbody>
</table>
List of Contributors

**Luís de Sousa**, Assistant Researcher, Center for Research and Studies in Sociology (CIES-ISCTE), Lisbon, Portugal.

**Juliana Erthal**, PhD candidate, Eberhard Karls Universität Tübingen, Germany.

**Andrés Malamud**, Assistant Researcher, Institute of Social Sciences (ICS) of the University of Lisbon, Portugal and Assistant Professor, Department of Political Science of the University of Buenos Aires, Argentina.

**Marcelo A. Medeiros**, Associate Professor, Departement of Social Sciences, Federal University of Pernambuco, Recife, Brazil.

**Michelle Ratton Sanchez**, Professor, Getulio Vargas Foundation São Paulo Law School, São Paulo, Brazil.

**Bob Reinalda**, Senior Lecturer, Department of Political Science, Radboud University Nijmegen, Institute of Management Studies, the Netherlands.

**Andrea Ribeiro Hoffmann**, Assistant Professor, Instituto de Relações Internacionais, Pontifícia Universidade Católica, Rio de Janeiro, Brazil.

**Philippe C. Schmitter**, Professorial Fellow, European University Institute, Florence, Italy.

**Berry Tholen**, Assistant Professor, Department of Public Administration, Radboud University Nijmegen, the Netherlands.

**Anna van der Vleuten**, Assistant Professor, Department of Political Science, Radboud University Nijmegen, Institute of Management Studies, the Netherlands.

**Gerda van Roozendaal**, Assistant Professor, Faculty of Arts, Department of International Relations/International Organizations, University of Groningen, the Netherlands.
This book takes an ancient method, comparison, and applies it to a novel subject, Regional Integration Organizations. One of the most evident descriptive features, first, of the post-World War II era and, then with renewed vigour, after the end of the Cold War has been the proliferation of these RIOs. Today, there is virtually not a region of the globe that does not have at least one of them and there are many countries that belong to several of them.

Political science does not seem to know where to place these organizations. Its sub-field of international relations – to the extent that it has been dominated by ‘realism’ and its step-child, ‘neo-realism’ – has some difficulty even in explaining how these islands of regional cooperation and integration can exist in the context of (allegedly) pervasive rivalry and anarchy. If their existence is recognized, it is quickly discounted – either as a side-product of domination by some hegemonic power – a sort of second-grade empire – or as a convenient façade behind which sovereign states strike momentary compromises based exclusively on national interests and relative power. Students of comparative politics have been even less well equipped to deal with RIOs and have tried their best to stay away from them, leaving the descriptive effort to so-called ‘area specialists.’ The only scholars who took them at all seriously for many years were members of a declining breed of ‘IO Specialists’ – perhaps best exemplified by Innis Claude Jr. and his masterful text, Swords into Plowshares, where RIOs occupy an honourable but secondary status alongside the United Nations and its Specialized Agencies.1

The great exception, of course, has been a select set of European RIOs, i.e., the European Coal and Steel Community, the European Economic Community, the European Atomic Energy Community and, most recently, the European Union. Although only a very small portion of the total number of RIOs active in Europe, these four have succeeded in generating a lively and expanding academic enterprise of their own. Virtually all conceptualizing and theorizing about the role of RIOs has come to be based on this experience alone. This has had the subtle effect of shifting the focus from cooperation between consenting and still sovereign national states to the voluntary, gradual and fitful process of their integration whereby these autonomous units cede and/or pool their sovereignty to a higher order, supra-national, polity that

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1 If I am not mistaken, this textbook has been continuously in print – which must be some indication that it is still used in undergraduate courses in the United States.
is capable of taking initiatives, making decisions and implementing rules without the unanimous consent of all of its member states. From this point of departure, the European process can be regarded as unique. Not only have the many other RIOs covering the surface of the globe not yet acquired this property of supra-national legitimate authority, but the European Union itself has only a precarious, selective and contested grasp of it. Nevertheless, the sheer prospect that – maybe – conditions exist elsewhere for successful trans-national regional integration and not just cross-national regional cooperation is so mesmerizing both empirically and normatively that it continues to dominate most efforts at conceptualization and theorization. If this were to happen and, especially, if this were to happen across several regions, it could produce nothing less than ‘the new world order’ that has been such a chimera since its arrival was announced at the end of the Cold War.

The Source of the Conceptual Problem

Politics on this planet gradually became dominated by one type of unit: the sovereign national state (SNS). From its heartland in Europe in the 15th and 16th Centuries, this genus of political organization in which a monopoly of authority over all coercive functions came to coincide with a distinctive territory and population spread to other continents – usually by violent means. The doctrine of ‘Nulle Terre Sans Seigneur’ – no land without a sovereign ruler – undoubtedly also helped in this process of extension. Outside of Europe, only those societies that possessed a singular identity and managed early to acquire some rudiments of stateness, e.g., Japan, Thailand and China, managed to escape being subordinated to or colonized by a European SNS. This left only a number of deserted islands, submerged reefs, floating icebergs, and one uninhabitable continent outside the realm of state authority. Not coincidentally, these ambiguous territories (plus one large rock – Gibraltar) continue to this day to generate interstate conflicts that are particularly difficult to resolve.

Not surprisingly, the academic discipline of political science has been deeply impregnated with prior assumptions of stateness. All of its proven laws or working hypotheses should be prefaced with the caveat emptor: ‘Assume the existence of a state and, only then, will the following assumptions, concepts and relations be true, …’. We simply do not have a convincing vocabulary or an operational logic for analyzing or even speculating about other forms of political organization. All of which makes it difficult for us to discuss the properties of and prospects for integrating ‘trans-national regions’. It is virtually impossible to compare them – unless we are willing to make one of two assumptions:

2 Nationhood, however, has not proven so easy to presume. An immense literature has been devoted to exploring the (mostly negative) consequences of states without nations and nations without states. The notion that the coincidence of the two was a prerequisite for orderly and legitimate politics (the so-called Westphalian System) was theoretically convincing, but almost impossible to attain empirically.

3 The major exception would be the literature in anthropology on so-called ‘stateless societies’ although it does not seem to have developed a distinctive and alternative set of concepts.
These units are merely SNSs at various early stages in their formation and will therefore follow already established national developmental trajectories; or

2. These units are merely specialized instances of another political organizational type, namely, the ‘Intergovernmental Organization’ (IGO) formed voluntarily by consenting SNSs and explained exclusively by their powers and purposes.

Only if both of these assumptions seem contestable do we have the burden of inventing a distinctive theory of trans-national regional integration. If one suspects that world regions composed of previous SNSs are not going to repeat the state-building experience of their members, and/or if one suspects that they might nevertheless develop some capacity to become actors in their own right, then does one have to give serious thought to developing a specialized vocabulary and a distinctive theory of transnational or interstate integration. And, only with such a vocabulary and theory in hand, can one compare the practices and performances of such regional organizations. I suspect that the authors of the essays in this book share three suspicions:

1. That Trans-National Regional Organizations (TNROs) can – under certain circumstances – become political actors in their own right;
2. That they are likely – for reasons to be specified – to develop according to processes different from those that previously produced SNSs; and
3. That they may never acquire all of the distinctive properties of a SNS, but still form a new type of stable and significant political unit.

If this is the case, they have accepted the challenge of trying to develop an approach to explaining why (and where) such organizations might emerge and how they might eventually form ‘semi-sovereign, non-national, semi-states’ (SNS2) or, more digestibly, trans-national regional polities (TNRPs). It should be stressed that these assumptions, concepts and hypotheses are focused on the process of regional integration, not regional cooperation. The latter may or may not be rooted in distinctive organizations, but it always remains contingent on the voluntary, unanimous and continuous decisions of its SNS members. ‘Entry’ into and ‘exit’ from such arrangements is relatively costless; ‘loyalty’ to the region as such is (and remains) minimal. ‘Legitimacy’ – voluntary compliance with collective decisions – is based exclusively on utility of output, not on normative expectations about input, i.e. on what the TNRO accomplishes, not on how it does it. Hence, collective efforts at the regional level are likely to be erratic, conditional and confined to pre-specified issues. It is only when a TNRO starts to become a TNRP, i.e., only when it acquires some legitimate capacity (however limited) to act on its own by initiating proposals, making decisions, and/or implementing policies that the regional process can be said to switch from cooperation to integration. And, in so doing, both ‘entry’ into the

---

4 In Europe, cooperation at the regional level began as early as 1815 with the creation of the Concert of Europe. It was not until the treaty forming the European Coal and Steel Community in 1952 was signed and ratified that the region acquired its first formal instrument of integration.
region and ‘exit’ from it become much more costly – and the latter may eventually become prohibitive. ‘Loyalty’ to a distinctive regional identity seems to come more belatedly, but ‘conformity’ to specific regional norms – even those produced against the consent of a given SNS member – can develop much more rapidly.

The Place of ‘Regions’ in the Literature

Political science (with a few exceptions to be noted) has long recognized the descriptive status of ‘regions,’ but denied the need for any special analytical treatment of them. Considered as sub-units within an existing SNS, regions are merely the remnants of territories that might have gained sovereignty but did not. Their past unique identities may be persistent enough so that their inhabitants continue to contest – sometimes violently – the domination of the winning SNS, but regions only acquire the status of actors if they actually manage to secede or are granted some recognized (but subordinate) role within a federal or decentralized polity. In the latter case, they are considered especially useful for comparative purposes – precisely because they have already been integrated, i.e., share a common political culture, legal system, constitution status and, often, party system, and therefore can be expected to vary in performance only due to exogenous shocks and diverse socio-economic conditions.

Considered as supra-units composed of multiple SNSs, regions have also been declared useful for comparative purposes. Under the label of ‘Area Studies,’ political scientists have conducted considerable research based on the presumption of cultural, historical or geo-strategic properties shared by all of the SNSs within the same region. They have virtually never (except, as we shall see, in the case of Western Europe) considered the region as such a relevant actor worthy of explanation. If the ‘Area’ happened to have some regional organizations in common, their behaviour was regarded as strictly ‘intergovernmental,’ i.e., as the mere by-product of the relative power and distinctive interests of its SNS members.

TNROs are not a new phenomenon. Functionally speaking, the first to appear was the Central Commission for Navigation on the Rhine in 1868. Territorially speaking, the first was the Organization of American States in 1890. Both still exist and have experienced some expansion in their collective tasks, although neither is remotely similar to a TNRP. Descriptively speaking, TNROs have increased rapidly in number over the past decades and extended their reach to cover most of the Earth – much as national states did several centuries earlier. Today, there are very few SNSs that do not ‘belong’ to some TNRO, and there are many that belong to many more than one. The reasons for this remarkable proliferation are somewhat obscure, but seem to resemble those that previously promoted national stateness: unconscious diffusion of fashionable practices, deliberate imitation of the success of other regions, self-defence against external predators, calculated imposition by imperial hegemons, and some ‘cloning’ from one TNRO to another. Their spread and the resulting cacophony of acronyms have produced considerable confusion and only some timid attempts at comparison.

The experience of Europe since the early 1950s with integrating – peacefully and voluntarily – previously sovereign national states is by far the most significant
and far-reaching among all such efforts. As such, it has attracted far more scholarly attention than any other TNRO. It stands to reason, therefore, that the European Economic Community (EEC), the European Community (EC) and, most recently, the European Union (EU), are collectively the most likely organizations to provide some lessons for those trans-national regions that are just beginning this complex and historically unprecedented process. But such a ‘historico-inductive’ strategy for theory-building and case-comparison is by no means uncontested. Partly, this is because many students of European integration have quite self-consciously defined it as a unique case and described it as such, or they denied its status as a potential TNRP and filed it away as merely an extreme example of regional cooperation among SNSs, along with hundreds of other intergovernmental organizations. Moreover, those who have tried to identify its more generic ‘integrative properties’ have tended to disagree about what these were and how far they would carry the process. Scholars and practitioners from other regions have not found it easy to exploit their work. In those rare cases where such comparisons were made, the conclusion was invariably negative, i.e., the ‘other’ region could not possibly expect to replicate the relative success of the EEC/EC/EU.

The Ambiguity of the Outcome

No student of TNRP s or even TNROs can ignore the disappointing history of most of them in the post-World War II period. Some were never more than mere façades for hegemonic domination. Most of them failed to reach their initial objectives, much less to expand these objectives. Those that have persisted may not have succeeded in doing very much. During the 1960s, there was a flourish of activity among so-called Third World countries in Latin America, the Middle East and Sub-Saharan Africa to produce regional organizations for a variety of ambitiously stated economic, political, and cultural purposes. Eager young scholars went off to study the East African Federation, the West Indian Federation, the Central American Common Market, the United Arab Republic and other such exotic creations. With the exception of the CACM (which does have the dubious distinction of having had two of its members go...
to war with each other), none of these still exist. The subsequent generations of trans-
national regional organizations seem more modest in their initial objectives – most
were created as little more than Free Trade Areas or Inter-governmental ‘Talk Shops’
– but they have persisted longer than their forerunners and they have sometimes even
acquired additional capabilities. One of which is especially intriguing since it has the
potential for generating global implications, namely, the mandate to intervene when
one of their members becomes or is threatened with becoming autocratic. Needless to
say, regionalism as an insurance policy for domestic democracy has had a chequered
history – Paraguay in Mercosur was one thing; Zimbabwe in SADC has been quite
another. The European Union’s intervention into the internal affairs of Austria turned
into something of a farce.

Nevertheless, the mere issuing of such a policy by a regional organization – not
to mention its insertion into virtually all treaties negotiated between the EU and
other countries or regional organizations – is a path-setting development. Were these
formal commitments to become politically effective within each region and were
these regions to enter into arrangements for mutual support and collective sanction
vis-à-vis each other, the potential exists for eventually providing the building blocks
for an alternative, more rule-bound and less violent world order than the present
one built on SNSs and capped at the global level by an ineffectual United Nations.
‘Peace in Parts’ was the provocative title of one of the first attempts at comparing
trans-national regional organizations.⁸ With their recent proliferation in numbers and
extension in area, this prospect may have become less remote.

⁸ Joseph S. Nye, Jr. (1987), Peace in Parts (Washington, DC: University Press of
America), a re-issue from the original (Boston: Little, Brown & Company, 1970).
Series Editor’s Preface

Series editors have basically two tasks: to guarantee the quality of the publications and to guard the topical boundary of the series in order to contribute to a specific discourse. In the latter respect, we receive book proposals, which are squarely within the series topic and proposals, which fall clearly outside the series intention. Andrea Ribeiro Hoffmann and Anna van der Vleuten’s proposal was difficult to label. Most Regional Integration Organizations are based on intergovernmental agreements and are not immediately and generally recognized as ‘non-state actors’. Being convinced about both the intellectual quality of the proposal as well as the methodological and theoretical soundness, the main question was: does the topic fit the subject of our series?

The “confidence” (as Andrea and Anna call it in their preface) we had in the editors and the authors was therefore not related to their quality as researchers as such, but to their ability to position Regional Integration Organizations in the larger discourse on non-state actors. That ‘confidence’ was based on what Philippe Schmitter explicitly refers to as the ‘shared suspicions’ of the authors, ‘that Trans-National Regional Organizations (TNROs) can – under certain circumstances – become political actors in their own right’ and that they can “form a new type of stable and significant political unit” (Schmitter page xiii of this publication, italics mine). Closing or Widening the Gap? Legitimacy and Democracy in Regional Integration Organizations turns that ‘shared suspicion’ into a plausible and convincing explanation, based on a variety of empirical evidence, methodological and theoretical approaches.

Andrea Ribeiro Hoffmann and Anna van der Vleuten have not only co-opted a number of scholars from different disciplines and with different research traditions into the production of an edited volume. They have – more importantly – succeeded into bringing them together on several occasions and guiding the debate(s) on the basis of a set of questions, which inform and connect the author’s approaches.

According to Andrea Ribeiro Hoffmann and Anna van der Vleuten “[t]here is no easy, general answer to the question [whether] RIOs widen or close the gap between citizens and policy makers” (page 201). An “(e)asy general answer” can only be found if we ask easy and general questions or engage in easy and general debates. The editors and authors of Closing or Widening the Gap? Legitimacy and Democracy in Regional Integration Organizations have clearly opted for another approach. They adopted an approach, which closed a part of the disciplinary gap in the study of non-state actors. What probably started as a multidisciplinary enterprise in June 2004 became more and more interdisciplinary as the authors met on several occasions. The end result is a publication that serves and connects the students and practitioners of law, politics and governance.

Math Noortmann
Acknowledgements

This book is the outcome of a truly trans-regional enterprise, bringing together scholars from Latin-America and Europe. It all started in June 2004, when the two of us met at the ECPR Conference in Bologna. Others joined us and we met in Nijmegen, Istanbul, Rio de Janeiro, Freiburg, Chicago and Helsinki. Well aware of hazarding into unknown territories, together we proceeded through deep and inspiring discussions looking for appropriate definitions of key concepts and ways to study them. It was Bob Reinalda who suggested us to make a book and, sharing his experience with us, helped us to realize this idea. We are indebted to the series editors for their confidence and to Kirstin Howgate at Ashgate for steering us firmly and friendly through the publication process.

Many others contributed to the accomplishment of the project. First of all, we thank CAPES (Coordenação de Aperfeiçoamento de Pessoal de Nível Superior), CNPq (Conselho Nacional de Desenvolvimento Científico e Tecnológico) and the research programme Shifts in Governance (Institute of Management Research, Radboud University Nijmegen) for their generous financial support. We thank the Radboud University Nijmegen and Catholic University of Rio de Janeiro for hosting the seminars in 2004 and 2005 respectively. Many thanks to the participants in the research seminar in Rio de Janeiro in November 2005 and to an anonymous reviewer from Ashgate for their very useful comments. We thank Roberto Satzamari who compiled the list of acronyms and the bibliography with great care and Florian and Nil Annabell for technical assistance with Skype (making trans-regional communication affordable).

Last but not least we thank all the authors who accepted the challenge of the project and were willing to revise their initial papers thoroughly in order to fit the whole. Toby Adams did a wonderful job in transforming a set of ‘non-native’ English texts into a coherent manuscript.

We dedicate this book to Florian, Hannah and Rachel on one side of the Atlantic and Nicole and Nil Annabell on the other side – thank you for sharing daily stress and happiness with us.

Andrea Ribeiro Hoffmann, Rio de Janeiro
Anna van der Vleuten, Nijmegen

May 2007
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCP</td>
<td>Association of Caribbean Community Parliamentarians</td>
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<td>ACP</td>
<td>African Caribbean Pacific</td>
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<td>ACS</td>
<td>Association of Caribbean States</td>
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<td>AFR</td>
<td>Assessor for Federal Relations</td>
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<td>AIS</td>
<td>Andean Integration System</td>
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<td>ALALC</td>
<td>Latin American Free Trade Association</td>
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<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
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<td>BANGO</td>
<td>Barbados Association of Non-governmental Organizations</td>
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<td>BCoC</td>
<td>Barbados Chamber of Commerce and Industry</td>
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<td>BEC</td>
<td>Barbados Employers Federation</td>
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<td>BPSA</td>
<td>Barbados Private Sector Agency</td>
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<td>BWU</td>
<td>Barbados Workers’ Union</td>
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<td>Caribbean Association of Industry and Commerce</td>
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<td>Brazilian Entrepreneurial Coalition</td>
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<td>Caribbean Employers Confederation</td>
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<td>CEEC</td>
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</tr>
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<td>CMC</td>
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<td>Common Market Group</td>
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<tr>
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<td>National Council on Scientific and Technological Development, Brazil</td>
</tr>
<tr>
<td>CODESUL</td>
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</tr>
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<td>Council for Human and Social Development</td>
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<td>COTED</td>
<td>Council for Trade and Economic Cooperation</td>
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<td>CPDC</td>
<td>Caribbean Policy Development Center</td>
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<td>Regional Commission for Foreign Commerce of the Argentine Northeast</td>
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<td>Caribbean Single Market</td>
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</tr>
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<td>Abbreviation</td>
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<tr>
<td>ECJ</td>
<td>European Court of Justice</td>
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<td>ECSC</td>
<td>European Coal and Steel Community</td>
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<td>EP</td>
<td>European Parliament</td>
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<td>ESAF</td>
<td>Economic and Social Advisory Forum</td>
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<td>EU</td>
<td>European Union</td>
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<td>FAO</td>
<td>Food and Agriculture Organization</td>
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<td>FGV</td>
<td>Getúlio Vargas Foundation</td>
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<td>FIESP</td>
<td>Industrial Federation of the State of São Paulo</td>
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<td>FOCEM</td>
<td>Fund for the Structural Convergence of MERCOSUR</td>
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<td>FPÖ</td>
<td>Austrian Freedom Party</td>
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<tr>
<td>FTA</td>
<td>Free Trade Agreement</td>
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<td>FTAA</td>
<td>Free Trade Area for the Americas</td>
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<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>IDB</td>
<td>Inter-American Development Bank</td>
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<td>IGO</td>
<td>Intergovernmental Organization</td>
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<td>ILO</td>
<td>International Labor Organization</td>
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<td>International Monetary Fund</td>
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<td>IO</td>
<td>International Organization</td>
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<td>IPU</td>
<td>Inter-Parliamentary Union</td>
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<td>IR</td>
<td>International Relations</td>
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<td>IUAR</td>
<td>International Union of American Republics</td>
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<td>JPC</td>
<td>Joint Parliamentary Commission</td>
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<td>MDIT</td>
<td>Ministry of Development, Industry and Trade</td>
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<td>MEP</td>
<td>Member of the European Parliament</td>
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<td>MERCOSUR</td>
<td>Southern Common Market</td>
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<td>MTC</td>
<td>Mercosur Trade Commission</td>
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<td>NAFTA</td>
<td>North American Free Trade Agreement</td>
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<td>NGO</td>
<td>Non-Governmental Organization</td>
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<tr>
<td>OECD</td>
<td>Organization for Economic Co-operation and Development</td>
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<td>OPDS</td>
<td>SADC Organ on Politics, Defense and Security</td>
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<td>Ouro Preto Protocol</td>
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<td>ÖVP</td>
<td>Austrian People’s Party</td>
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<td>Latin American Parliament</td>
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<td>Parliamentary Power Index</td>
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<td>Preferential Trade Agreement</td>
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<td>Regional Integration Organization</td>
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<td>Southern African Development Community</td>
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<td>SADC Youth Movement</td>
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<td>SAFPA</td>
<td>Special Assessor for Federal and Parliamentary Affairs</td>
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<td>SAPSN</td>
<td>Southern African People’s Solidarity Network</td>
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<td>SENALCA</td>
<td>National Coordination Unit on FTAA-related Issues</td>
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<td>SENEUROPA</td>
<td>National Coordination Unit on EU-related Issues</td>
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<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>SICA</td>
<td>Central American Integration System</td>
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<td>SMIM</td>
<td>Specialized Municipalities and Intendencias Meeting</td>
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<td>SPÖ</td>
<td>Austrian Social Democratic Party</td>
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<td>TA</td>
<td>Treaty of Asunción</td>
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<td>TEC</td>
<td>Treaty establishing the European Community</td>
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<td>TEU</td>
<td>Treaty on European Union</td>
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<td>ToA</td>
<td>Treaty of Amsterdam</td>
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<td>UN</td>
<td>United Nations</td>
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<td>WEU</td>
<td>Western European Union</td>
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<td>WHO</td>
<td>World Health Organization</td>
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<td>Working Subgroups</td>
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<td>World Trade Organization</td>
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PART 1
Introduction
Chapter 1
Legitimacy, Democracy and RIOs: Where is the Gap?
Anna van der Vleuten and Andrea Ribeiro Hoffmann

Introduction: A Gap?

In the 1990s, a ‘new wave of regionalism’ rolled over the world and has developed to such an extent that virtually every state in the world is now member of some regional organization or agreement (Breslin et al. 2002). New regional organizations were created and existing ones were revived and enlarged. These regional integration organizations (RIOs) were heralded as the building blocks of a new global order which would be characterized by prosperity thanks to trade liberalization, and by peace thanks to democratization. RIOs would reduce the legitimacy gap which had resulted from processes of regionalization and globalization. RIOs would re-democratize politics.

Have RIOs lived up to these expectations? In the intervening years, several events have cast doubt on their capacity to do so. Regional cooperation was unable to offer a powerful solution to the financial and economic crises that rocked Southeast Asia and Latin America in 1998. Regional cooperation had no answer to increasing ethnic violence and terrorist attacks in Africa and South Asia. And in addition, RIOs were not perceived as democratizing agents but, on the contrary, as bulwarks for elitist policy making in the interest of some happy few. Even the European Union, which can be credited for five decades of prosperity and peace in Western Europe and for housing the world’s only directly elected supranational parliament, continues to suffer from a legitimacy problem. In direct elections to its European Parliament in June 2004 there was an extremely low turn-out, especially in its new member states in Central and Eastern Europe. One year later, French and Dutch ‘no’ votes in the referendum on a proposed Constitution for the EU made it clear that a majority of the people in these countries disapproved of further integration of this kind. Does this mean that RIOs do not, in fact, reduce the ‘legitimacy gap’, but rather widen it? How should we judge their contribution to a legitimate and democratic world order?

These questions have not been answered satisfactorily yet. Research on regional cooperation used to focus on the explanation of the consecutive successes and failures of economic integration (see for instance Axline 1994; Mansfield and Milner 1997; Mattli 1999). The New Regionalism Approaches have explained regional integration predominantly in terms of its success (or failure) as an answer to economic globalization (see Boås, Marchand and Shaw 2005; Breslin et al. 2002; Fawcett and Hurrell 2000; Hettne, Inotai and Sunkel 1999; Laursen 2003; Schirm 2002; Söderbaum and Shaw 2003). Surely, economic success constitutes an important
aspect of legitimacy, more precisely of ‘output legitimacy’ as Fritz Scharpf (1999) calls it, and some argue that this is the only aspect of legitimacy to be found at the regional level. Yet, we shall argue that this is too limited a view.

Other studies focus on democracy and legitimacy at the global level. The “Battle of Seattle” in 1999, when non-state actors representing a wide spectrum of causes joined in mass protests against the WTO, sparked off a stream of literature on transnational civil society and global governance (see Coicaud and Heiskanen 2001; Held and Koenig 2005; Scholte 2002; Zweifel 2006). This literature investigates the legitimacy gap in relation to global and functional international organizations. However, regional organizations differ from global and functional organizations in important respects, both on the ‘demand-side’ – as regards the high expectations citizens have in terms of regional development, security, employment – and on the ‘supply-side’, as regional integration is ‘multidimensional’, including economic, political, social and cultural aspects. For that reason, the issue of legitimacy and regional governance deserves special attention, as also Jon Pevehouse argues (Pevehouse 2002; Pevehouse 2005). He focuses specifically on the issue of whether RIOs contribute to the success or failure of domestic transitions to democracy, showing how regional organizations influence the cost-benefit calculations of domestic actors. He does not discuss democracy within regional governance or the legitimacy of RIOs in a wider sense, but his argument will serve as a starting point for the chapters in the last part of this book.

Of course, there is a wealth of literature on the European Union (EU) and its alleged democratic deficit. Much of the literature, however, lacks a comparative perspective, considering the EU as *sui generis*, a unique phenomenon, and is therefore unable to explain and interpret developments in other regional organizations. The ideas about the EU, legitimacy and democracy put forward by Philippe Schmitter (2003) and Fritz Scharpf (1999), however, have been used as stepping stones for further conceptualization, adapted to non-European regional organizations.

This volume thus borrows insights from various strands of work on regionalism, global governance, transnational civil society and domestic democracy in order to answer the question of whether RIOs make the gap between governing elites and their constituencies – which has resulted from processes of regionalization and globalization – wider or smaller. Opinions on this question differ and contradict each other. Some argue that RIOs have put the citizenry at a distance, widening the gap between governments and the governed. Others hold that RIOs have enabled the mobilization and development of a transnational civil society which may replace or supplement forms of domestic participation and control (Scholte 2002). Some hold that regional governance makes for elite policy making and suffers from a ‘democratic deficit’. Others, meanwhile, see evidence that regional organizations contribute to a just global order and the realization of democratic values and rule of law both within and beyond states (Pevehouse 2005). It is not our aim to elaborate a ‘user’s guide’, setting out how RIOs should be made more democratic and regional governance more legitimate. We do not argue that RIOs are the ‘good guys’, serving the interests of humanity, or the ‘bad guys’ for failing to fulfill such expectations. The issue, for us, is to investigate the meanings of legitimacy and democracy in a non-national political system. We shall explore the issue from different angles, not focusing on a
single RIO but assessing and explaining similarities and differences between RIOs in terms of legitimacy and democracy. This will include the presence of mechanisms which can influence legitimacy at the regional level; the quality of participatory arrangements involving supranational parliamentary actors, subnational state actors and transnational non-state actors; and also the willingness of RIOs to intervene and preserve democracy in their member states.

Key Concepts

Among observers there seems to be a consensus that there ‘is still no consensus on the main concepts in the study of regionalism’ (Söderbaum and Van Langenhove 2006, 9). In this section, we shall present the definitions of the key concepts which have guided the authors of this volume. In several chapters, the authors will further elaborate or refine these definitions.

Regionalization, Regionalism, RIOs, Region

Cooperation between states takes many different forms, ranging from global agreements to security alliances, customs unions and common markets. Regional cooperation or regionalism differs from regionalization. The latter ‘defines a trade-driven, bottom-up process of intensifying interactions and transactions of private economic and other non-state actors, especially business firms, which leads to increased interdependencies between geographically adjacent states, societies and economies’ (Hänggi et al. 2006, 4). By regionalism we refer to the process of state actors, belonging to a certain region and reaching agreements cross-nationally. As opposed to ‘bottom-up’ regionalization, which is a primarily economic process, regionalism is a ‘top-down’ political process, ‘a conscious policy of nation states for the management of regionalization and a broad array of security and economic challenges’ (Hänggi et al. 2006, 4). States are the central actors from a formal point of view, concluding the agreements which are binding upon all the other actors involved, but this does not imply that state actors are the sole players.

Non-state actors such as business, think tanks and civil society organizations play a role in regional policy making, for instance in the form of ‘track-two diplomacy’ aimed at resolving conflicts between and within states through unofficial contacts and interactions (Caballero-Anthony 2005, 158). In this volume, the concept of state actors refers to the government at the national level as well as to subnational actors, such as state governments in federal states and the governmental representatives of cities and municipalities. The category of non-state actors encompasses actors often referred to as ‘civil society’ and non-governmental organizations, trade unions, but also private interest groups such as business associations. They are often thought to offer a potential remedy for the lack of parliamentary control at the regional level, but of course the fundamental difference with parliamentarians is that none of these actors is directly elected and thus they all represent specific interests without being directly accountable to those whose interests they represent. Part Four of this volume
Closing or Widening the Gap?

will further investigate the role of non-state actors in RIOs and their potential role in widening or closing the ‘legitimacy gap’.

Regional integration organizations (RIOs) are thus formal institutions which are capable of ‘purposive action like raising and spending money, promulgating policies, and making discretionary choices’ (Keohane 1989, 175). RIOs all differ in their institutional set-up: they can be purely or partially intergovernmental, and have institutionalized decision making along more or less supranational lines. In spite of these differences, RIOs may be distinguished from other forms of international cooperation in terms of three aspects: territoriality, identity and scope.

First, there is the aspect of territoriality. RIOs are composed of states belonging to a region. For that reason, RIOs have a restricted membership, requiring candidate members to be located within a certain geographical area. This territorial aspect makes them a specific kind of international organization, distinguishing them from global or functional organizations. It also begs the question of how to define a region – or: how do we know a region when we see one? A region presupposes some geographical coherence, but geography alone does not determine what a region is. The Pyrenees and the Alps, for instance, with many summits reaching over 3000 metres above sea level, are expensive obstacles to the free movement of goods and people, but they do not constitute the southern borders of the region of Europe. The region of Southeast Asia is composed of island states and of continental states, in spite of ‘the stopping power of water’ (cf. Mearsheimer 2001, 114–27). From these examples, it follows that ‘natural’ borders are not given and natural, but constructed and geopolitical (see Katzenstein 2005, 6–13). Geography is one necessary, but not a sufficient, condition for a group of states to constitute a region. For that reason, territoriality and identity, the first and second aspects defining an RIO, cannot be considered separately.

The second aspect is identity. RIOs often refer to a common identity based on the shared history of this territorial entity. To be member of a region, a nation must share this identity, based on some combination of cultural, economic, linguistic, or political ties (see Mansfield and Milner 1999, 591). The members of a region define and redefine themselves. Identity is intersubjective, as it expresses not only the meaning an actor attributes to the Self, but also the meaning which the Other attributes to the Self. In order to label a geographical area a region, some consensus about the self-definition of the region is required, as well as external recognition of the area as a region.¹ This shared regional identity is institutionalized in the founding documents of an RIO and its conditions for membership, enabling an RIO to exclude certain countries and include others. These constructed territorial and identity aspects make RIOs a specific kind of international organization, distinguishing them from organizations with potentially a global membership such as the UN.

Thirdly, RIOs have a potentially broad mission which evolves from a limited set of tasks to a more encompassing role, as opposed to functional international organizations which focus on a specific policy area, such as health (WHO), food (FAO), security (NATO) or labour relations (ILO). This also sets them apart from bilateral preferential trading arrangements and free trade areas, which eliminate

¹ We thank Andrea Ruggieri for pointing this out to us.
internal trade barriers (negative integration) but do not aim at any further steps implying positive integration.

These specific aspects do not suggest that we conceive of RIOs as entities which are or will become state-like actors. An RIO is not a supra-state actor but an inter-state political system. It derives its power and weakness from precisely this status, being as strong as its constituent parts will accept. Even the European Union, the most institutionalized RIO, is clearly not a state since it lacks sovereignty, the crucial feature defining a political collective as a state. The EU ‘does not claim a sovereign status and is not recognized as sovereign state by the other members of international society’ (Werner and De Wilde 2001, 303) – nor by its citizens. Member states ‘have handed over powers to a degree unprecedented in the history of international organizations’ (Werner and De Wilde 2001, 302), but those states continue to claim their sovereignty before domestic and international audiences and those claims continue to be recognized. This has an impact on our discussion of legitimacy and democracy, as it implies that the regional level complements rather than replaces the national level, which remains a locus of political representation, checks and balances.

Legitimacy and democracy: why bother?

Studies on legitimacy classically concentrate on the ideal relationship between the nation state and domestic civil society. The processes of regionalism force us, however, to reconsider this relationship and include another level of analysis. Building on Scharpf (1999), we elaborate a ‘non-national’ definition of legitimacy, based on the premise that legitimate governance is responsive (input legitimacy), is accountable (control legitimacy) and provides effective solutions (output legitimacy) in order to merit the trust of its citizens. Democracy is understood here as a political system in which ‘governors are answerable to the governed for their actions and omissions’ (Scholte 2004, 211). Tholen and Erthal offer a further elaboration of these concepts, applied to regional integration organizations (Tholen, Chapter 2; Erthal, Chapter 3).

If RIOs are not state-like entities, and if we do not expect them to develop into states, why then worry about issues of legitimacy and democracy? Zweifel, for instance, argues that the idea of an ‘international state’ is indispensable for being able to apply the concept of democracy to the global level (Zweifel 2006, 13). From this, it would follow that we need to think in terms of a ‘regional state’, for our efforts to make sense. We have just pointed out, however, that we do not conceive of RIOs as regional states. Tholen and Erthal will return to the question how one may conceive of democracy and legitimacy in non-state contexts, showing that Zweifel’s preoccupation with an ‘international state’ is unnecessary if one abstracts from form and focuses on function (Tholen, Chapter 2; Erthal, Chapter 3).

Still, there are at least two apparently good reasons to dismiss the whole issue of regional democracy and legitimacy as irrelevant. First, while RIOs may be missing many aspects of democracy that are present in most modern states, one could argue that this is of no importance as the lack of civic participation is easily compensated for by the benefits of regional cooperation such as peace and prosperity.
Output legitimacy compensates for the lack of input legitimacy. Secondly, one could argue that what is important is democracy at member-state level. It is here that the preconditions for democracy exist (shared understandings and a demos) and democracy is institutionalized. The national parliament is entitled to approve decisions taken at the regional level, so if democracy functions properly at member state level, there is no need for ‘regional democracy’.

On closer inspection, there are weaknesses in both arguments. The first statement presupposes that one aspect of legitimacy is reducible to other aspects. At the normative level, we do not find support for this as different aspects of legitimacy are considered complementary to each other, each of them being a necessary – though not sufficient – condition for legitimate decision making. From a sociological perspective, the argument would mean that citizens support regional cooperation only as long as they perceive clear benefits from it. As soon as times get tough, there is no longer any reason to comply with regional policies.

The second statement presupposes that institutionalized regional cooperation does not affect domestic democracy. It ignores the possibility that domestic democracy might suffer if decision making is shifted to a higher level which, for lack of resources and information, it cannot control in the same way as it controls national-level decision making. For instance, national parliaments are usually able to block the ratification of a regional agreement, but they are not involved in preceding phases of regional policy making and have no power to amend the agreement reached. In general, all social systems need some mechanism which gives them legitimacy, in the sense that it makes them acceptable and valid, susceptible to public consent. A social system which lacks legitimacy would, it is supposed, degenerate into a dysfunctional system, characterized by abuses of power. For these reasons, we hold that the issue of democracy, legitimacy and regional governance warrants further attention.

Key Questions and Outline of the Volume

Key questions

This volume focuses on a set of interrelated questions in order to clarify the connections between regional governance, legitimacy and democracy. Regional integration has created a system of governance in which policy making no longer takes place solely at the national and sub-national levels, but has also shifted to a higher level. This shift is generally perceived as a ‘rescue of the nation-state’ – to borrow Alan Milward’s famous expression (Milward 1992) – in a globalizing world as well as a cause of a legitimacy deficit, putting the citizenry at a distance.

We assume that this shift affects the positions of actors in the national, subnational and international political arenas and the extent to which non-state actors, subnational state actors and parliamentary actors influence decision making and control executive power. Yet, we need to say more about these shifts in positions and capabilities if we are to detect patterns, formulate explanations and analyze whether RIOs ‘widen the gap’ between policy makers and citizenry or whether they ‘reduce
the gap’ – and under which conditions they have the potential to do so. From these aims, the following questions have been derived:

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?

These questions are dealt with in the different Parts of this volume, as will be set out in the next section.

Outline of the volume

After the introductory first part, the second part of the book will aim to clarify the key concepts and answer the question of the conceptualization of legitimacy and democracy in non-national political systems and the question of to what extent RIOs display input legitimacy, control legitimacy and output legitimacy.

Part Two

In Chapter 2, Berry Tholen argues that a normative debate is taking place between those who consider RIOs as a contributing factor in the legitimacy deficit which characterizes the processes of policy making at the global level, and others who welcome RIOs as a way to strengthen legitimacy. As these two camps disagree on the way the present situation ought to be assessed, they also differ on the most desirable way forward. Tholen claims that part of the debate is caused by differing interpretations of the concepts of legitimacy and democracy. Elaborating on work done by Fritz Scharpf, he develops a clear articulation of legitimacy, distinguishing between input, control and output legitimacy, and rethinking the concepts in order to fit regional governance. Tholen points out, furthermore, that in judging the functioning of RIOs, their position within a desirable world order should be taken into account.

In Chapter 3, Juliana Erthal discusses the relevance of the concept of regional democracy. She takes the attributes of democracy, as identified by Robert Dahl, as a point of departure and elaborates these to fit RIOs. Next, Erthal investigates to what extent the quality of democracy in RIOs is constrained by the varying quality of democracy in their member states. She illustrates the argument with an assessment of regional democracy in the seven RIOs investigated more extensively in the other chapters of this volume.
In Chapter 4, Bob Reinalda identifies the characteristics of RIOs which may be relevant to the different aspects of input, control and output legitimacy. He first traces the development of regional cooperation, focusing on the economic regionalism of the post-Second World War period. Next, two different perspectives in IR theorizing on RIOs and their contribution to legitimacy are presented: a sceptical view and an accountability view. In order to investigate the validity of these conflicting views, Reinalda develops a set of indicators for different aspects of legitimacy and compares 31 regional integration organizations all over the world. His analysis enables him to confirm the accountability view and to argue that the sceptical view on legitimacy in RIOs is disputable.

Part Three

The chapters in this part analyse the effects of institutions created by state actors to reduce alleged democratic deficits – institutions such as regional parliamentary bodies – and explore the changing role of sub-national state actors in RIOs decision making. They also aim at explaining the similarities and differences between RIOs as regards the quality of regional democracy.

In Chapter 5, Andrés Malamud and Luís de Sousa trace the development of five regional parliaments: the European Parliament, the Parlatino, the Parlacen (SICA), the Parlandino (CAN) and the Parlasur (Mercosur). They assess the contribution of these parliaments to regional representation (and thus to input legitimacy), decision making (output legitimacy) and the monitoring of the executive branch and the bureaucracy (control legitimacy). On the basis of this comparison, they identify a set of factors which offer a plausible account of the differences between these parliaments.

In Chapter 6, Marcelo Medeiros investigates how governance has been changing in the Mercosur integration process, focusing on the relationship between the regional, national and sub-national levels. He shows how the inclusion of the subnational level (cities, border regions, provinces and the like) influences democratic interactions between and within the levels. The chapter highlights the incipient rise of constituent diplomacy by subnational state actors, which could provide a bridge between citizen, state and regional integration organization.

Part Four

The chapters in this part explore the potential role of non-state actors in remedying the loss of democracy and legitimacy resulting from regionalization and regionalism. As legitimacy concerns functions that have to be fulfilled, it is not only elected parliamentarians or sub-national state actors which contribute to it. What is needed is a fundamental understanding of the possible and necessary forms of the involvement of non-state actors to complement the traditional concept of representative democracy. These observations lead us to the following empirical questions: which roles do non-state actors actually fulfil within different RIOs, and what influence do they have in terms of input, control and output legitimacy? And which factors explain their influence or lack of it?
In *Chapter 7*, Michelle Ratton Sanchez explores the participation of non-state actors in Mercosur. She traces the development of institutional participatory mechanisms in Mercosur. Next, she assesses whether these mechanisms have empowered non-state actors, enabling them to increase the input and control legitimacy of Mercosur policy making. Ratton Sanchez clarifies the imperfections in the organizational structure of Mercosur and its functioning.

In *Chapter 8*, Gerda van Roozendaal explores the conditions under which non-state actors are able to contribute to the input and control aspects of legitimacy in Caricom, a regional organization in the Caribbean. She looks at the processes through which non-state actors become involved, as well as at the nature of the actors themselves. The chapter includes a study of Barbados, a major Caricom member state, since influence is not only exercised at the level of Caricom itself, but also at the national level.

**Part Five**

This part addresses the question of whether RIOs strengthen democracy in their member states and thus acquire output legitimacy. In Chapter 3, Erthal explores the relationship between the quality of democracy at the nation-state level and the quality of regional democracy. Chapters 9 and 10 investigate the role of RIOs in promoting and preserving democracy in their member states, especially in instances where democratic values are violated. Under which conditions are RIOs willing to intervene in the domestic affairs of their member states? And, what are the effects of such interventions on the quality of democracy in the member states?

In *Chapter 9*, Anna van der Vleuten examines under which conditions RIOs intervene in the domestic affairs of their member states. By applying different IR theories, different expectations may be formed concerning RIO behaviour in cases where democratic values are violated in a member state. Van der Vleuten tests these expectations by examining two RIOs: the Southern African Development Community (SADC) and the Association of Southeast Asian Nations (ASEAN).

In *Chapter 10*, Andrea Ribeiro Hoffmann explains the institutionalization process of political conditionality in the European Union and Mercosur. Next, she assesses the functioning of the democratic clause of these RIOs in an evaluation of domestic political developments in Paraguay and Austria. She explains to what extent the RIOs involved succeeded in securing democracy in these countries.

**Part Six**

The final part deals with the five key questions and their interrelationship. In *Chapter 11*, the editors summarize the results obtained in the different chapters. They show how the answers formulated by the authors in this volume contribute to a better understanding of the relationship between regional governance, legitimacy and democracy. This enables us to formulate a first, cautious answer to the main question: do we have reason to believe that RIOs reduce the gap between citizens and policy makers, or, rather, do RIOs widen that gap?
References


politics and regional cooperation (Oxford: Blackwell).

PART 2
Defining and Assessing Legitimacy and Democracy in RIOs
Chapter 2

RIOs, Legitimacy and Democracy.
A Conceptual Clarification

Berry Tholen

Conceptual Confusion

As many have observed before, the past decades have been marked by an increase in regional cooperation of states, in all parts of the world. Parallel to this has been the growing attention of scholars to this phenomenon – the latter probably developing even faster than the regional cooperation itself. This scholarly interest has not only been of an empirical nature, describing and explaining the phenomenon of regionalism. Normative issues have also been broadly discussed, and in many studies regional integration organizations have been marked as a source of legitimacy deficit.

A legitimacy deficit?

The development of these organizations should be understood, so the argument goes, in terms of a shift in governance that has led to problems of accountability and control and a lack of civic participation. New decision-making centres have been established at an international level, but these centres lack (to a large extent) powerful parliaments, legal systems with independent courts accessible to citizens, an adequate system of popular representation, etc. (Van Kersbergen 2001). Furthermore, the basic characteristics of a legitimate political system, such as shared understandings among all the people involved, a demos and a shared public sphere, are lacking (Lehning 1998). Others, however, argue that growing regionalism actually strengthens legitimacy because it helps overcome deadlocks in international decision making and remove inefficient competition between states to deal with cross-national issues. The establishment of regional integration organizations makes more effective cooperation possible (Scharpf 1999).

These two camps in the normative debate disagree on the way the present situation is to be assessed and, consequently, they also differ on the best path for future development. From a ‘true believer’s’ point of view, what is needed is still more regional integration – eventually leading to a global government. This would bring maximum effectiveness and efficiency to decision making and problem solving. Regionalism is seen as an exemplary step towards a better global order. For the sceptics, this is obviously a worst case scenario, resulting in multiple deficits in legitimacy. On a global scale, it would be even more problematic to realize an accountable and representative system, because a demos would be completely absent and genuine party-building would be impossible.
This, of course, is an overly schematic sketch of the existing normative debate on the consequences of regionalism. It leads us, nonetheless, to a number of important observations. For one, it demonstrates that regional integration functions as a central case in a broader dispute on the legitimate world order. If issues of legitimacy are interesting in this time of globalization, they certainly deserve to be investigated in relation to the development of Regional Integration Organizations (RIOs). They represent, for ‘believers’ and sceptics alike, something of a test case. The above sketch shows, furthermore, that apparently different normative issues in this field are formulated in terms of legitimacy, making one wonder: is this disagreement not (also) one about the meaning of the concept of legitimacy itself? Do both sides in the debate share the same understanding of legitimacy? ‘Legitimacy’ is a widely cited concept in the debate, but is it clear what is meant by it? A few observations from the literature on legitimacy and the European Union show this is not clear.

Understandings of legitimacy

First of all, we can see that in different studies, ‘legitimacy’ is understood in different ways. Quite often legitimacy is used as a synonym for democracy, and the use of the term in this sense often turns up in studies on ‘the democratic deficit’ (Follesdal 1998; Weale 1998). In other studies, legitimacy is understood as some kind of combination of democracy and legality (Beetham and Lord 1998). In most studies, however, the exact meaning of legitimacy is left implicit; research on the power and influence of the parliament or the decision-making structure within the EU is simply presented as relevant to the concept of ‘legitimacy’.

Secondly, we witness that not only the specific content of ‘legitimacy’ differs between studies, but also the object of legitimacy. This leaves us with the question of whether legitimacy in the field of regional cooperation is a characteristic of decisions, of decision-making systems, of power holders, or possibly of organizations? This vagueness as to the object of legitimacy was already present in Max Weber’s classical text on the subject. In Politics as a Vocation, legitimacy first seems to be characteristic of the rule or the commands of power holders, but then the term also refers to government as such (Weber 1919, ch 1).

A last factor that brings further confusion to the debate on the legitimacy of RIOs is the logical status of the concept of legitimacy. Weber introduced the concept as a sociological one. According to this understanding of the term, legitimacy refers to the likelihood of governmental decisions being obeyed by citizens – not out of hope or fear, but because of some ‘internal motivation’. Weber presented three categories of possible ‘internal motivations’; that is three ideal typical types of authority (Weber 1919, ch 1). In his Political Writings, however, Weber used these sociological concepts as normative ones (Weber 1988). In these texts, legitimacy referred to the conditions that must be fulfilled for decisions (or governance as such) to be binding or valid.

Distinguishing between these two conceptual categories is important for several reasons. First of all, these different concepts imply different kinds of questions and different kinds of answers. In a sociological study we ask: do people accept political decisions (or a regime, etc.) as binding for them? In a normative study we ask: when
should decisions (or a regime, etc.) be accepted as binding? Furthermore, they differ in their approach to the question ‘legitimate for whom’? In a sociological study, it is of relevance to define the group of people which should be asked whether they accept this decision (or regime, etc.). In a normative study we apply a rational argument that should be equally convincing to everyone. In some contemporary studies, these two categorically different understandings of legitimacy seem to become mixed up. Beetham and Lord, for instance, take legitimacy (in a normative sense) to mean ‘normative justifiability’ plus ‘express consent of the appropriate subordinates’ (Beetham and Lord 1998). This approach at least suggests that the latter is not an aspect of its normative justifiability but merely an empirical matter.

Our aim in this chapter is to develop a clear articulation of legitimacy in the normative sense. In this articulation, we focus on Regional Integration Organizations (RIOs) as they are key to the current global shifts in governance. Our articulation will help us to engage systematically in the study of RIOs and since ‘legitimacy’ and ‘democracy’ have a central role in this book, we will return to their relationship to one another once the concept of legitimacy has been clarified. In the following section, we point out how our understanding of the concept of legitimacy is related to the context in which it developed: that of states. In section 3 we shift our perspective to legitimacy in regional multi-level systems. In section 4 we shall add the global system to the picture. In the final section we will use our interpretation of the legitimacy of RIOs to investigate the issue of ‘RIOs and democracy’.

**Legitimacy and State**

In the introduction to this chapter, we have outlined the debate between the two positions on the legitimacy of RIOs. On the one hand, there are alarmists who point out legitimacy deficits: RIOs lack proper parliaments and judicial review, for instance. By others, meanwhile, regional cooperation is judged positively because it means solving coordination problems. Two different arguments, two different conclusions – and probably two different conceptions of legitimacy, as well. At the outset it is not clear whether either position is significantly stronger than the other.

What we can point out is that beyond the apparent disagreement, the two arguments also have something in common: both take the state as the basis for judgement. The sceptics point out the legitimacy deficits of RIOs, thereby taking the state as the baseline by which legitimacy is to be judged. To ‘believers’, the advantages of new regional (or international) organizations or decision-making systems are spelled out in terms of their likeness to the coordination systems within existing (federal) states. One party focuses on the differences between RIOs and states, the other on the similarities – both take the state as their point of reference.

**States and RIOs**

Of course, the state-parallel that is often construed in dealing with RIOs’ legitimacy must not strike us as odd. We are familiar with the concept of legitimacy as referring to states. Until quite recently, any book about ‘legitimacy’ would have had to refer
to the ‘state’. The concept developed while the state as we know it was finding its shape. Ideas like individual liberties, an independent judiciary, volonté de tous, representation, and so on, were developed and found their realization in the political entities that we have learned to call states.

Furthermore, RIOs are often pictured and characterized in ways – and indeed present themselves in ways – that remind us of states. Maps are drawn of the territory of the RIO and this territory encompasses a clear, regionally concentrated part of the globe, not just some set of areas that cartographers accidentally gave the same colour. We read that people living in this region have historical ties that go beyond ethnic or linguistic difference: a common history of oppression under colonialism or shared cultural roots. The political authority within the region tends to broaden its scope beyond the narrow functional tasks that global international organizations have. From economic cooperation, many regional integration organizations move on to incorporate other functions that have classically been the domain of states.

However tempting the step from ‘legitimacy and state’ to ‘legitimacy and RIO’ might be, our question must remain: are RIOs to be judged in the same way as states are, in order to be called legitimate? To that question, various answers have been given in recent years. One answer is affirmative. Regional cooperation and the establishment of RIOs imply shifts in decision-making power from states to other forums. In order to be legitimate, arrangements for control, accountability and the like should follow the shifts in decision making. RIOs should develop exactly the same institutions states have. States, however, have not dissolved. Even the greatest pessimists hold that states still have some autonomy (De Vries 2001). What we witness in institutionalized regional cooperation, therefore, is not a simple shift in governmental power, but a change into something new. Many argue that the EU should not be seen as a (deficient) state, but as a sui generis, that must be judged by its own criteria (Bader 1999; Curtin 1997).

**Functional equivalence**

How should the legitimacy of RIOs, if they are not to be understood as (deficient) states, be judged? Of course, if it still is ‘legitimacy’ we are interested in, our perspective cannot be radically different from the one we employ when judge states. Basically it must deal with the issue: what characteristics must it have for its decisions to be binding and its actions accepted by its citizens?

An answer that has been developed in recent years is the notion of ‘functional equivalence’. A first interpretation of this idea takes functional equivalence to mean that an RIO does not need exactly the same institutions as states have to be legitimate; there should, however, be equivalent institutions for each national institution. There need not be parliaments, as exist in states, but there has to be some body that represents the citizens’ interests. Such an understanding of functional equivalence, however, is vulnerable to the same critique as the idea that RIOs should become identical to states. It still does not fully take into account the specific co-existence of RIOs and states. We have to look for an interpretation of ‘functional equivalence’ that is less naïve. A more sophisticated interpretation should not take existing institutions or arrangements within states at a starting point and then look for
equivalents within RIOs. The alternative approach is to identify those functions that must be fulfilled within any political system in order for it to be called legitimate. This more sophisticated version of functional equivalence will enable us to distinguish between arrangements or institutional designs that contribute to the legitimacy of the decision-making system, and those that are dysfunctional. Consequently, this approach to functional equivalence will not give us a demarcation criterion with which to distinguish between legitimate systems and those which lack legitimacy. It will, however, help us to point out what measures and arrangements contribute to the legitimacy of the system, and which do not.

**Legitimacy in Regional Multilevel Governance**

*Scharpf’s functional approach*

On one RIO in particular, the literature on legitimacy is enormous: the EU. Only in a small minority of these publications, however, is the concept of legitimacy systematically addressed. Sometimes a list of desirable institutions is presented. Often it is one institution or practice within the EU that is investigated. For our purposes, a list of ‘necessary items’ is much too arbitrary as a starting point. As argued in the previous section, for a meaningful articulation of the legitimacy of RIOs a functional approach is called for. One promising approach is that of Fritz Scharpf. His distinction between input and output legitimizing functions might be an appropriate starting point. Scharpf describes his perspective on legitimacy as functional.

In this view, legitimating arguments invoking shared legitimacy beliefs imply *a socially sanctioned obligation to comply with government policies even if these violate the actor’s own interests or normative preferences, and even if official sanctions could be avoided at low cost* (Scharpf 2003, 3 italics in orig).

In that definition he clearly follows Weber, and in doing so he seems to take a sociological focus. In the text immediately following these lines, he refers to the effects of responsiveness (input legitimacy) and of providing effective solutions (output legitimacy) to promote greater trust in modern institutional arrangements on the part of citizens. Yet, Scharpf reassures us that he attempts a conceptual normative articulation. Input and output legitimacy both rest, Scharpf maintains, on the premise that legitimate government must serve the common good of the respective constituency, and that this function must be protected both against the self-interest of governors and the rent-seeking strategies of special interest. ‘Input legitimacy’ basically means government *by* the people, and ‘output legitimacy’ government *for* the people.

*Input* legitimacy is oriented at collective decision making and realizing the public will. Scharpf develops this aspect of legitimacy by referring to Rousseau’s work on the formation of the general will, but also to the work of Habermas and others on communicative rationality and public deliberation. *Output* legitimacy, on the other hand, involves effective governmental steering in the public interest.
Scharpf here draws on the ideals of balancing power as they have been formulated in the *Federalist Papers*, and earlier by De Montesquieu and even Aristotle. Output legitimacy, according to Scharpf, is not only about blocking the power of special interest and preventing wrongdoing. It also is about ‘institutional arrangements facilitating the vigorous pursuit of the common interest and effective problem-solving’ (Scharpf 1999, ch 1; Scharpf 2003, 3–5). These two kinds of legitimacy are complementary in serving the common good; the one cannot be reduced to the other. Institutional arrangements vary widely among constitutional democracies, Scharpf observes, but they ideally serve either or both of these functions. In fact, most forms can be said to serve both functions.

Over the years Scharpf has presented and elaborated this distinction in many publications. Basically, however, the argument has remained the same. He criticises time and again those that maintain that the EU suffers from some kind of crisis of legitimacy, the solution to which lies in further democratization. While he agrees that in certain respects the legitimacy of the EU might be threatened, in his analysis, the problem is not to be found on the input side, but on the output side. It is problem-solving gaps and coordination problems that make for the EU legitimacy deficit – not lack of popular participation, and better performance in one dimension cannot substitute for the deficits in another. Scharpf agrees with those critics that argue that state-like participatory democratic policy making at the EU level is improper because one of the necessary preconditions for this is not fulfilled: a collective, a people with a common identity is non-existent (Scharpf 1996; Scharpf 1999; Scharpf 2003).

*Scharpf re-examined*

Scharpf’s distinction between two kinds of legitimacy, of course, rings familiar. It echoes dichotomies such as ‘democracy versus effectiveness’ or ‘participation versus steering’. Scharpf has articulated a familiar distinction into an elegant and more elaborate position. When observed more closely, however, his distinction is not as clear and convincing as it at first seems. Three observations can substantiate this claim.

First, a central concept in his understanding of input legitimacy is the *public or general will*. Through participation in public deliberation and decision making, in whatever form, the general will is expressed. In output legitimacy the central concept is the *public interest*. That is the point of orientation for effective problem solving. A first question that must be raised is: what exactly is meant by the public interest and how does it differ from the general will? Scharpf’s argument does not allow that the public interest can in some way be deduced from the general will; that would mean that output legitimacy could be reduced to input legitimacy. Scharpf cannot refer to aims or values that have, in effect, been chosen in the decision-making process to stuff out public interest (see: SangiovanniVincentelli 2002). His work however, hardly gives us a clue as to how public interest is to be understood. Only one passing example is given: results should accord with ‘plausible norms of distributive justice’ (Scharpf 1999, 13). Any further justification for this example is lacking, however. Our point is not that problem solving in the public interest is
irrelevant for legitimacy. We simply observe that Scharpf offers us a very limited articulation of what is in the public interest.

Second, the category of output legitimacy, as Scharpf presents it, encompasses two quite different aspects. On the one hand, it is about avoiding and remediing decision-making traps and thus about effective problem solving. On the other hand, it is about the prevention of wrongdoing and checks on power holders. We may grant the point that both aspects are about ‘governing in the public interest’. But are they not two quite distinct functions? Scharpf himself observes that there is ‘an obvious and problematic tension’ between institutional arrangements designed to fulfil either of these tasks (Scharpf 2003, 5). The logical conclusion would be to accept that there are in fact two different functions at stake here.

Third, on the input side the central idea is the development or expression of the general will. In recent discussions on deliberative democracy, it has become clear that in fact two ideals are involved in the advocacy for participation in government. One ideal is that of (practical) rationality: deliberation means having a discussion, in which the better ideas prevail. The other ideal takes a more political perspective, it is concerned with equal opportunity and checks on the most powerful, to prevent them dominating the weaker (Bohman 1997; King 2003; Macedo 1999). This distinction between ideals in deliberation can be understood as two functions that might be fulfilled by deliberative and participatory arrangements. The participation of citizens in policymaking can lead to better, that is more rational decisions, and their participation may be an effective way to guard their individual interests. In his classical work on representative government, J.S. Mill makes an effort to bring both aspects into a parliamentary system: civic participation is better than despotic rule because one man cannot see what many can and because each man is himself the best guardian of his own interests (Mill 1991/1861, 238–9); an electoral system should at the same time guarantee that the most competent men become member and make for an equal representation of different interest groups so as to prevent the tyranny of a specific group (Mill 1991/1861, ch. VI and VII); parliament is to be understood as a ‘congress of opinions’ playing a role in finding good policies and as a ‘committee of grievances’ critically controlling government (Mill 1991/1861, 282). The example of Mill’s work and the discussions on deliberative democracy lead us to the conclusion that Scharpf’s input-category in fact contains two functions.

Scharpf’s matrix rearranged

Scharpf’s approach to legitimacy, presenting different aspects of the common good, is appealing. The distinction he makes, however, is not completely convincing. Our comments suggest another categorization to judge whether specific arrangements are functional to legitimacy:

- do they contribute to rational decision making (input legitimacy)?
- do they contribute to preventing the abuse of power (control legitimacy)?
- do they contribute to the realization of outcomes in the public interest (output legitimacy)?

Each of these builds on a long tradition.
Input  Bringing practical rationality into political decision making is an ideal that can be traced back to Aristotle and Plato. The latter maintained in *The Politeia* that the wise should be kings as they have privileged access to the relevant knowledge. At least since the Reformation the idea has developed that, in principle, all people can and should participate in rational debate and contribute to the formation of opinion. Since early modern times this idea has done its work and led to civic participation and public debate as we know it (Habermas 1962). Practical rationality has increasingly come to be understood as something for which communication and even debate was necessary. Since the beginning of the 20th century, as the social sciences have developed, this tradition has in a sense witnessed a revival of Platonic ideas as special expertise (based, this time, on scientific enquiry) was advocated for rational decision making. A recent renewal of the tradition has emphasized the importance of including the experiences of ordinary people, especially those that are ‘socially excluded’. Many recently introduced new participatory arrangements for governance have been advocated for their potential contribution to rational decision making: citizen polls and citizen policy juries at the local level or forums of accredited NGOs and epistemic communities at the international level.

Within this functional field of legitimacy we typically find debates on the best mix of broad civic participation and the inclusion of experts and on the optimum balance between unlimited access (leading to problems of coordination) and regulated entry (hindering open debate).

Control  The tradition of control has its roots in Aristotle’s analysis of mixed constitutions, in which different societal groups hold each other in check through the calculated distribution of offices (The Politics). The rationale here is political: it is about ‘power blocked by counter power’, in the classical phrase of De Montesquieu (Montesquieu 1748/1979, L. XI ch. iv). The other topical formulation is that of ‘checks and balances’, as elaborated in the Federalist Papers. This political rationality is also invoked in arguments for democratic rights. As Mill pointed out, each individual’s interest is served best when everyone has a say. Having a voice in decision making, albeit via one’s representative, is an effective barrier against special interest and tyranny (Mill 1991/1861, Ch 3). These ideals typically found their way into modern law: constitutions in which the relations between counterbalancing offices are fixed, and which also present individual freedoms that can be invoked to block the exercise of power.

Within this functional field of legitimacy, one of the *topoi* is that on horizontal versus vertical control. Adherents to the latter, in debates on establishing control, opt for arrangements in which power holders are held accountable by some forum. Those who favour horizontal control put their trust in arrangements of competition, peer review and countervailing powers.

Output  Within political theory, a distinction is often made between procedural and substantial theories of justice. Procedural political theories tell us how decisions should come about. They, broadly speaking, cover the field of input and control. The output tradition is closer to the theories that put forward a substantial interpretation of justice. They tell us what we should try to realize, what is worthwhile to defend...
and foster. It is a tradition that deals with aims or values that are the yardstick for success. They involve ideals like individual security and development, the equitable distribution of goods, economy in the use of collective resources or environmental sustainability. Which actors are involved in what capacity and at which moment is not of relevance from this perspective.

Of course, failure to realize a specific output-value can have many causes. Scharpf had his reasons to focus on a particular cause of failure: coordination problems. The causes of failures to realize the output-aims that contribute to a system’s legitimacy might be elaborated in Scharpf’s version of the rational choice analysis of coordination problems, or in any other. That, however, is of no consequence for the output criterion. For output-legitimacy, decision making might simply be viewed as a black box. What is relevant is the quality of the decisions coming out of it. Within this functional field, debates are typically about the priority of specific values or aims: for instance, relief of poverty now versus general economic development over the long term; economy versus environment.

Summing up, we propose, following Scharpf, to assess the legitimacy of an organization or a system of decision making according to the extent to which it contributes to the realization of the common good. Realizing the common good is to be measured on three complementary aspects. Regarding specific aspects or arrangements within that system we have to ask, firstly, whether they contribute to rational decision making. The second question needs to be whether they contribute to a system of countervailing power or effective accountability. The third question is whether they contribute to the realization of outcomes that accord with substantial universal principles. In a later section we will flesh out these basic requirements of legitimacy, especially in relation to ‘democracy’. Before doing that, however, we want to add a global dimension to our picture, in order to make our analysis complete.

**Legitimacy in a Global Pluralistic System**

In our introduction we came across two opposing positions. One of them held that RIOs are not and cannot be called legitimate, simply because they are not and cannot be like states. In the last two sections we have developed an interpretation of legitimacy that would allow for RIOs to be part of a legitimate system. That leaves us with the other position in the debate. Adherents to the second position argue that the cooperation of states in regional integration organizations helps solve all kinds of coordination problems. The gist of the argument is that we should aim for institutionalized global cooperation. The issue that has to be addressed now, is whether regional co-operation should only be a phase in the development towards global government? Is there a lasting role for RIOs in a just world, and if so, under what conditions? There is a further reason to turn to the global level. In investigating the concept of legitimacy hitherto, we have focused on arrangements and developments within RIOs and specific regions. Scharpf’s claim, as cited above, is that input and output legitimacy rest on the premise that legitimate government
must serve the common good of the respective constituency. Can there be any justification for narrowing down the domain of legitimacy in such a manner?

**World government**

The ideal of a world government and global democracy has, in recent years, again found its supporters. As many problems and disasters in our world can be said to be a direct or indirect consequence of the existence of many states all following their own interests, the argument for ending the international anarchy of states certainly has its appeal. Would not the fight against insecurity and the continuous threat of war, inequality and suppression be better conducted by one world government? There would be no more safe havens for terrorists; the consequences of the uneven distribution of natural resources could be compensated by an effective tax system; equal rights for all could be guaranteed; pollution problems could be tackled without the endless disputes between states, and so on (Archibugi 1998; Held 2002).

The ideal of a world government, however, has been criticized since its very inception. A classical comment is that of Kant. He pointed out an important difference between arguments for the establishment of states, and arguments that can be given for a world state in a situation in which particular states already exist. It can be argued that individuals in a state of nature rightfully choose to partake in a state because it means moving from lawlessness to a lawful order. Individuals have nothing to lose in giving up their ‘lawless freedom’. States, however, ‘already have a lawful internal constitution, and have thus outgrown the coercive right of others to subject them to a wider legal constitution in accordance with their conception of right’ (Kant 1795, 104). Fusing states into a world state could easily mean despotism, because it would mean disregarding the differences between the nations in the world. A similar argument has more recently been made by Rawls. Peoples in the world should be able to organise and govern themselves – up to a certain level – and that means accepting a plurality of states in the world (Rawls 1999).

On the one hand, the notion of a world state is appealing because it promises an effective approach towards solving international problems and realizing a more peaceful and just world. On the other hand, it might mean despotism because it implies overriding the differences that exist between – and are valued by – peoples. Is a feasible middle course conceivable?

**A middle course**

One route that has often been chosen, is that of the development of some kind of federal world state (Habermas 1992; Pogge 1992; Pogge 1998). It remains unclear, however, how exactly decision-making power would be distributed. In practice, it probably comes down to either a global state, or a plurality of independent states (Mertens 1996; Tholen 1997). It seems reasonable to look for a middle course that could in some sense incorporate the continued existence of states.

To imagine such a middle course, we might start with Kant’s ideal of a federation of free states, a league of nations, to guarantee eternal peace. The league would be established by a treaty and it is in International Law that Kant invested his trust.
In recent times we have witnessed that the existence of International Law alone often is not enough to prevent disasters like war between states or ethnic cleansing. Others have put their hope in International Organizations, like the UN or the World Bank. International Law is already complemented by real organizations, but this still seems inadequate – international organizations have often proved weak and ineffective (Tesón 1995). We could move further, however. Some have pointed out that we must also take into account all kinds of transnational networks of citizens, of experts, of corporations, and also of executive officials (Haas 1992; Keane 2003; Keck and Sikkink 1998; Slaughter 2004). These international transnational networks must also be understood as part of the international middle ground. A last addition to this cumulative picture of a feasible middle position between a world state and anarchy of states is that of RIOs. Walzer, for example, stresses the importance of regional integration organizations like the EU in his argument for a ‘third degree global pluralism’. ‘[I]t offers’, so he maintains, ‘the largest number of opportunities for political action on behalf of peace, justice, cultural difference, and individual rights; and it poses, at the same time, the smallest risk of global tyranny’ (Walzer 2000, 8).

The proper conclusion seems to be that we can value the cooperation of states within RIOs as positive, without necessarily accepting the premise that the ultimate goal is a world government. In a world that includes Regional Integration Organizations, in addition to states and International Organizations, an optimum of both universal and particularistic values might be realized, as Walzer puts it. This implies a high level of checks and balances and in this multi-centred regime the number of agents that can be involved in deliberation is maximized. Here the aspects of input and control legitimacy return. It is noteworthy, however, that ‘the respective constituency’ must now include every individual in the world, and also that RIOs are understood to be part of a world system that is regulated by international law: they are supposed to obey international principles and regulations and they are themselves the result of international treatises and recognized by other international organizations.

To judge his multi-level world system Walzer, as a matter of fact, also uses specific ideals of output legitimacy like justice, cultural difference, and so on, that refer to desirable states of affairs in the world at large, but also in each specific state. For distributive justice we logically take a global perspective, as it involves comparing the conditions of people everywhere in the world. For a value as individual liberty, we should concentrate on the way individuals are treated by particular states. We can take this as an articulation of output legitimacy of RIOs. It makes us ask, for example, whether an RIO contributes to democratization, the rule of law and respect for individual liberties within member states.

**RIOs, Legitimacy and Democracy**

Now that we have clarified the concept of legitimacy, including its relationship to world order, we are ready to bring the concept of democracy into the picture. One of the confusions we pointed out earlier lies in the use of the terms ‘democracy’ and ‘legitimacy’. While sometimes these terms are used synonymously, at other times
they are understood quite differently, and one also reads of ‘democratic legitimacy’. Here, we suggest that the ideal of democracy is indeed part of what makes a system legitimate. Different aspects can be distinguished within the concept of ‘democracy’, however, and these aspects can be categorized following our three legitimacy-functions.

**Input: democracy as participation of non-state actors in RIOs**

The central issue in input-legitimacy is the participation of non-state actors in decision making at RIO level, in order to develop rational – that is well-informed – policies. In the existing literature on this topic the category of non-state actors is often labelled as ‘civil society’. Many kinds of actors and many sorts of participatory arrangements are presented. Often a distinction is made between parliamentary and non-parliamentary arrangements. With the former, the case of reference is that of national parliaments, composed of individual delegates chosen through direct or indirect general elections (see Part Three of this volume). In the latter case, the model is that of corporatism: civic participation is realized through the (formal) involvement of (representatives of) societal groups (see Part Four of this volume).

If we follow this distinction, we can point out two groups of criteria for the evaluation of existing arrangements within RIOs. For a parliamentary type structure to contribute to input-legitimacy, this has to be open to all societal voices, and debates should be public so they can be part of public opinion making. In more corporatist structures, the focus is on non-governmental organizations and the opportunities they have to play a role in policy debates. In the literature on international governance, much is expected of non-governmental organizations (Keane 2003; Keck and Sikkink 1998; Risse 2000; Verweij 2003; Witte 2002). Yet, these actors can only contribute to input legitimacy if they are able to bring many different voices into the public debate. This depends on their practical capacity to organize, freedom of organization and speech, and to what extent the institutional arrangements at RIO level are conducive to public deliberation.

**Control: democracy as specific checks on the use of power in RIOs**

Central to research on control legitimacy are the existence and functioning of checks and controls. Such functions typically concern checks on executive powers and therefore involve judicial review (including the level of legalization and access to courts) and parliamentary or corporatist control. Here, again, civic involvement is of interest, but this time to a different end. Here, our question is: are there participatory arrangements and do they contribute to countervailing the power of the executive within the RIO?

Regarding parliamentary arrangements the criteria of evaluation are: is there some parliamentary body? Does it have only an advisory role or effective veto-power? Does it have such competencies on all issues dealt with by the executive? Can it turn to a court? For a more corporatist system our criteria involve: does accreditation of some kind of non-state actors mean that they have formal power? Do these non-state actors have the qualities to develop a powerbase and use it? Much of the literature
Output: democracy as an aim of RIOs’ activities

In our short excursus on the legitimacy of RIOs in a global setting we have found that we also have to take into account the ability of RIOs to contribute to the realization of basic values like democracy and the rule of law in member states. Here ‘democracy’ is to be understood as an aspect of output-legitimacy, as we have defined it above.

The criteria for evaluating a RIO and its arrangements involve here: do they effectively contribute to the furthering of civic participation within the political systems of the member states? Do their actions lead to guaranteeing individual rights within their region? Are citizens of member states empowered to stand up for their rights and interests in participatory arrangements and via a legal system?

Conclusion

We started this chapter by sketching a debate. On the one hand, it was argued that RIOs are not and cannot be legitimate in taking binding decisions. On the other hand RIOs were claimed to solve coordination problems which individual states cannot solve, which makes for their legitimacy and may even bring us to the conclusion that we should opt for a world-state. By analysing these positions we discovered their weak points. More importantly, however, this analysis was of use in articulating the concept of legitimacy. It enabled us to step beyond the conceptual confusions common in the debate on the legitimacy and democracy of RIOs.

The concept of legitimacy, as we have formulated it, refers to functions that must be fulfilled for decisions to be considered as binding. To do so, they must lead to the realization of the common good; we distinguished three aspects that we labelled as input, output and control. This distinction, we pointed out in the last section, helps us to understand the relation between the norms of ‘legitimacy’ and ‘democracy’. It also shows us the way to different sets of criteria for the evaluation of RIOs.

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Introduction

The main aim of this chapter is to explore the relationship between national and regional democracy. This is an issue not often addressed, as most of the literature on democracy and democratic deficit focuses on either one of these levels. Those who have attempted to deal with this relationship have mainly focused on the influence of regional integration on national democracy (see, for example, Anderson 1999; Schmidt 2006). Here, I take regional democracy as the dependent variable, and ask which elements influence democracy at the regional level. In this context I will focus on two specific conditions: national democracy and regional parliaments. First of all, it is necessary to discuss the meaning of the concept of democracy in the context of regional governance and the criteria by which democracy of regional integration organizations (RIOs) should be assessed. The main challenge in this regard is to define the type of democratic control that should be exercised at the regional level, and the criteria to be used to assess democratic regional governance. The approach formulated in this chapter takes the criteria used in the national setting as reference, and develops a series of minimal attributes for the concept of regional democratic governance as a first step towards a closer understanding of the topic.

The chapter is divided into two sections. The first section discusses the relevance of debating the question of democracy in RIOS. It presents a discussion of Robert Dahl’s concept of democracy (and polyarchy) and suggests the utilization of Dahl’s criteria to construct an instrument for the assessment of regional governance. It also defends the possibility for democracy at the regional level. The second section discusses the relation between regional democracy, regional parliaments and national democracy. It shows how RIOS created by well-established democratic states have a better chance of having a functioning parliamentary institution and of being more democratic than those created by weaker democracies.

The Concept of Regional Democracy

Since its inception, the concept of democracy has been contested and debated. Definitions of democracy proliferate. This calls for a minimal specification of the attributes to be taken into account. In the case of RIOs, the lack of consensus even

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1 I am very grateful to Anna van der Vleuten and Berry Tholen for helping me develop the argument presented in this chapter, and also to Andrea Ribeiro Hoffmann and Marcelo Coutinho for useful comments.
Closing or Widening the Gap?

precedes the definition of its attributes, raising the question of whether the term should be applied in relation to this kind of political system at all.

Among the authors who reject the idea of democracy in connection to processes of regional integration is Dahl (1999), who provided some grounds for the claim that democracy and RIOs are incompatible. In brief, he argues that populations in general have difficulty in controlling the foreign policy decisions of national governments, which would suggest that this difficulty would be even greater in international organizations. According to him, for adequate popular control and participation at the international level, it would be necessary to create appropriate institutions for participation and control, in addition to a public debate, competition between parties, and the control over bureaucracies by elected leaders (Dahl 1999, 31–32). Dahl also emphasizes the issue of the size of political systems: a larger population will mean a more heterogeneous society and greater the discord in questions of policies concerning the public good. If we accept this argument, we must also accept that RIOs would negatively influence the prospects for regional democracy since the creation of RIOs means a considerable growth in a polity’s size.

Despite Dahl’s scepticism about the possibility of democratic international organizations, we will take his work on democracy as a basis on which to develop a better understanding of regional democracy. Should Dahl’s pessimism prove well-founded, then we will come up against a fundamental obstacle to the objectives of this chapter. However, we will argue that while Dahl offers a strong argument about democracy and international organizations in general, he pays little attention to the specific case of RIOs, and presents no ontological, logical or practical obstacle to regional democracy.

The topic of democracy at the regional level has been the subject of debate, particularly among those interested in the case of the European Union (EU). The ‘democratic deficit’ and ‘legitimacy deficit’ of the EU have been much discussed, but without arriving at a clear distinction between these two concepts. This has been dealt with by Tholen in the previous chapter of this volume. Like the concept of legitimacy, discussed in Chapter 2, applying the concept of democracy brings difficulties to the study of regional systems because the concept of democracy was defined for the analysis of national political systems. This observation raises questions on which parameters should be used to judge regional democracies. Another weakness of the literature is the absence of a consensus in terms of the criteria to be adopted for the analysis of democracy at the regional level. Berthold Rittberger illustrates the consequences of this problem as follows:

It is evident that the benchmarks against which democracy at the EU-level are measured, and, consequently, the means through which the democratic deficit should be remedied depend on the researchers’ assumptions of what constitutes democratically legitimate governance (Rittberger 2005, 33).

2 In a recent work (Dahl 2005), Dahl himself used his criteria for national democracy to evaluate international systems of governance. I am, then, following Dahl’s suggestion of standards for international democracy.
This problem is not exclusive to RIOs. Philippe Schmitter (2003) discusses the parameters by which the assessment of the new national democracies would be appropriate and, after arguing that the negative classification of Latin American and East European regimes in comparison to older European democracies is unjust, he states that ‘(…) we must not hold neo-democracies to the highest standards of performance that took previous democracies decades (if not a century) to acquire (…)’ (Schmitter 2003, 13).

In the same manner, the institutions of RIOs (and particularly the EU) have been judged based on the democratic performance of well-established national political systems. The question which then arises is: should we really measure the democratic performance of regional systems according to national parameters? But, on the other hand, should we lower our requirements for representation and participation simply because this is another system? Democratic theory authors have been demonstrating the importance of democratic values for decades. These values do not lose their relevance simply due to the advent of a new level of political interaction. There are no easy answers to these questions, but taking an analysis of the attributes of the concept of democracy as our point of departure, we will verify their pertinence to the regional level, so that we may develop a parameter for the assessment of the democratic characteristics of RIOs.

**A minimum concept for regional democracy**

The currently dominant idea of democracy includes a series of claims which can be understood using the notion of the various dimensions of democracy. These various dimensions correspond to the dimensions of citizenship, their counterpoint. Marshall distinguishes between civil, political and social citizenship (Marshall 1967). Civil citizenship corresponds to the rights necessary to individual freedom, among them the right to justice. The right to justice ensures the protection of all other civil rights – namely freedom of movement, freedom of the press, thought and religion, and the right to property and to sign valid contracts. In tribunals, we find the institutions essential to the preservation of civil rights. Political citizenship refers to participation in the exercise of political power, be this through participating in an organization invested with political authority, or through the right to elect those who do so. Its corresponding institutions are parliaments and local government bodies. Social citizenship is related to the guarantee of a minimum of economic welfare and participation in social inheritance; it thus encompasses the ways in which citizens enjoy the ‘civilized’ conditions of society. To construct a minimum concept for regional democracy, we will start from the notion of political democracy which is the political dimension of democracy, and associated with political citizenship.

Not only it is necessary to distinguish between different types of democracy according to the notions of citizenship, we also have to specify which model of democracy is to be used as a reference. In his work on models of democracy, David Held (1987) undertakes a careful analysis of which he considers to be the most important and emblematic of the classical and modern theories on democracy. The author establishes a general division between models of participative (or direct) democracy and representative (or liberal) democracy. Held (1987, 4) characterizes
participative democracy as a decision-making system of public affairs in which citizens are directly involved. Representative democracy, in turn, is defined as a system of elected public service workers who obey the law and represent the interests and visions of citizens, within the rule of law of a state.

There is discussion about the respective merits of representative and participative democracy. Carole Pateman (1970) defends democratic ideals that emphasize participation, in a clear critique of authors who defend what is known as representative democracy (such as Dahl and Schumpeter). A democratic system is, therefore, not only a system of national institutions, but also a participative society (Pateman 1970, 20). The concept of participative democracy posits that the existence of democratic institutions at a national level is insufficient, by itself, and that democracy requires structures of democratic authority at all levels of society. The exercise of democracy prepares individuals for the democratic process itself, which exerts an important educational function and ensures the stability of the system, making it self-sustaining. Participative democracy broadens the concept of politics to include all of society, as well as of the concept of participation and, consequently, of democracy.

Still, the requirements presented by a representative system of democracy are considered as the basis for all democracy, even by those authors who criticize representative democracy theory. Pateman highlights the importance of representative democracy, noting, however, its insufficiency and defending a broader role for participation, as defined in the theory of participative democracy (Pateman 1970, 20). Other critiques of the representation criteria do not reject the criteria of representative democracy, but rather they go beyond representation, including other criteria considered essential by the authors (Mainwaring et al. 2001; Santos 1998). As our aim is to evaluate regional systems which are relatively new and still struggling to satisfy demands for democratic legitimacy, it therefore seems reasonable that for the discussion of the concept of regional democracy we should adopt a minimum political, representative approach. This view is developed by Dahl. In spite of his critical and negative view on the relationship between democracy and international organizations (Dahl 1999), he adopts the same criteria for the assessment of international organizations as those he uses for national systems: the creation of institutions that enable citizens to participate; influence and political control more or less equivalent to those of national democracies; the availability of information on the political process for the population; the existence of public debate; the development of political parties that mobilize this debate; and the control of the international bureaucracy by elected representatives (or their functional equivalents) (Dahl 1999, 31 and 2005).

In A Preface to Democratic Theory (Dahl 1956) Dahl elaborates ‘populist democracy’ as a system which is able to restrict tyranny, be it of the majority or minority. It grounds itself in the principle of the majority to maximize the values of popular sovereignty and political equality, and the process of formulating public policies must be subjected to these values. Political equality corresponds to the notion that control over government decisions is exercised by the people so that the preference of all members of this group is of equal value. Popular sovereignty is defined as a condition whereby the political choices made are those which are
preferred by the greatest number. For both these conditions to be satisfied, therefore, the principle of majority government must be obeyed.

In search of a theory that specifies which parameters in a society render it democratic, Dahl seeks to identify the necessary conditions for the goals of populist democracy, popular sovereignty and political equality to be maximized. This, in turn, is connected to majority rule which, through a process of choices, results in the victory of the option which attracts the preference of the greatest number of members involved. In this way, the author establishes eight ‘more or less observable’ conditions (Dahl 1956, 76) in the real world that are associated with this rule. These are the conditions:

‘During the voting period:

1. All members of the organization practice acts that we suppose constitute a manifestation of preference before presented alternatives, that is, voting.
2. In the tabulation of these manifestations (votes) the weight attributed to each individual’s choice is identical.
3. The alternative with the greatest number of votes is declared the winner.

During the pre-voting period:

4. Every member which considers a set of alternatives, at least one of which they find preferable to any of the other alternatives presented may insert their preferred alternative(s) among those presented to the voting.
5. All individuals possess identical information on the alternatives.

During the post-voting period:

6. The alternatives (leaders or policies) with greatest number of votes win all others (leaders or policies) contemplated with less.
7. The orders of the elected public servants are executed.

During the inter-voting stage:

8. All decisions taken between elections are subordinate or executory to those taken during the election period, that is, the elections are, in a certain sense, controllers;
   Or the new decisions, taken during the period between elections, are guided by the seven preceding conditions operating, however, under very different institutional circumstances;
   Or both.’ (Dahl 1956, 84–5).

For Dahl, the requisites for democracy, summarized above, represent social preconditions which are necessary for the construction of a non-tyrannical system of governance. His conditions for democracy place emphasis, therefore, on the restrictions on tyranny imposed by the social dimension of a political system. The author presents his argument as follows:
... an increase in the extension in which one of the social preconditions is present is perhaps much more important in the strengthening of democracy than any given constitutional elaboration. Whether we are concerned about tyranny of the majority or the minority, polyarchic theory suggests that the first and crucial variables to which political scientists must direct their attention are social and not constitutional. (Dahl 1956, 83)

In *Polyarchy* (1971), Dahl redefines the minimum conditions under which a society may be considered democratic, associating them to the equal opportunities the citizens must have. In this work, Dahl emphasizes the dimension of contestation, exploring the conditions which significantly increase the chances of public contestation and the existence of a ‘polyarchy’ – a democratic political system ‘in practice’, as opposed to a utopian ideal. He establishes that for a government to remain equally responsive to all its citizens for a period of time, all these citizens must have equal opportunities to formulate their preferences, signify their preferences to other citizens and to the government by way of individual or collective action, and have their preferences equally considered in the conduct of government – that is, considered without discrimination by content or source of the preference (Dahl 1971, 2). These conditions are necessary even if, according the author, they are probably not sufficient for the existence of democracy. Dahl’s next step is to establish a list of eight criteria for the three conditions above to be satisfied, when applied to societies with a large number of citizens such as modern nation-states (Dahl, 1971):

1. Freedom to enter and form organizations
2. Freedom of expression
3. Freedom to vote
4. Right of political leaders to compete for support and votes
5. Alternative sources of information
6. Eligibility for public offices
7. Free and fair elections
8. Institutions that make government policies depend on votes and other expressions of preference

Making clear his proviso that other conditions may also be necessary for a system to be considered ‘strictly democratic’, the author focuses on a characteristic of democracy which he considers central, that is, government’s continued responsiveness to citizens’ preferences, citizens being considered politically equal. In this way, a democracy is a political system which is completely, or almost completely, responsive to all its citizens (Dahl 1971, 2). In this context it is also important to remember Dahl’s notion of *polyarchies*. The author uses the term *polyarchies* to refer to real political systems, thus differentiating them from the utopian ideal of democracy which serves as parameter for the assessment of human experiences. With this concept, the author also establishes the idea of degrees of democracy, meaning that a system does not necessarily have to be classified exclusively in terms of ‘yes or no’, but can be seen as more or less polyarchic. This opens up possibilities for assessing and comparing imperfect regional democracies as regional polyarchies.
Delegative democracy and regional democracy

Even if Dahl’s polyarchies seem to offer openings for discussing ‘less fully established democracies’, Guillermo O’Donnell (1992) argues that the democratic theory devised by Dahl takes the democratic practices of capitalist developed countries as its reference. Many Latin American countries do not have sufficiently institutionalized democratic regimes, which has resulted in a specific kind of democracy in these countries: delegative democracy. He argues that:

A non-institutionalized democracy is characterized by the (basically class-based) restricted scope, by the weakness, and by the low density of whatever political institution it has. Other, non-formalized but strongly operative practices – especially clientelism, patrimonialism, and, indeed, corruption – take place of the former, jointly with various patterns of highly disaggregated and direct access to the policy-making process (O’Donnell 1992, 6).

The absence of an institutionalized regime is related to the functioning, scope and force of its institutions. There is, according to O’Donnell, a second transition to be made after the passage to a democratically elected regime. This is the passage to a consolidated institutional democracy. For this, democratic institutions must undergo a process of consolidation and strengthening, in a dynamic that includes the aggregation of interests and the stabilization of agents’ expectations. The appearance of formal organizations is part of the strengthening process of an institutional system (O’Donnell 1992, 5). O’Donnell cites Argentina, Bolivia, Brazil, Ecuador and Peru as countries which are considered democracies according to Dahl’s criteria, although the second transition, that which leads to a consolidated institutional system, has not yet been observed. This lack of institutionalization results in a system where democratically elected representatives are free to govern according to their own will, to the degree allowed by existing power relations. Among the prerogatives of such a delegative democracy is the absence of the need for accountability before governmental institutions and other private or semi-private organizations. The president possesses, in this context, total authority, the congress and the parties being marginalized from the majority of decisions important to the country. Limits on the executive’s powers are not set by institutions, but solely by non-institutionalized power relations. It is true that even representative democracy implies a certain level of delegation, but in delegative democracy this dimension is exaggerated and, crucially, it differentiates itself from representative democracy on the issue of accountability. O’Donnell argues that:

Representation entails the idea of accountability: somehow the representative is held responsible for the ways in which he acts in the name of those for whom he claims to be entitled to speak. In consolidated democracies, accountability operates not only, nor so much, ‘vertically’ in relation to those who elected the officer (except, retrospectively, at times of elections), but ‘horizontally’ in relation to a network of relatively autonomous powers (i.e., other institutions) that have the capacity of calling into question and eventually punishing ‘improper’ ways of discharging the responsibilities of the given officer. (O’Donnell 1992, 8–9)
This relationship between representation and accountability, according to O’Donnell, is what draws the line between the public and private spheres of the interests of those who occupy public offices.

These remarks are useful in the discussion about regional democratic governance. Even though it is possible that the criticism of democratic Latin American regimes made by O’Donnell, which classifies them as *delegative* and distinguishes them from *consolidated* democracies, underestimates these new democracies by comparing them unjustly to political systems which have had considerably more time to evolve (as highlighted by Schmitter 2003), his work calls attention to the importance of the correspondence between norms and practices in democratic systems - that is, their institutional consolidation.

Evidence of democratic institutionalization is a certain degree of conformity between actual conduct and the conduct prescribed by formal norms (O’Donnell 1996, 18). In relation to regional systems, this problem is commonly underestimated, as demonstrated by Félix Peña (Peña 2003a and 2003b) in his research on the Southern Common Market (Mercosur). The author argues that there is an effectiveness deficit built into the rules of Mercosur, and that this deficit has a significant effect on the credibility and legitimacy of the regional integration process. This concern about the rules’ effectiveness is justified by the author as follows. First, respect for the rules guarantees that the national interests of the participants will be reciprocally respected. Because Mercosur is the result of a voluntary integration process between states that, until now, had not wanted to give up their sovereignty, this reciprocity is of great importance to the sustainability of integration over time. Second, the author identifies an accumulation of rules that are not obeyed or have not even completed the cycle of legal approval. Among the possible reasons for this, the author emphasizes insufficient consultation of the members of society, or the weak participation from civil society in the representative institutions. This lack of participation may be due to a lack of transparency in the negotiations and the process in general. For that reason, Peña argues that the credibility and legitimacy of the Latin American integration process could benefit from greater civil society participation in regional negotiations.

Keeping this in mind, we agree with O’Donnell that it is necessary to go beyond Dahl’s *decisive criteria*, which separate polyarchies from non-polyarchies, and add new criteria (O’Donnell 1996, 8–9) for a more meaningful distinction between politically democratic systems so that variations within the same category of polyarchy may be better identified. Of course, the inclusion of more criteria entails the risk that we end up with a concept which in reality will not find any correspondence at the regional level, not even approximately. Following O’Donnell and Peña, it seems appropriate, however, to include the need for institutional consolidation among the elements which compose regional democracy. These elements, according to our discussion so far, are schematized in Table 3.1.

Although we cannot refer to any existing set of regional institutions as completely democratic according to the attributes of the concept developed, the idea is that they can, potentially, be democratized. The idea of degrees of democracy, or polyarchies, as Dahl refers to them, can be particularly useful in this context.
This observation brings us back to Dahl’s rejection of the notion of democratic international organizations. Despite the fact that most international organizations do not aim at the construction of a democratic system of governance, this is not true in the case of RIOs. Dahl does not differentiate between types of international organizations. The author does not consider the peculiarities of RIOs as compared to other international organizations, as described in Chapter 1 of this volume. Yet, it does not seem appropriate to compare the population’s interest in foreign policy decisions to its interest in regional policies, as Dahl does. Interest among United States citizens in the policies of the State Department concerning Southeast Asian security issues, for instance, is not comparable to the interest of Indonesian citizens in ASEAN policies on security, trade, employment, and health in their own and neighbouring countries. RIOs are a particular type of international organization, which may promote the integration of their member states, not only economically but also politically and culturally. To the extent that RIOs pursue such political, economic and cultural objectives, it is important that they also develop mechanisms for participation in and control of their decision-making process, as argued by Tholen (Chapter 2).

It is obvious that RIOs also differ among themselves as regards their scope and institutional set-up, but RIOs such as Mercosur and the EU indeed aspire to be responsive to their citizens, developing regional parliaments and holding (or planning to hold) direct elections for their representatives. The observation that regional parliaments of RIOs other than the EU have yet to struggle to become powerful institutions (see Malamud and De Sousa, Chapter 5) does not negate the fact that they do intend to create a representation mechanism over time. In a similar way, in the case of the EU (where the issue is most polemic at the moment), the apparent consensus about the non-desirability of a set of institutions that resemble the national polity does not necessarily set aside the democratic values that are valid for national democracies. According to Philippe Schmitter,

<table>
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<tr>
<th>Regional democracy</th>
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<tr>
<td>Freedom to enter and form organizations</td>
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<td>Right of political leaders to compete for support and votes</td>
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<td>Eligibility for public offices</td>
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<td>Institutions that make governmental policies depend on votes or other expressions of preference</td>
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<td>Consolidation of democratic institutions, or conformity between observed behaviour and formal norms</td>
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... When it comes to the design question, there seems to be a general awareness that the rules and practices of democracy at each of these levels can not, should not be identical. Especially when it comes to ensuring the accountability of a polity of the size, scale, scope and diversity of the European Union demands a literal re-invention of democracy, a task that was not even attempted by the Convention that drafted the unsuccessful Constitutional Treaty. (Schmitter 2005, 6)

The criteria defended by Dahl do not refer to any specific form of institutional or constitutional design, but they do present the values and social characteristics that a democratic polity should have. As Schmitter points out, one of Dahl’s most valuable contributions has been to call our attention to the fact that democracy is a political system capable of reinventing itself without violent ruptures.

Indeed, one could claim that this is the most distinctive and valuable characteristic of democracy: its ability to re-design itself consensually, without violence or discontinuity – even sometimes without explicitly diagnosing the need for such a ‘radical’ change in formal institutions and informal practices. (Schmitter 2005, 16)

Continuous change in democratic polities constitutes a revolution in itself, although it is possible that the actors involved in such a revolution are not aware of the importance of these changes. Regionalism can, then, be included among the democratic revolutions of the contemporary world. It combines changes already experienced in democracy (the considerable growth in the size of polities, for example) with other ongoing changes, such as the appearance and ever greater relevance of organizational citizenship, the professionalization of politics, political guardianship, and multi-level governance (Schmitter 2005). Democracy is a political system which is under a continuous process of change, and is therefore capable of transforming itself to fit a regional system of governance. It is not my intent to defend the argument that the regional systems in existence today are sufficiently democratic, but simply to defend the point of view that RIOs can be democratic and, therefore, democratized. The aim of this section was to present a minimal set of criteria developed to analyze national democratic polities, and argue that these criteria do not lose their value once we enter the regional arena.

**Conditions for Regional Democracy: National Democracy and Regional Parliaments**

After discussing the meaning of democracy and the relevance of the concept for evaluating RIOs, we will now discuss the role of regional parliaments and national democracy as prerequisites for regional democracy.

**Regional parliaments**

Regional parliaments can be seen as an indicator of democratization at the regional level. The existence of a regional parliamentary assembly actually implies that a considerable number of the nine criteria selected for regional democracy may have
been fulfilled (see Table 3.1). If the citizens of a RIO are able to vote for regional parliament members (as well as to be elected as a representative) in free elections, then they have the right to participate in political organizations, the right to vote, to compete for votes, and to be elected to public office; five out of the nine criteria are thus met. If they also have freedom of expression and multiple information sources, the total rises to seven. But none of this is really a sign of regional democracy unless the two last criteria are satisfied: the institution that depends on votes (the parliament) should be responsible for governmental policies – that is, it should have real powers to influence the regional political process; and its role in the regional system should be respected, as a consequence of its institutionalization.

Failure to satisfy the last two criteria means that the existence of a regional parliament does not necessarily mean regional democracy, even if members of parliament are directly elected. For examples of parliaments with little or no political power, we need look no further than the Central American Parliament of the Central American Integration System (SICA), and the Andean Parliament of the Andean Community (CAN). On the other hand, the issue of empowering regional parliaments is certainly not free from controversy, especially in the European context. It is no coincidence that in the EU this theme is one of the most disputed, the EU being the RIO that possesses the most powerful parliament of all its peers – the European Parliament. As Anderson (1999) points out, the issue of further empowering the EP becomes more contested as it is intertwined with discussions about the future and the final goals of the integration project.

... those who seek to eliminate or reduce the democratic deficit face an uphill battle; their agenda, which typically includes a much strengthened European Parliament, is virtually indistinguishable from the agenda of those who seek to push the integration process in the direction of a federal outcome: a United States of Europe. Since the end point of integration has always been bitterly contested among the member states, a situation that has intensified in the post-Maastricht period, it should come as no surprise that progress on eliminating the democratic deficit has often fallen victim to deadlock on these more fundamental debates about integration and national sovereignty (Anderson 1999, 4–5).

Another way to look at the relationship between regional parliaments and democracy in RIOs is to consider the potential these institutions have for a positive influence on the democratization of the regional system as a whole. The relationship between democracy and the existence of a powerful parliament is developed by Steven Fish (2006), who argues that the presence of a ‘strong’ legislative in national political systems exerts a positive influence on democratization. His measurement of the power of national legislatives is based on an index (the Parliamentary Power Index, or PPI), which takes into account measures of the parliament’s capacity to

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3 Until recently, the former Mercosur’s Joint Parliamentary Commission could have also been included among parliamentary structures with no real power over the integration process. It was substituted by the newly created Parlasur, which has been established with no significant legislative, budget, or control powers. An evaluation of the influence this regional parliament will exert on the South American integration will only be possible in the future, after it has completed its transitional phases (Erthal 2006).
monitor the president and the bureaucracy, their liberty in relation to presidential control, their authority in specific areas and the resources at their disposal to finance their activities (Fish 2006, 7–8). The author demonstrates that there is a strong correlation between the improvement of the PPI-rating of a country and the rating it receives in the Freedom House democracy index. While countries that receive good PPI-ratings tend to receive significant improvements in Freedom House rating, the same did not occur with those states with low PPI-ratings. According to the author, this occurs because a weak parliament hampers horizontal accountability, its limited relevance discouraging the development of political parties which establish the link between population and elected representatives (Fish 2006, 12–13). Fish’s data show that even countries which are impoverished or emerging from long-term autocratic regimes may become open regimes and that ‘would-be democratizers should focus on creating a powerful legislature’ (Fish 2006, 18).

Transferring this logic to the regional level, the hypothesis would be, in the case of RIOs, that the inclusion of a parliament, or some equivalent legislative institution, in the regional system should tend to, just as with national systems, provide a strong democratizing impetus. In this way, a regional parliament appears not only as the product of an effort to make the system more democratic – as is the usual interpretation in literature on regional integration – but is also an agent of democratization in itself. According to this hypothesis, therefore, in RIOs which incorporate a parliament with effective powers, we should also see an intrinsic democratizing impulse and they should therefore tend to democratize over time.

National democracy

A second factor influencing regional democracy is national democracy. Democracies are more likely to commit to long-lasting international agreements and bind themselves to international institutions than non-democracies (Ikenberry 2001). But the specific influence of national democracy over the democratic characteristics of RIOs has not yet been established. Using statistical analysis, Marcelo Coutinho (2001) establishes a correlation between democracy, development and regional integration. He argues that democracy directly influences the stability of countries which, in turn, affects their degree of credibility and is, therefore, a condition for regional integration. In the same way, development also influences integration positively, since developed countries are at less risk of facing economic crises and offer greater security to external investors. Both democracy and development affect the structure of domestic political preferences, political institutions and the availability of information for external actors (Coutinho 2002, 6). According to the argument, the probability that an integration process will be successful and institutionalize is greater among democratic and economically developed countries.

Coutinho argues, furthermore, that this correlation is strongest when the aggregate values of democracy and development are considered – that is, ‘the joint strength that these variables assume regionally’ (Coutinho 2002, 16). Coutinho demonstrates, therefore, the existence of a correlation between the national and regional levels. The levels of democratization and development of countries – especially seen in an aggregate form in their region – result in ‘objective structural conditions’ for
the success and institutionalization of regional integration processes. This argument makes clear that national democracy, along with development, must be seen almost as pre-requisites for regional institutionalization, although the direct effects of national institutions on the democratic characteristics of RIOs remain unclear.

Despite the lack of information about the relationship between national and regional institutions, if the remarks presented here about the importance of national democracy and regional parliaments are valid, then we can expect both these factors to exert a positive influence on regional democracy. The more democratic the member states of a given RIO, the more democratic the RIO will tend to be. If we admit that a powerful regional parliament is an important contribution to regional democracy, then RIOs created by democratic countries would also tend to endow their regional parliaments with effective powers. This chapter does not provide in-depth case studies to test this hypothesis, but it offers a preliminary indication based on the comparison of the indicators for political rights attributed to countries by Freedom House (2006),4 for the RIOs which are discussed in further detail in chapters 5–11 of this volume: the EU, the Caribbean Community and Common Market (Caricom), the SICA, Mercosur, CAN, the Southern African Development Community (SADC) and the Association of Southeast Asian Nations (ASEAN). Indices of the democracy of the member states in these RIOs are summarized in Table 3.2. The last column assesses whether the regional parliament has any power vis-à-vis the regional ‘government’ (the council of ministers or the summit of leaders of state and government).

The data indicate that the EU, being the RIO with the parliament endowed with the greatest real powers, is also the RIO whose members have the highest democracy ratings. Even if we add candidate countries (Croatia: 2; Republic of Macedonia: 3; and Turkey: 3) to the average, it still remains well above the others, at 1.2. The EU is followed by Caricom, SICA and Mercosur, all of which score significantly below their European counterpart, but remain within the ‘Free’ category (1–2.5). These are RIOs that have not transferred significant powers to the regional parliamentary assemblies they have developed. It is interesting to observe that the RIOs with the lowest scores – SADC and ASEAN – are the only ones that have no parliamentary structure at all. The SADC Parliamentary Forum is, in spite of its name, not formally part of SADC but an autonomous interparliamentary organization (see Van der Vleuten, Chapter 9).

This observation reveals that despite having created weak parliaments, the national governments of “Free” RIOs do, in general, have democratic standards in mind, and seek to legitimize their integration enterprise by creating such assemblies. This could be less of a preoccupation for heads of state coming from national polities which are themselves less democratic. These remarks point to a correlation between

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4 The Freedom House Political Rights index reflects a scale from 1 to 7, with 1 being the highest level of political freedom and 7 the lowest. On this scale, countries are divided into three categories: free (1.0 to 2.5), partly free (3.0 to 5.0) and not free (5.5 to 7.0). Despite its methodological limitations, the Freedom House indices remain of great use, since they are the only available indicators with the necessary breadth and continuity for this type of assessment.
Closing or Widening the Gap?

Table 3.2 Regional and domestic democracy compared

<table>
<thead>
<tr>
<th>RIO</th>
<th>Average score on political rights of the member states (between brackets: range of scores)*</th>
<th>Name regional parliament</th>
<th>Control by the regional parliament of the regional government</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Union</td>
<td>1.03 (1–2)</td>
<td>European Parliament</td>
<td>yes</td>
</tr>
<tr>
<td>Caricom</td>
<td>2.0 (1–7)</td>
<td>Assembly of Caribbean Community Parliamentarians</td>
<td>no</td>
</tr>
<tr>
<td>Central American Integration System (SICA)</td>
<td>2.14 (1–4)</td>
<td>Parlacen</td>
<td>partial</td>
</tr>
<tr>
<td>Mercosur</td>
<td>2.4 (1–4)</td>
<td>Parlasur</td>
<td>no</td>
</tr>
<tr>
<td>Andean Community (CAN)</td>
<td>2.75 (2–3)</td>
<td>Parlandino</td>
<td>no</td>
</tr>
<tr>
<td>SADC</td>
<td>3.5 (1–7)</td>
<td>no parliament</td>
<td>–</td>
</tr>
<tr>
<td>ASEAN</td>
<td>4.75 (2–7)</td>
<td>no parliament</td>
<td>–</td>
</tr>
</tbody>
</table>

*Source: Freedom House 2006

National democracy and the creation of regional parliaments, and are compatible with the observations made in chapter 5 of this volume, where the authors include, among other elements, domestic institutions as an influencing factor in the successful creation of legitimate regional institutions.

Nonetheless, it is hard to draw significant conclusions from these observations, since these RIOs have not developed (at least so far) any supranational authority and have not, thus, generated a democratic deficit as national parliaments remain ‘in control’. So far, the only case available for observing the relationship between regional democracy, regional parliaments and national democracy is the EU. Other RIOs may have developed regional parliaments, but have not created a regional system of governance. Since the main reason for the ever greater empowerment of the EP has been the perception of a democratic deficit created by European supranational governance (Rittberger 2005), we could perhaps expect that other RIOs would also follow this path: the impetus for transferring powers to regional parliaments should
come with the strengthening of the regional decision-making process and the ensuing democratic deficit. On the other hand, it is also possible to imagine other paths for institutional development in RIOs outside Europe. Important questions remain, which have yet to be answered satisfactorily. Can a regional parliament develop its powers and become an institution capable of relatively broad influence before national sovereignty is pooled in a regional executive? Can elements other than a democratic deficit provide significant incentives to strengthen regional parliament? Is it possible to develop a regional parliament when national democracy is weak? May a regional parliament act as a democratizing agent for national democracies? These questions remain open and serve as motivation for further research.

Conclusion

This chapter has discussed the relevance of the concept of regional democracy, the criteria which can be used to assess it, and two conditions which may influence its success – namely, the existence of regional parliaments and domestic political democracy. The chapter argued in favour of the possibility of regional democratic governance and, therefore, the democratization of RIOs. Democratic values remain valid, regardless of the level at which political decisions are taken. Preliminary indicators for the concept of regional democracy have been developed here, based on Dahl and O’Donnell, indicating the importance of ‘institutions that make governmental policies depend on votes or other expressions of preference’ and ‘consolidation of democratic institutions or conformity between observed behaviour and formal norms’ (see Table 3.1) to speak meaningfully about regional democracy. Finally, it has been argued that the presence of regional parliaments and domestic democratic institutions in member states seem to contribute to the democratic quality of regional integration organizations. Regional parliaments are considered important institutions for the fulfilment of the democratic criteria selected for RIOs and as agents of further democratization. At the same time, those RIOs created by democratic states seem to be more inclined to create and empower regional parliamentary institutions. For the improvement of democracy in RIOs, we should focus on strengthening democracy at the national level and empowering regional parliaments.

References

Closing or Widening the Gap?


Scholars disagree on the question of whether intergovernmental organizations (IGOs) have only output legitimacy, or also have input and control legitimacy. The same question may be asked of regional integration organizations (RIOs). Based on an analysis of 31 economic RIOs, this chapter will answer the question of whether economic RIOs contribute primarily to output legitimacy, as is generally assumed, or also contribute to input and control legitimacy. The chapter deals with the characteristics of economic RIOs relevant to legitimacy and presents in the last section the indicators which permit empirical research into the three forms of legitimacy within economic RIOs.

Two Conflicting Views

IGOs, according to Robert Dahl, are inherently ill-suited to democratic governance. He regards them as bureaucratic bargaining systems and argues that governments take decisions without much control by, or even awareness of, the citizens of the member states (Dahl 1999, 33–4; see also Erthal, chapter 3). The legitimacy of IGOs, according to Dahl, is not to be found in their ‘democraticness’, but rather in their effectiveness, superior knowledge and concern for affected parties. Elite bargaining in IGOs in terms of legitimacy as discussed in this volume is not a matter of ‘input’ or ‘control’ legitimacy, but rather of ‘output’ legitimacy. Others, such as Ruth Grant and Robert Keohane, argue that the authority of IGOs to act in the international arena is explicitly conferred on them by nation-states, which implies that they can be held accountable for their behaviour. For these authors, legitimacy depends on conformity to established international agreements and shared norms. The legal instruments here are the charters of the IGOs ‘that specify the procedures by which they have to act to make their rulings authoritative, defining what is often referred to as “input” or “process” legitimacy’ (Grant and Keohane 2005, 35). Hence, they assume that input and control (or process) legitimacy may exist and can be recognized. The responsibilities of IGOs may become recognizable through the purposes, procedures and bodies mentioned in their charters with the aim of monitoring these responsibilities and providing checks and balances in the decision-making process. IGOs may also be held to standards articulated in international law, for instance, if they violate human rights treaties or provisions of international courts or tribunals. The existence of these two views leaves us with the puzzle of whether legitimacy of IGOs is only a matter of effectiveness or output legitimacy (as
Dahl, with his sceptical view, assumes), or also one of support and transparency or input and control legitimacy (as Grant and Keohane, with their accountability view, suggest). Before defining indicators for the three forms of legitimacy I will elaborate further on economic RIOs specifically.

The Process of Integration and the Nation-State

In order to avoid the impression that there is only one successful example of regional integration which casts its shadow over other efforts, I will not take the Western European integration process as my starting point, but rather the rise of economic regionalism, of which the European case is a part. Economic regionalism has a dynamic, rather than static, character. Cooperation between nation-states may evolve from less to more intensive forms, from free trade agreements to far-reaching integration. Bela Balassa’s range of five categories of integration starts with no tariffs or quotas (a free-trade area) and continues with the addition of, in turn, a common external tariff (a customs union), a free flow of production factors (a common market) and harmonization of economic policies (an economic union). It ends with unification of policies and political institutions (total economic integration) (Balassa 1994). In reality, there are even more than these five categories. A preferential trade agreement, for instance, can be considered a weaker form of a free-trade area and a monetary union differs from an economic union. Some organizations do not fit Balassa’s range, because their function as ‘booster organizations’ remains restricted to encouraging regional free trade and/or economic cooperation. Sometimes one of Balassa’s categories applies, but the RIO’s purposes reach beyond this specific category. The purpose of a customs union, for instance, may be to become a common market or monetary union, whereas in other RIOs, a customs union is the final destination. Regionalism thus demonstrates its dynamic character. ‘Early stages of integration tend to concentrate on the elimination of trade barriers and the formation of a customs union in goods. As integration proceeds, the agenda expands to cover non-tariff barriers, the regulation of markets, and the development of common policies at both the micro- and macro-levels’ (Hurrell 2000, 43).

Andrew Hurrell clarifies this dynamic character by dividing regionalism into five categories, ranging from rather autonomous transnational economic networks within a certain region (that is, economic regionalization that is not based on the conscious policy of a group of states) to a cohesive and consolidated regional unit (which he calls ‘regional cohesion’). His second category refers to regional political activity in conjunction with common attitudes. Regional awareness (or identity) matters because of the ‘shared understandings and the meanings given to political activity by the actors involved’ (Hurrell 2000, 41). Internal factors (religious traditions, history, or culture) as well as external factors (security threats or cultural challenges) may highlight common elements that promote more intense forms of cooperation than the original coincidental regionalization. His third category, ‘regional interstate cooperation’, follows on from this common understanding and serves as a ‘means of responding to external challenges and of co-ordinating regional positions in international institutions or negotiating forums’, or can be developed ‘to secure
welfare gains, to promote common values, or to solve common problems, especially problems arising from increased levels of regional interdependence’. Whether this interstate cooperation is formal or informal, it is ‘very clearly statist, designed to protect and enhance the role of the state and the power of the government’ (Hurrell 2000, 42). This applies still more to his fourth category (‘state-promoted regional integration’), which is based on specific policy decisions by governments designed to reduce or remove barriers to the mutual exchange of goods, services, capital and people. In his final category regional cohesion forms the organizational basis for policies within the region across a range of issues. It enables the region to play a defining role in the relations between this group of states and the rest of the world.

Regionalism Subordinated to Universalism

Although RIOs developed before global international organizations, they became subordinate to them. Regionalism first developed in the Western Hemisphere. The International Union of American Republics (IUAR) was established in 1890, and the Central American Union in 1907. In the early 20th century, the IUAR, predecessor of the Organization of American States, represented the multilateral regional approach driven by the US and used in conjunction with the Monroe Doctrine. Obviously aware of the power relations which dominated that part of the world, the founders of the League of Nations recognized the IUAR in 1919. Article 21 of the League’s Covenant reads: ‘Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace’.

In 1945, during the foundation of the League’s successor, the United Nations (UN), the American states expressed their fear that the Dumbarton Oaks proposals for the UN would restrict the capabilities of regional arrangements or agencies with some autonomy in relation to the UN Security Council. The US and other powers, however, feared that such independent regional arrangements could undermine the authority of the universal Security Council which they wanted to establish. A compromise was reached. The authority of regional arrangements would be accepted, as long as they recognized the UN’s objectives. Regional arrangements were covered by a special Chapter of the UN Charter with three Articles. Article 52 in Chapter VIII reads:

Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

Although this UN Chapter explicitly refers to security, this understanding of the combination of universalism and regionalism has also had an impact on regional arrangements for economic and social cooperation between states. In principle, the UN only recognizes and accepts economic regional arrangements when they correspond with UN objectives. Most European economic regional arrangements
in the 1930s – such as the British Commonwealth, the French customs union with its colonies, the Baltic Entente and the trade agreement between Bulgaria, Hungary, Rumania and Yugoslavia – were protectionist. The Oslo States were among the few that favoured free trade. After 1945, a protectionist orientation was hard to accept within the UN system, given the dominant free-trade orientation of the General Agreement on Tariffs and Trade (GATT). However, the emergence of the GATT regime itself was a political compromise. The failure of the Havana Charter of a proposed International Trade Organization created a situation in which political support for GATT was exchanged for two major exceptions to the Most-Favoured-Nation Treatment as a fundamental GATT standard – namely, the creation of customs unions and common markets. In practice, GATT policies tried to limit these exceptions by arguing that regional arrangements with the character of customs unions or common markets were acceptable as long as ‘trade creation’ occurred and ‘trade diversion’ was avoided (Choi and Caporaso 2001). Just like the UN, GATT has ensured that regional arrangements are required to declare their existence, which is followed by an assessment of whether regional arrangements are in line with GATT’s general policies. The World Trade Organization (WTO) has maintained GATT’s method in this regard.

Re-active and Pro-active Regionalism

The driving forces behind the creation of RIOs have been external challenges and the search for strategies to cope with them. For examples of this, we need only look at the US in the early 20th century, when the US opted for a multilateral approach in the Western Hemisphere in which Europe was not to intervene, and again in 1944–1945, when the US initiated the process of international institution building and soon after promoted Western-European integration as a shield against communism (Ikenberry 2001). Here, the external challenges, whether of an economic or a security nature, caused a re-action by the hegemon, which in international relations takes the form of an international cooperative alliance whose aim is to resist that challenge. Although realists, who stress the importance of the hegemon’s role in creating regimes, assume that such alliances will be temporary, history has shown that cooperation often goes through a process of institutionalization which enhances the permanent character of cooperation.

However, regionalism does not only result from hegemonic strategies, but also from the pro-active policies of weaker states in a certain region. In order to withstand external challenges they themselves may try to become stronger players by uniting on a regional basis. The reluctance of the ‘North’ to let the ‘South’ participate in the world economy on fairer, more equal terms was already an issue at the 1944 Bretton Woods conference. It was decided, however, to give European recovery priority over Southern development (Murphy 1997). This imbalance encouraged the Latin American states to strengthen their position in the world economy through regional cooperation. This pro-active strategy was based on the ideas of the Dependency School. For them, regionalism became ‘a tool in the struggle to end the exploitative and dependent relationship between the developing countries (the South) and the
industrialized countries (the North’) (Fawcett 2000, 15). Latin and Central American RIOs, as well as others, are therefore to be seen as autonomous developments, rather than as copies of Western European integration, although to some extent they have drawn on European ideas and experiences.

On the subject of economic regional cooperation among developing states, Andrew Axline discerns four generations of regionalism. An analysis of this development may help to determine the conditions for successful regional cooperation in relation to legitimacy. The first generation consisted of attempts to transfer the policies of trade liberalization that had been applied in industrialized economies to an underdeveloped setting. Examples of this are the Latin American and Caribbean free trade associations established during the 1960s and the Association of South East Asian Nations. The second generation moved away from regionalism as a means of promoting trade and economic growth and used regionalism as a means of industrialization and economic development, known as ‘regional import substitution’. Although promoted by the UN regional Economic Commissions, this conflicted with GATT policies. The third generation had a greater political impact since regional cooperation was heading towards the adoption of a common front among developing countries using regional policies as a form of ‘collective self-reliance’. ‘Joint policies within the region were augmented by regional external policies towards third countries and common negotiating positions in larger international forums’ (Axline 1994, 3). This politicization led to turbulent times for RIOs, but although weakened most RIOs remained in existence.

New regional starts (both as reorganizations and new institutions) made around the end of the Cold War (during the late 1980s and early 1990s) mark a fourth generation, with a move back to trade liberalization measures ‘often on the basis of overlapping bilateral agreements rather than multilateral regional obligations’. The Andean Group is an example. Another characteristic, revealed by Mercosur and the Southern African Development Community, is ‘specific cooperation on individual programmes among several countries’ (Axline 1994, 4). The liberalization process of the 1980s, in line with the ideas of Milton Friedman, promoted regionalism as a shield against the consequences of this ‘new’ globalization. In the insecure environment of the revived Cold War of the 1980s, when bipolarity was still dominant, various regional organizations, often with a strong economic character, represented a serious attempt ‘to create a security consensus in a given area without the direct backing of a major external power’, according to Louise Fawcett (Fawcett 2000, 16). The 1990s represented a different era which allowed greater freedom to regionalism, the restraints of the Cold War having vanished. Furthermore, the US actively promoted regionalism and even became a practitioner. Feeling the need to manage the increased levels of interdependence in the region, the US became a regional player through NAFTA (North American Free Trade Agreement) and its FTAA strategy for the Western Hemisphere (Free Trade Area for the Americas). Now, preferential trade agreements were used with increasing regularity to help prompt and consolidate economic and political reforms among prospective members, which had been ‘a rarity during prior eras’, according to Mansfield and Milner. Finally, regionalism was accompanied by ‘high levels of economic interdependence, a willingness by the major economic actors to mediate trade disputes, and a multilateral (that is,
the GATT/WTO framework that assists them in doing so and that helps them to organize trade relations’ (Mansfield and Milner 1999, 601).

**Conditions for Successful Regional Cooperation**

An analysis of the hampering, stagnation and failure of economic RIOs in their ongoing evolution as described above produces at least four conditions which must be met for successful regional cooperation, two at the level of the state and two at the level of the RIO. States engaging in regional cooperation must have sufficient ‘stateness’, as well as sufficient and stable domestic support. RIOs, in turn, must be able to produce an acceptable distribution of benefits (or losses) and contribute to an understanding among their member states’ citizens of their double allegiance (both national and regional).

The *first* condition refers to a nation-state’s need for sufficient and viable institutions in order to cooperate regionally. Its political, economic and social systems must be developed and flexible enough to adapt to changing circumstances as a result of external influences while maintaining political and administrative continuity. This ‘stateness’ was lacking in the 1960s, when newly-created African states began to function as independent but still inadequately equipped entities. A lack of state strength and its negative impact on regionalism are also found more recently as the result of state failure. ‘In many parts of the post-colonial world political instability, civil war, economic mismanagement, and environmental degradation interact to undermine the cohesion of state structures, to erode the economic base and social fabric of many weak states, and to produce a deadly downward spiral leading towards disintegration and anarchy’ (Hurrell 2000, 67).

The *second* condition is that, given the distributive consequences of cooperation, governments engaged in regional cooperation must be able to gain support from within their domestic system widely enough to continue and intensify integration. ‘Those groups suffering losses due to a particular policy or changes in a policy will oppose it, while those benefiting from the policy will support it. Various domestic groups thus will demand different policies, and a government’s economic policy choices often will reflect the underlying preferences of the strongest and best-organized interests within society’ (Mansfield and Milner 1997, 12). Governments, therefore, must remain aware that the discriminatory effects of regionalism may endanger their popularity, particularly if they want to intensify cooperation.

The *third* condition for success is that governments should agree not only on common policies contributing to the region’s development, but also on an acceptable distribution of the benefits between them. The 1960s showed that if agreed mechanisms for the (re)distribution of gains and losses from integration are absent, polarization arises between ‘growth’ and ‘stagnation’ poles (cf. Axline 1977, 83–8). Latin American experiences during the same era reveal three problems which beset integration endeavours (cf. Macbean and Snowden 1981, 187–8):

1. the distribution of costs and benefits, especially when dynamic destabilizing
tendencies emerged that seemed to benefit most those already better off; 
2. the incipient politicization of the integration process; and 
3. the necessity among partners to agree on underlying policy goals, which 
became problematic given the high degree of politicization and strong nationalist feelings.

If the costs and benefits of regional integration are unevenly distributed among 
the participating states, those not benefiting from them will oppose policies that will 
bring regional gains. This also raises the issue of identity: does national identity 
prevail in such situations, or is there sufficient regional identity to counterbalance 
any nationalist feelings?

This leads us to the fourth condition: that governments and populations develop 
a sense of ‘double allegiance’ which combines national and regional understandings 
in such ways that further integration is not blocked. This implies that governments 
are capable of successfully playing ‘two-level games’, in which they are aware of 
national preferences and domestic support and also manage to look for opportunities 
to intensify regional integration and to win domestic support for them, even when 
integration can bring potential costs with it. Such situations require awareness among 
citizens that they are both national subjects and participants in a RIO. The term ‘double allegiance’ refers to a situation in which national allegiance remains undiminished while citizens develop a secondary allegiance which allows regionalism to continue its existence or to intensify cooperation (cf. Milward 1995, 19). The creation of this secondary allegiance also depends on the RIO. The minimum to be expected is that a RIO which seeks to intensify cooperation also tries to receive support from the citizens of its member states, either by engaging them and their representatives in the common endeavour, or by providing transparency about what is taking place within it.

The first and the third condition for successful regional cooperation (‘stateness’ 
and ‘RIONess’) can be related to control legitimacy, the second and the fourth 
condition (domestic support and double allegiance) to input legitimacy.

Identifying Input, Control and Output Legitimacy

In order to establish whether economic RIOs display any of the three forms of 
legitimacy, indicators for each of the three forms need to be established. If economic 
RIOs have higher aspirations with regard to regional integration (establishing, 
resuming, or intensifying cooperation), their concern for legitimacy should increase, 
not only with output legitimacy (effectiveness), but also with input and control legitimacy (support and transparency). The subordination of regional to universal 
organizations can be related to output legitimacy because it presupposes the universal 
organizations’ consent for regionalism. This leads to the following indicators of 
input, control and output legitimacy of economic RIOs.

With regard to input legitimacy, it can be argued that inputs coming from actors 
other than governments contribute to this kind of legitimacy. It is assumed that, if 
such representation is taking place, often in a consultative form, governments have
felt the need to increase the organization’s legitimacy by engaging actors involved in domestic or international politics. Indicators are therefore representations by such actors as: 1) parliamentarians, 2) interest groups, 3) non-governmental organizations (NGOs) with a consultative status, 4) experts, 5) subnational authorities, and 6) IGOs with an observer status.

With regard to control legitimacy, it can be argued that the presence of independent bodies playing a role alongside governments during the decision-making process within a RIO represents this kind of legitimacy. It is assumed that governments and RIOs establish such international bodies in order to increase control legitimacy. They contribute to checking and balancing the principals (governments) and their involvement provides greater transparency and accountability than if governments were the sole decision makers. Indicators are the availability of: 1) independent secretariats and supranational organs, 2) dispute settlement bodies (tribunals, courts), 3) autonomous monetary institutions (for instance, involving central bank governors), 4) ombudspersons and auditors, and 5) parliamentary structures with co-decision powers.

With regard to output legitimacy, it can be argued that recognition by authoritative IGOs such as the UN or GATT represents this kind of legitimacy for economic RIOs. It is assumed that by seeking such recognition, economic RIOs will improve their effectiveness and thus their output legitimacy. The same goes for formal cooperative agreements with other international or regional organizations. Indicators are the presence of: 1) an observer status granted by the UN, 2) notification by the GATT/WTO, 3) an observer status granted by the WTO, 4) an observer status granted by other IGOs, and 5) cooperative agreements with other IGOs.

**Input, Control and Output Legitimacy in 31 Economic RIOs**

In order to investigate the issue of legitimacy empirically, 31 economic RIOs were selected as characteristic of their region: eight from Africa, four from Asia and the Pacific, five from the Middle East and Western Asia, nine from the Western Hemisphere and five from Central and Eastern Europe/former Second World (Western Europe was excluded). In order to ensure comparable data one encyclopaedic handbook was used as a source for all organizations (Europa Directory 2001).

Table 4.1 provides an overview of these RIOs and their main characteristics. The most common kinds of economic cooperation found among the selected RIOs (sometimes in combination) are: booster organizations (11), preferential trade agreements (11), customs unions (8) and free trade areas (6), with only two common currencies (monetary union), one common market and one economic union (see Table 4.1). With regard to integration perspectives beyond preferential trade agreements, two RIOs will remain a free trade area and two a customs union, whereas 16 also aim towards a common market, economic union and/or monetary union (one even a political union). This number confirms the dynamic character of integration assumed by Hurrell. But it must also be mentioned that the more intensive forms of integration remain small in number (which is different from the purpose of becoming more intensive). 13 of these 31 RIOs went through a process of reorganization, most of
them during the 1990s (9) and 1980s (3). These reorganizations indicate that these economic RIOs were able to adapt to serious changes in their environment and confirm Axline’s move from the third to the fourth generation of regionalism (back to measures of trade liberalization due to the new economic mood of the 1980s).

Although most of the RIOs selected are primarily economic organizations, nearly half of them (15) include a security dimension (institutionally: 12; ‘on the agenda’: 3), an issue hinted at by Fawcett and mentioned by Hurrell as a factor relevant to regional awareness. Five security dimensions are found in booster organizations, four in preferential trade agreements, three in free trade areas, two in customs unions and one in an economic union. This implies that economic regional cooperation, irrespective of type, does not need to restrict itself to economic issues.

Tables 4.2, 4.3 and 4.4 provide the various forms of legitimacy (input, control and output) found according to the indicators discussed above. The general finding of the investigation with regard to the three forms of legitimacy is that all forms of legitimacy (input, control and output) are found in the group of 31 RIOs. Comparing the three forms of legitimacy, output legitimacy proves the strongest of the three with a ‘total value’ of 74, followed by input legitimacy at 52 and control legitimacy at 43. This order was determined by assessing the legitimacy aspect of each RIO (with a scale ranging from ‘absent’ to ‘very strong’, in combination with grades ranging from zero to five; see legend under Table 4.2) and calculating a total score for all 31 RIOs. Referring to the two views discussed in the first section (Dahl’s sceptical view and Grant and Keohane’s accountability view) we may conclude that the data does not support the sceptical view. Input and control legitimacy may be weaker than output legitimacy, but they are clearly present.

Output legitimacy is expected by both views. The subordination of regionalism to universalism implies that, in order to perform, RIOs need to pursue the same goals as universal IGOs, such as the UN and GATT/WTO, and/or need to conclude formal agreements with other IGOs. The findings shown in Table 4.4 confirm these expectations. According to the five indicators, output legitimacy was found in 17 RIOs having a UN observer status, 19 providing GATT/WTO notifications, 13 having a WTO observer status, two having an observer status elsewhere, and 23 having concluded cooperative agreements with other IGOs. Conclusion: given the total numbers of observer statuses (32), notifications (19) and agreements (23), RIOs are recognized by universal IOs, thus enhancing their output legitimacy.

Input Legitimacy is not expected by Dahl but hinted at by Grant and Keohane. It is related to the necessity of finding sufficient domestic support in combination with an understanding of the evolving integration. According to the six indicators, input legitimacy was found in 19 parliamentary structures (of which two were just proposals), 19 arrangements for interest group representation, nine arrangements for NGO representation, three arrangements for the inclusion of experts, and one arrangement for subnational authorities representation. Although these indicators do no necessarily reveal their actual influence (see, for instance, Malamud and De Sousa, chapter 5), it must be observed that parliamentarians are involved in nearly two-thirds of the cases (19 of 31 RIOs). This equals the number of arrangements for interest group representation (19) and is roughly twice as large as the arrangements for NGO representation (9). Seven RIOs provide outsiders (IGOs) with the opportunity
to observe directly what is going on within their organization (see Table 4.1). The numbers of other indicators (experts, subnational authorities) remain small. The conclusion is, then, that the numbers of parliamentary structures and interest group representation (both 19) indicate that input legitimacy matters, mostly through these channels, rather than through NGO or IGO representation. It must be observed that the engagement of parliamentarians in this group of RIOs is a rather recent, post-Cold War phenomenon – one arrangement dates back to 1979, three to 1989, nine to the 1990s and four to 2002.

Control Legitimacy is not expected by Dahl but is hinted at by Grant and Keohane and relates to providing transparency and checks and balances vis-à-vis governments in order to avoid the problems that beset earlier integration endeavours. According to the five indicators control legitimacy was found in four active secretariats, 19 arrangements of dispute settlement (often as a court of justice: 12; two being planned), 16 arrangements with autonomous monetary institutions (of which nine involving central bank governors), and four auditing arrangements; no co-decisive parliamentary structures were found (see Table 4.3). Control legitimacy is thus most visible in judicial procedures (in 19 of 31 RIOs) as well as in autonomous monetary arrangements (16). Control by other arrangements, such as active secretariats or independent Commissions (4), auditors (4) or co-decisive parliaments (0), is rare. The conclusion is, then, that control legitimacy is present, and is effective mostly through judicial and monetary channels. Dispute settlement arrangements often are part of a RIO’s design, but it may take a while before they start functioning. Independent monetary arrangements arise during the process of integration.

Table 4.5 shows the distribution of the results of the major legitimacy indicators among the various kinds of cooperation among the 31 RIOs (this time combinations are neglected). For instance, seven out of 11 booster organizations, five out of nine preferential trade agreements, three out of five free trade areas and all five customs unions have parliamentary arrangements. Five out of 11 booster organizations, five out of nine preferential trade agreements, three out of five free trade areas and all five customs unions have a dispute settlement arrangement. The table indicates that all kinds of cooperation display almost all of the ten legitimacy indicators to some extent. There are hardly any empty cells (with the major exception of the economic union column). This implies that awareness of legitimacy is a matter of regionalism, independent of its specific form. It underlines the previous conclusion that Dahl’s sceptical vision with regard to input and control legitimacy is disputable.

References

European Integration (Boulder: Lynne Rienner).


<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Name</th>
<th>Established/Reorganized</th>
<th>Kind of Cooperation*</th>
<th>Integration Perspectives</th>
<th>Security Dimension</th>
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<tbody>
<tr>
<td>AMU</td>
<td>Arab Maghreb Union</td>
<td>1989</td>
<td>5</td>
<td>BO; common front vis-à-vis EU members</td>
<td>Functioning weakly</td>
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<tr>
<td>APEC</td>
<td>Asia Pacific Economic Cooperation</td>
<td>1989</td>
<td>2</td>
<td>BO for free and open trade and investment</td>
<td>Functioning weakly</td>
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<tr>
<td>ASEAN</td>
<td>Association of South East Asian Nations</td>
<td>1967</td>
<td>10</td>
<td>PTA 1992; Common Effective Preferential Tariff 1993</td>
<td>AFTA 2008; ASEAN Regional Forum</td>
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<tr>
<td>BSEC</td>
<td>Black Sea Economic Cooperation</td>
<td>1992</td>
<td>11</td>
<td>BO</td>
<td>Functioning as subsystem</td>
</tr>
<tr>
<td>CACM</td>
<td>Central American Common Market</td>
<td>1960</td>
<td>5</td>
<td>CU 1961</td>
<td>Functioning as subsystem</td>
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<tr>
<td>CAEU</td>
<td>Council of Arab Economic Unity</td>
<td>1964</td>
<td>12</td>
<td>BO towards CM; joint ventures</td>
<td>Functioning weakly</td>
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<td>Issue(s)</td>
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<td>8</td>
<td>CARICOM Caribbean Community and Common Market</td>
<td>1965 CARIFTA: Caribbean FTA 1973 CARICOM</td>
<td>15</td>
<td>CU 1974; FTA services 2003</td>
<td>CM Foreign policy coordination</td>
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<tr>
<td>9</td>
<td>CBSS Council of Baltic Sea States</td>
<td>1992</td>
<td>11 + EU</td>
<td>BO</td>
<td>Background issue</td>
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<tr>
<td>10</td>
<td>CEFTA Central European Free Trade Agreement</td>
<td>1992</td>
<td>8</td>
<td>FTA 1994</td>
<td>Functioning for non-EU members</td>
</tr>
<tr>
<td>11</td>
<td>CIS Commonwealth of Independent States</td>
<td>1992</td>
<td>12</td>
<td>FTA 1999</td>
<td>CU; Common Economic Space Collective security agreement</td>
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<td>14</td>
<td>EAEC Eur-Asian Economic Community</td>
<td>2000</td>
<td>5</td>
<td>CU 1999</td>
<td>Common Economic Space</td>
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<td>BO</td>
<td>CU; CM</td>
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<td>ECOWAS</td>
<td>Economic Community of West African States</td>
<td>1975 established 1993 reorganized</td>
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<td>1986 IGADD Intergovernmental Authority on Drought and Development 1996 IGAD</td>
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<td>BO</td>
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<td>25</td>
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<td>Pacific Islands Forum</td>
<td>1971</td>
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<td>PTA 1981: SPARTECA South Pacific Regional Trade and Economic Cooperation Agreement</td>
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### Table 4.2  Input Legitimacy in 31 Regional Organizations

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<th>Acronym</th>
<th>Interest Groups</th>
<th>NGOs with Consultative Status</th>
<th>Experts</th>
<th>Subnational Authorities</th>
<th>IGO’s with Observer Status</th>
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<td>APEC Advisory Business Council 1995</td>
<td>Engagement of academics</td>
<td></td>
<td>ASEAN Secretariat; Pacific Economic Cooperation Council; PIF Secretariat</td>
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<td>Business interest groups (called NGOs) 1986</td>
<td>guidelines for relations with NGOs (mainly interest groups) 1986</td>
<td></td>
<td>UN Development Programme is ASEAN Dialogue Partner 1977</td>
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<td>Parliamentary Assembly 1993</td>
<td>BSEC Business Council (observer status)</td>
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<td>Black Sea Commission; Energy Charter Secretariat</td>
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<td>13</td>
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<td>East African Legislative Assembly 1999</td>
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<td>EAEC</td>
<td>Inter-Parliamentary Assembly 2002</td>
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<td>15</td>
<td>ECCAS</td>
<td>ECCAS Network of Parliamentarians 2002</td>
<td>Weak</td>
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<td><strong>17</strong></td>
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<td>Economic and Social Council to be established: consultation of NGOs (Art. 81)</td>
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<td><strong>20</strong></td>
<td><strong>IGAD</strong></td>
<td>Private Sector Forums 2002</td>
<td>IGAD Women’s Desk 1999; IGAD Civil Society Forums 2001</td>
<td>Weak</td>
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<td><strong>21</strong></td>
<td><strong>LAIA</strong></td>
<td>Entrepreneurial Advisory Council; Labour Advisory Council (bodies of Committee of Representatives)</td>
<td>UN Economic Commission for Latin America and the Caribbean, EU, Inter-American Development Bank, Organization of American States, SELA, UN Development Programme</td>
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<td>Joint Parliamentary Commission 1991</td>
<td>Consultative Economic and Social Forum (business and labour unions)</td>
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<td><strong>NAFTA</strong></td>
<td>(Commission for Labour Cooperation)</td>
<td>(Commission for Environmental Cooperation)</td>
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Table 4.2 continued

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<td>24</td>
<td>OECS</td>
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<td>25</td>
<td>PIF</td>
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<td>SAARC Chamber of Commerce; recognized professional associations</td>
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Table 4.3  Control Legitimacy in 31 Regional Organizations

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<tr>
<th>Acronym</th>
<th>Independent Secretariat &amp; Supranational Organs</th>
<th>Dispute Settlement Bodies</th>
<th>Autonomous Monetary Institutions</th>
<th>Ombudspersons &amp; Auditors</th>
<th>Co-decisive Parliamentary Structure</th>
<th>Assessment Control Legitimacy</th>
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<tr>
<td>5 CACM</td>
<td>Secretariat must ensure that treaties are properly executed</td>
<td>Arbitration Tribunal 1960 (ad hoc)</td>
<td>Central American Bank for Economic Integration 1961; Central American Monetary Council 1964 (CBGs); Central American Fund for Monetary Stabilization 1968</td>
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<td>Court of Justice 1979</td>
<td>Andean Development Corporation 1970; Latin American Reserve Fund 1978</td>
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<td>East African Development Bank 1967</td>
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<td>-----------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>22</td>
<td>MERCOSUR</td>
<td>Annex III 1991 for solution of controversies; Protocol of Brasilia: Arbitral Procedure (CBGs are member of Common Market Group, i.e. dependent)</td>
<td>Very weak</td>
</tr>
<tr>
<td>23</td>
<td>NAFTA</td>
<td>No secretariat Dispute Settlement Procedure through Free Trade Commission</td>
<td>Very weak</td>
</tr>
<tr>
<td>24</td>
<td>OECS</td>
<td>Eastern Caribbean Supreme Court 1967 Eastern Caribbean Currency Authority 1965; Eastern Caribbean Central Bank 1983</td>
<td>Weak</td>
</tr>
<tr>
<td>25</td>
<td>PIF</td>
<td></td>
<td>Absent</td>
</tr>
<tr>
<td>26</td>
<td>SAARC</td>
<td></td>
<td>Absent</td>
</tr>
</tbody>
</table>
Table 4.4  Output Legitimacy in 31 Regional Organizations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>UN Observer Status</th>
<th>GATT/WTO Observer Status</th>
<th>WTO Observer Status Elsewhere</th>
<th>Cooperative Agreements with IGOs</th>
<th>Assessment Output Legitimacy</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 AMU</td>
<td>CTD</td>
<td></td>
<td></td>
<td></td>
<td>Very weak</td>
</tr>
<tr>
<td>2 APEC</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Absent</td>
</tr>
<tr>
<td>4 BSEC</td>
<td>X</td>
<td>Energy Charter Secretariat</td>
<td>With UN Industrial Development Organization 1997; UN Economic Commission for Europe 2001; UNEP 2002; EU 2002; World Bank (being elaborated); project cooperation with Food and Agricultural Organization and WTO</td>
<td>Present</td>
<td></td>
</tr>
<tr>
<td>6 CAEU</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Absent</td>
</tr>
<tr>
<td>7 CAN</td>
<td>X</td>
<td>12 Oct. 1992 EC CTD</td>
<td>With EU 1993; Mercosur 1998</td>
<td>Strong</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>Region</td>
<td>Date</td>
<td>Agreement Details</td>
<td>Status</td>
<td></td>
</tr>
<tr>
<td>----</td>
<td>----------</td>
<td>------------</td>
<td>-----------------------------------------------------------------------------------</td>
<td>----------</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>CBSS</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>CEFTA</td>
<td>30 June 1994 GATT XXIV</td>
<td>National association agreements with EU</td>
<td>Weak</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>CIS</td>
<td>X</td>
<td>1 Oct. 1999 GATT XXIV</td>
<td>Present</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>COMESA</td>
<td>26 Sept. 1995 EC</td>
<td>Cooperation agreements with EAC, ECOWAS, IGAD, Indian Ocean Commission, SADC</td>
<td>Weak</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>EAC</td>
<td>X</td>
<td>11 Oct. 2000 EC</td>
<td>Present</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>EAEC</td>
<td>X</td>
<td>21 Apr. 1999 GATT XXIV</td>
<td>Weak</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>ECCAS</td>
<td>X</td>
<td>With African Union 1999</td>
<td>Weak</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>ECO</td>
<td>X</td>
<td>22 Jul. 1992 EC</td>
<td>Very strong</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>ECOWAS</td>
<td>X</td>
<td>CTD</td>
<td>Present</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>EMCCA</td>
<td>29 Sept. 2000 EC</td>
<td>CTD</td>
<td>Weak</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>GCC</td>
<td>11 Oct. 1984 EC</td>
<td>CTD</td>
<td>Present</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>IGAD</td>
<td></td>
<td>IGAD Partners Forum (EAC, EU, World Bank, UN Development Programme)</td>
<td>Very weak</td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td>Region</td>
<td>Status</td>
<td>Date 1</td>
<td>Date 2</td>
<td>Description</td>
</tr>
<tr>
<td>-----</td>
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<td>--------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>21</td>
<td>LAIA</td>
<td>X</td>
<td>1 Jul. 1982</td>
<td>EC CTD, CTE, CTBT</td>
<td>With IOs with observer status; CAN 2001</td>
</tr>
<tr>
<td>22</td>
<td>MERCOSUR</td>
<td></td>
<td>5 Mar. 1992</td>
<td>EC</td>
<td>With EU 1992; CAN 1998</td>
</tr>
<tr>
<td>23</td>
<td>NAFTA</td>
<td></td>
<td>1 Feb. 1993 GATT</td>
<td>1 March 1995 GATS V</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>OECS</td>
<td>X</td>
<td></td>
<td></td>
<td>Associate member of CARICOM; links with Caribbean Development Bank, IDB, World Bank</td>
</tr>
<tr>
<td>25</td>
<td>PIF</td>
<td>X</td>
<td>20 Feb. 1981</td>
<td>EC SPARTECA (South Pacific Regional Trade and Economic Cooperation Agreement)</td>
<td>CTD, CTE</td>
</tr>
<tr>
<td>26</td>
<td>SAARC</td>
<td>X</td>
<td>25 Apr. 1997 EC</td>
<td>SAPTA (South Asian PTA)</td>
<td>With UN Conference on Trade and Development 1993; Colombo Plan, UN Economic and Social Commission for Asia and the Pacific, EU, International Telecommunications Union, UN Drugs Control Program, UN Development Program, UN Children’s Fund</td>
</tr>
<tr>
<td>27</td>
<td>SADC</td>
<td>X</td>
<td>9 Aug. 2004 GATT</td>
<td>CTD</td>
<td>With ASEAN, African Union, COMESA, EAC</td>
</tr>
</tbody>
</table>
Table 4.4 continued

<p>| | | | | | | | | | | | |</p>
<table>
<thead>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>SEECP</td>
<td>Various IGO’s as special invitees</td>
<td>Absent</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>SELA</td>
<td>CTD, CTE, CSPM</td>
<td>With UN Economic Commission for Latin and Central America, G77, UN Conference on Trade and Development</td>
<td>Present</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>SICA</td>
<td>CTD</td>
<td>With EU 1993</td>
<td>Present</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>WAEMU</td>
<td>3 Feb. 2000 EC</td>
<td>CTD</td>
<td>(With EU)</td>
<td>Weak</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Total | 17 GATT/WTO notifications | 13 WTO observer status | 2 observer status elsewhere | 23 cooperative agreements with IGOs | Absent: 4 | Very weak: 3 | Weak: 8 | Present: 10 | Strong: 5 | Very strong: 1 | TOTAL VALUE: 74 |

CSPM = Observer status WTO Commission on Sanitary and Phytosanitary Measures  
CTBT = Observer status WTO Committee on Technical Barriers to Trade  
CTD = Observer Status WTO Commission on Trade and Development  
CTE = Observer Status WTO Commission on Trade and Environment  
EC = Enabling Clause: allows preferential trade in goods among developing countries (1979 GATT decision)  
GATS = General Agreement on Trade in Services  
GATT XXIV = Article XXIV of the Agreement as a basic rule for trade in goods
Table 4.5 Legitimacy Indicators According to Kinds of Regional Cooperation

<table>
<thead>
<tr>
<th>KIND OF REGIONAL COOPERATION</th>
<th>Booster Organization N=11</th>
<th>Preferential Trade Agreement N=9</th>
<th>Free Trade Area N=5</th>
<th>Customs Unions N=5</th>
<th>Economic Union N=1</th>
</tr>
</thead>
<tbody>
<tr>
<td>INPUT LEGITIMACY</td>
<td>Parliaments</td>
<td>7</td>
<td>5</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Interest Groups</td>
<td>6</td>
<td>7</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>NGOs with Consultative Status</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>IGOs with Observer Status</td>
<td>4</td>
<td>2</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>CONTROL LEGITIMACY</td>
<td>Dispute Settlement Bodies</td>
<td>5</td>
<td>5</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Autonomous Monetary Institutions</td>
<td>3</td>
<td>6</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>OUTPUT LEGITIMACY</td>
<td>UN Observer Status</td>
<td>5</td>
<td>5</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>GATT/WTO Notification</td>
<td>0</td>
<td>9</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>WTO Observer Status</td>
<td>4</td>
<td>5</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Cooperative Agreements with IGOs</td>
<td>7</td>
<td>8</td>
<td>4</td>
<td>4</td>
</tr>
</tbody>
</table>
PART 3
RIOs, Regional Parliaments and Subnational State Actors
Introduction

After four centuries of gradual development, the modern parliament was born in England in the 17th century as an instrument by which the rising bourgeoisie could control the monarchy. It claimed legislative supremacy, full authority over taxation and expenditure, and a voice in public policy through partial control (exercized by impeachment) over the king’s choice of ministers. It later spread to America – becoming a separate branch of power – then to continental Europe and subsequently to the rest of the world, becoming the emblematic institution for political deliberation and legislative decision-making in modern nation-states (Orlandi 1998). Parliaments, or analogous legislative assemblies, were also established in several subnational units such as states or provinces, some of which were originally autonomous but later united into federal nation-states. Subnational parliaments date back at least as far as the 18th century, being present in the American colonies when independence was declared and the Constitution established. Supranational parliaments, in contrast, are a much more recent phenomenon.

The first significant supranational parliament was the European Parliament which, in the words of the 1957 Treaty of Rome, ‘represents the peoples of the States brought together in the European Community.’ The Parliament’s first direct elections were held in June 1979; since then, it has derived its legitimacy from direct universal suffrage and has been elected every five years. Other processes of regional integration have attempted to replicate such a supranational legislative assembly, Latin America being the region where these experiments have gone the farthest. In November 2005, membership of the Inter-Parliamentary Union (IPU) accounted for 143 national members and seven associate members, all of the latter having an international nature.

This phenomenon raises some questions. First, why should region-makers take the trouble to establish a regional parliament (Rittberger 2003) when integration is
first of all an economic endeavour? Second, are regional parliaments real parliaments, or do they fail to come up to the mark? Third, how are these parliaments different, especially regarding those that have taken root in Europe and Latin America? This article addresses these questions through a comparative analysis of five regional – also called supranational – parliaments. It includes all the Latin American cases mentioned plus the Mercosur Parliament (an embryonic institution that deserves closer scrutiny) and the European Parliament. Some bodies are excluded from this comparison: the Parliamentary Assembly of the Council of Europe is not discussed, since it has no ambition to develop any further and the African cases are too young to be evaluated.

This article proceeds as follows. Each of the first five sections analyze one parliamentary assembly in order to summarize its historical evolution, examine its structure and assess its competences and performance in light of the classical parliamentary functions. These functions are fourfold: representation (related to input legitimacy), legislation/decision-making (output legitimacy), monitoring of the executive branch and the bureaucracy (control legitimacy), and leadership selection and formation – which, as Weber (1994) argued, was essential to democracy. The last section elaborates a handful of comparative conclusions.

The European Parliament (EP)

Anyone looking for the first time at the institutional fabric of Europe is likely to be surprised by the numerous arrangements that overlap, interact and cooperate to make this a unique case of regional integration. Due to the level of integration reached between its members and the scope and intensity of its policy competencies, the EU has become the core organizational structure in Europe. There is, however, a series of other organizations, established prior to the 1957 Rome Treaties, whose contributions to the singularity of the European integration process have been noteworthy – albeit less wide-ranging and encompassing fewer decisional competencies. Some of these international organizations have survived independently of the European integration process, even if they have retained only a symbolic or deliberative role (for example, the Council of Europe) or have later been incorporated into groups involved in the European treaties (for instance, the Western European Union). Some organizations have limited their membership to European nations; others, such as the OECD, have extended their activities to other countries and regions of the world. However, one common feature of most of these organizations is the existence of a parliamentary assembly.

One could also mention other parliamentary initiatives such as the Nordic Council (which includes representatives from the Scandinavian parliaments), the Benelux Inter-parliamentary Consultation Council, the Baltic Assembly, the Black Sea Parliamentary Assembly for Economic Cooperation and the Parliamentary Conference of Central European initiative. None of these extra-EU bodies have,
however, played a similar role to the European Parliament with regard to the European integration process, and nor do they enjoy comparable competencies. Of all the regional parliamentary bodies, the EP is the only one that has developed real decision-making powers and become a central component of the complex decision-making structure of the European Union. In order to understand how the EP has evolved from merely another parliamentary assembly into the foremost one, it is useful to review the structures and processes of the European Community.

**Evolution and competencies of the European Parliament**

The founding fathers of the 1951 Treaty of Paris (ECSC) sought a rupture with the past. The failure of the Council of Europe as an institutional response to the idea of a united Europe was a clear example of what the ex-members of the Council, such as Paul-Henri Spaak, wanted to avoid in their new project (Urwin 1997, 78). Their ambitious project was based upon an institutional compromise between intergovernmental and supranational decision-making and a tripartite liberal constitutional framework: an executive that initiated and implemented policies; an assembly in which those policies were debated and decided upon; and an independent judicial body whose members reviewed decisions and settled conflicts.

The originality of this regime lay in the translation of the traditional tripartite division of powers – executive, legislative and judicial – into an international institutional arrangement which combined intergovernmental and supranational decision making. The competencies of the three major political bodies – the Commission, the Council of Ministers and the European Parliament – were intertwined to the extent that a clear-cut division of the executive and legislative powers was, and remains, difficult to establish.

Two institutions share the executive function: the European Commission and the Council of Ministers. The European Commission is a supranational body appointed through common agreement between the member states, but which is independent from their respective governments. The Commission represents the interests of the community, acts as ‘guardian of the Treaties’ (by ensuring that treaties and Community law are respected, even if this means bringing a member state before the ECJ), and remains the hub of the decision-making system (Mény 1998, 24). The Council of Ministers is an intergovernmental body composed of representatives of the member states, which embodies their interests.

Although these two bodies are termed executive organs, they also carry out legislative functions. The Commission has a near monopoly on initiating legislative proposals within the community and is responsible for managing existing common policies and monitoring the application of Community law. It can also make decisions (autonomously or upon delegation from the Council), give its opinion and make recommendations. The Council has broad decision-making powers: it may pass regulations and directives, conclude agreements and treaties (which are negotiated with the Commission), and shares budgetary powers with the Parliament.

The EP, like the national parliaments of all EU member states, is elected by universal suffrage; however, unlike most European parliamentary regimes, the ‘European government’ does not emanate from any majority represented in the EP.
In other words, election to the EP is not intended as a reward or punishment for a ‘European executive’, even if the EP has the right to dismiss the Commission in a vote of censure by a two-thirds majority. The EP also has supervisory powers over EU bureaucrats and agencies, and decides on the adoption of legislation together with the Council of Ministers by means of the co-decision procedure. The EP can install inquiry commissions, question Commissioners on any issue relating to a common policy, pass resolutions, and hold hearings. However, limited legislative powers and the inability of voters to choose their European executive at the ballot box may partly explain the low turnout at European elections and the tendency of national parties to use these elections to test national incumbent majorities. To this complex institutional triangle, as it is called, one should add the ‘decisional power’ that emanates from the European Court of Justice’s decisions (Mény 1998, 25).

We should not forget that this decision-making structure operates within a complex and evolving balance between three sources of input legitimacy with competing interests: the interests and demands of the European people(s), represented in the EP by their MEPs; the interests of member states, as represented in the Council; and the community interests represented in the Commission and expressed by treaties, Community law and the jurisprudence of the ECJ.

The empowerment of the European Parliament

Initially, the role of the EP was similar to that of the Council of Europe parliamentary assembly with regard to the scope of its competencies and its institutional design. The EP, known as ‘the assembly’ until 1962, was essentially a forum composed of delegations appointed from the national parliaments. It had a limited consultative function regarding a small number of issues and legislative proposals prior to their adoption by the Council. The founding fathers did not provide the EP with a central role in the European integration process from the outset. Instead, its competences evolved over time mostly due to institutional mimesis (Costa 2001, 19).

The creation and institutional set-up of the EP was in line with a pattern of institutional design common to all post-1945 occidental regional and international organizations. The majority of these organizations had a similar decision-making structure: a council where decisions were made and a consultative assembly of a more or less representative nature (i.e. UN, WEU, Council of Europe and NATO). The symbolic dimension attached to this type of parliamentary institution was also crucial. These assemblies served not only as an interface between the organization and its national members, but they also made it possible for the political elites of countries that had been at war with each other to be in close contact, and hence the assembly helped to restore the mutual trust and cooperation between old adversaries. Furthermore, in a Cold War context they also sent out the message that the West ‘does it better’.

However, there was another important factor involved: the pooling of sovereignty. The idea of building a political project beyond the nation-state, which both Robert

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3 The 1986 Single European Act would finally formalize the denomination of ‘European Parliament’.
Schuman and Jean Monnet had in mind, raised problems of legitimacy and accountability, since it challenged the traditional concept of territorial sovereignty. It was inevitable that the supranational political project would need to include some sort of plenary assembly where the different views, positions and ideas of its members could be expressed and where the decisions made on a much more restricted level for the totality of members could be subject to collective scrutiny and, possibly, majority deliberation. It was too early to talk about a parliament of European people(s) as part of a copy-paste version of national democracies transplanted to the regional level, an idea that had always displeased some European countries (such as the UK). Instead, the founding fathers counted on the ability of such a parliamentary institution to ensure the efficacy and legitimacy of the activities of the supranational High Authority created for the European Coal and Steel Community.

Which factors have contributed to the evolution of the EP from simply ‘another international parliamentary assembly’ into a unique supranational parliament with real decisional powers and a central role in the process of European integration? The answer is not straightforward, but three factors are worth mentioning: early supranationalism, extraordinary leadership and direct elections. Let us develop these further.

First, the institutionalization of the EU evolved from a single objective and supranationally oriented organization – the European Coal and Steel Community – whereas other European international organizations, such as the Council of Europe, were created with the purpose of addressing multiple and diffuse objectives and were always kept intergovernmental. The latter organizations have affected the lives of Europeans, but none of them have had enough strength or vocation to lead to the creation of a supranational structure. The supranational regulation of the production of coal and steel, the raw materials of war and industry and sources of energy, represented a small policy step to countries that had been at war with each other, but it would prove to be a giant leap in the European integration process.

Second, the leaders behind the venture of European integration had common experiences and a common vision. Monnet, Schuman and Spaak had served the Council of Europe project, but later abandoned it in reaction to British euroscepticism and reluctance to move towards supranational forms of government, even though this only concerned the regulation of a single industrial or commercial sector. Their views were backed by a small number of countries – the Six – that had decided to expand the ‘community method’ into other economic and social policy areas. Each of these countries had strong reasons to believe in the process of European economic integration: Benelux had already implemented a successful customs area; the running of the High Authority had promoted a lasting Franco-German understanding; and in Italy an important federalist movement had been born.

Third, the direct election of the European parliament in 1979 and the subsequent emergence of Euro-party formations were the turning point for the role this body would play in the triangular institutional complex of the European Community and in the integration process itself (Corbett 1998). Since then, the EP has been elected by the European peoples every five years, according to a distribution of seats that roughly reflects the demographic weight of each state. A system of proportional representation for EP elections, which had already been in place in most member
states since 1979, has been used by all member states since the 1999 elections. The electoral dynamics, together with the progressive empowerment granted by each successive treaty reform and the spillover effects of qualified majority voting in the Council, transformed the EP into the only supranational parliamentary assembly in the world that enjoys simultaneously democratic legitimacy, decision-making competencies and the power to bring down a ‘government’ (the Commission). In it, European parliamentarians have the chance of honing their political skills in an influential, supranational environment – even if they are frequently recruited from the ranks of elder politicians or party dissidents, either as a golden parachute for retirement or as a mutually convenient arrangement to take out internal opponents (Bardi 1996; Scarrow 1997). The evolution of the EP over fifty years is elegantly synthesized by Hix, Raunio and Scully (2003, 191–2):

For much of the half-century since its humble beginnings, the European Parliament… was marginal to the development of European integration and the politics of the European Union. Initially, the institution was essentially a consultative body composed of delegates of national parliaments. Fifty years on, the elected Parliament has significant legislative and executive investiture/removal powers and all the trappings of a democratic parliament that flow from such powers: powerful party organizations, highly-organized committees, a supporting bureaucracy and constant lobbying from private interest groups.

From a European perspective, the EP may still be a developing body which must negotiate many shortcomings; from the perspective of an outsider, however, the EP is the archetype to which every supranational parliament will be compared to for years to come. Moreover, it has become the standard model for those who undertake the mission of institutionalizing regional integration elsewhere. Thus far, Latin America is the region where its influence has proved the strongest.

The Latin American Parliament (PARLATINO)

The Latin American Parliament is a regional, unicameral assembly made up of members of twenty-two national parliaments of Latin America and the Caribbean. Founded in Lima, Peru, in December 1964, it was later institutionalized by an international treaty signed in Lima in November 1987 and, since 1992, has been permanently located in the Brazilian city of Sao Paulo. Its main goals, as stated in its charter, are the defence of democracy, the promotion of regional integration and the strengthening of cooperation among parliamentarians and parliaments across Latin America. It has legal personality and a budget provided by the signatory states. Its official languages are Spanish and Portuguese.

The PARLATINO assembly is composed of national delegations sent by the member parliaments. Each national delegation may appoint up to twelve representatives in a proportion that reflects the weight of the national parliamentary
groupings. If a delegation has less than twelve members, each of them can cast up to four votes without exceeding the overall number of twelve; this disposition grants all countries the same voting power regardless of country size. A quorum is obtained when more than half of the national delegations are present, provided that their delegates represent at least one third of the overall votes. PARLATINO gathers once a year in its permanent location. It has no decisional authority and limits itself to passing agreements, recommendations and resolutions that are not binding upon any other body or organization.

One puzzling characteristic of PARLATINO is that its membership does not include Haiti (only independent French-speaking state in the Americas) or the French overseas departments (French Guyana, Guadeloupe and Martinique). However, despite the ‘latino’ component of its name, the organization does include three Dutch-speaking members: one independent country (Suriname) and two dependencies of the Kingdom of the Netherlands (Aruba and the Netherlands Antilles).

Due to its open, malleable and extended territorial scope, PARLATINO resembles the Parliamentary Assembly of the Council of Europe more than the European Parliament; it is also similar to the former institution in its intergovernmental nature and lack of powers. However, as will be seen below, these are common characteristics for most regional assemblies in Latin America. Unlike the other regional assemblies analyzed in this article, though, PARLATINO is not the representative, deliberative or decisional body of any regional organization, but has rather had an independent status since its very inception. This characteristic is unique, as parliaments are generally institutions which belong to some wider encompassing entity.

PARLATINO has gained a certain international recognition notwithstanding its limited influence and competencies. In 1972, it agreed with the European Parliament – which at that time was also indirectly elected – to establish permanent contacts and convene a regular Inter-parliamentary Conference. The first was held in Bogotá in 1974, and since 1975 it has taken place every two years without exception, the venue alternating between a Latin American country and a European Union member state. To date, sixteen such events have been organized, making the conference the longest running bi-regional forum. The debates and resolutions produced as a result of the conferences have constituted a testimony to the dominant issues of the trans-Atlantic agenda, as well as to the evolution and shortcomings of the Conference. The salience of this forum decreased with the consolidation of democracy in Latin America, as most national parliaments saw their continuity guaranteed. When the Inter-parliamentary Conference’s long fight for representative institutions and the defence of human rights had finally been won, the Conference failed to find another equally mobilizing issue and its prominence slowly declined. The new focus on institutional quality and the reform of public administration has proved less attractive, and the cause of regional integration has found better supporters in the sub-regional blocs that were created or relaunched in the early 1990s.

Despite a general agreement regarding the main issues on the common agenda, there have been some topics that have revealed persistent asymmetries between the two regions. In particular, significant consensus has never been reached on matters concerning international trade and foreign debt. In a different vein, cooperation for development is one area that brings to light the structural imbalances between the two
regions, but it has never evolved into a controversial matter since its management depends on the unilateral will of the wealthiest party – the European Union.

In sum, PARLATINO is a symbolic rather than an operative body, capable of hosting deliberation on regional and inter-regional affairs but with no prospect of ever becoming a decisional organ. It lacks both political significance and social roots. Its main historical merits have been to provide a beacon for democratic aspirations and parliamentary procedures during the dark era of Latin American dictatorships; its main shortcomings have possibly originated in its not belonging to any significant, more encompassing organization.

The Central American Parliament (PARLACEN)

The Central American Parliament is the deliberative body of the Central American Integration System (SICA). Building upon the Central American Common Market, founded in 1960, the SICA was established in 1991 as a complex organization linking the Central American countries on a variable geometry basis. Hence, while SICA brings together the seven Central American countries (Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama), the PARLACEN excludes two of them (Costa Rica and Belize) but includes the Spanish-speaking, Caribbean state of the Dominican Republic. SICA also features a supranational judicial branch, the Central American Court of Justice, and an intergovernmental supreme authority, the Central American Presidential Meetings. The Secretary General coordinates the whole system. PARLACEN is broadly considered to be the parliamentary organ of SICA, although, as will be seen below, it has not developed any legislative function.

PARLACEN was first envisaged in the Declaration of Esquipulas I, which was signed by the Central American presidents with a view to putting an end to traditional rivalries and foster democracy and peace in the region. The presidential summit, strongly supported by the Contadora Group, its Group of Support and the then European Community, took place in May 1986. In a later Declaration known as Esquipulas II, made in 1987, the presidents agreed that the Parliament should be the symbol of freedom, independence and reconciliation for the region, which had been devastated after years of bloodshed and political instability. Between the end of 1987 and early 1989, Guatemala, El Salvador, Costa Rica, Nicaragua and Honduras successively signed and ratified the PARLACEN Constitutive Treaty. Three additional protocols were signed afterwards in order to allow for the delay in the election of the national representatives and to facilitate the adhesion of Panama to the Treaty – although its incorporation would only be fully complete in 1999. The Parliament was finally established in October 1991 when its assembly first met in

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5 The Contadora Group, founded in 1983, was made up of Mexico, Colombia, Venezuela and Panama, whereas its Group of Support, established in 1985, was made up of Argentina, Uruguay, Brazil and Peru. The goals of both groups were to contribute to a negotiated solution to the Central American conflict, and their principles included self-determination, non-intervention, demilitarization and democratization. In 1986 the two groups merged into what came to be known as Grupo de Rio.
Guatemala City, which would become its permanent location. Costa Rica eventually declined to participate, while the Dominican Republic joined the process in 1999.

Since October 28, 1991, PARLACEN has grown from having a total membership of 65 deputies, representing four countries and 13 political parties, to the current total of 132 deputies, representing six countries and 42 parties. The deputies are directly elected every five years by the people of the member countries, each country having the right to elect 20 representatives. In addition, each country has the right to send two appointed deputies, namely their former presidents and vice-presidents. On top of the full member countries, other parliaments send representatives with observer status: among them, PARLATINO, the Andean Parliament and the European Parliament have participated since the beginning of the process, whereas Puerto Rico, Mexico and Taiwan entered at a later stage. The national representations are clustered in three broad parliamentary groups: the largest one represents the centre of the political spectrum, while the other two cover the left and right wings.

As acknowledged by the first article of its founding treaty, the legislative competencies of PARLACEN are limited to proposal, analysis and recommendation. However, the treaty also confers it with the ability to elect, appoint and remove the highest executive official of all the institutions that belong to the SICA. Strangely enough, this parliamentary organ is not able to pass laws but it is (formally) empowered to nominate and hold accountable a myriad of technical administrators (article 5c). It is also allowed to request information and reports from every SICA organ and to make recommendations to them, but not to interfere in their functioning. As for voting procedures, PARLACEN makes decisions by absolute majority, except where establishing or amending internal statutes is concerned: in this case, a qualified majority is required. The country members provide for the parliamentary budget on an equal basis.

After more than a decade of operation, the record of PARLACEN is mixed: while it can boast sound achievements in enlarging its membership, it has made no progress regarding the deepening of its competencies. If, on the one hand, it has effectively contributed to pacification and growing interdependence among the societies it represents, it has at the same time failed to become a decisive actor in the feeble process of Central American integration.

**The Andean Parliament (PARLANDINO)**

The Andean Parliament is the deliberative organ of the Andean Integration System (AIS). The Andean Pact, precursor of the AIS, was founded in 1969 with the goal of overcoming the shortcomings of the Latin American Free Trade Association (ALALC), a wider regional project that had failed mainly because it had reproduced internally the division between more and less developed countries that it criticized in the world as a whole. The founders of the Andean Pact drew on the model of integration that was then being consolidated in Europe, and so they decided to formalize the process

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6 The Andean Pact was signed by Bolivia, Chile, Colombia, Ecuador and Peru. During the mid-1970s, Venezuela entered the process and Chile left it.
of integration by creating a network of institutions that included majority voting and binding supranational authorities. By the end of the 1980s, after years of turbulence and standstill due partly to domestic factors but also to the failure to foster economic interdependence, the national presidents decided to relaunch the process with more modest aspirations and a more frugal institutional design. However, the institutional structure of the organization still bears a great resemblance to that of the European Union: it features a Commission, a Parliament, a Tribunal of Justice, a Council of Ministers and a Presidential Council, as well as a set of technical institutions such as financial corporations, consultative forums of the civil society and even a university. Nevertheless, the real competencies and performance of these regional institutions lag behind those of their European models.

Within the institutional arrangement described above, PARLANDINO is meant to represent the peoples of the Andean Community and enjoys a supranational nature. Its founding treaty was signed in 1979, coming into force in 1984. Its location was the Colombian city of Bogotá, and in 1997 it was decided that parliamentarians would be elected by popular vote. The electoral process was supposed to take place within the following five years; yet, at the time of this writing only two countries (Venezuela and Ecuador) have completed this process. In the remaining countries, direct elections are either planned for the near future (Colombia and Peru) or subject to a previous constitutional review (Bolivia).

PARLANDINO is made up of twenty-five deputies, five from each member country. There are five standing committees composed of five members each, one of each nationality. PARLANDINO is entitled to issue as many as four different kinds of acts (decisions, agreements, declarations and recommendations), all of which must be approved by an absolute majority. PARLANDINO lacks any decision-making competence. Its competencies are vague and limited to the following areas: steering and fostering the integration process; promoting the harmonization of legislation between member countries; encouraging cooperation and coordination with the national parliaments, third countries and other integration associations; and formulating recommendations regarding the budget of the Andean Community.

In 2004, PARLANDINO celebrated its twenty-fifth anniversary. It is half the age of the European Parliament, which has always been the model and source of inspiration for the founders of the Andean Community. The huge differences between the two assemblies, though, could not be more evident. Considering the delayed and irregular popular election of national representatives, a composition that is not demographically proportional, and the absence of decision-making attributions, PARLANDINO has evolved relatively little, just like the regional bloc to which it belongs (Bonilla 2001; Malamud 2004). Contradictory national interests, institutional instability, economic turmoil and even political conflict among the member countries have, in fact, rendered the Andean Community a textbook example of what to avoid when crafting an integration project. As key actors in the process have emphasized, the first steps in the formation of Mercosur drew upon the experiences of the Andean region in order not to repeat the same mistakes (Caputo 1999; Pereira 2000).7

7 In 2006, while this book was being edited, Venezuela left the Andean Community and applied to Mercosur, further eroding the former bloc and its common institutions.
The Mercosur Parliament

Mercosur, a Spanish acronym that stands for Common Market of the South, was founded in 1991 by the Treaty of Asunción, and consolidated in 1994 by the Protocol of Ouro Preto. It brings together four countries: Argentina, Brazil, Paraguay, and Uruguay, with Venezuela joining in 2007. It aims at creating a common market through the lifting of intra-regional obstacles to the circulation of goods, capital, and services and has taken steps towards a freer circulation of people. Although its founding fathers had in mind the successful experience of the European Union, they were also aware of the poor record of integration in Latin America and attempted to minimize the risks of failure by avoiding premature institutionalization, while keeping the control of the process in the hands of the national presidents (Malamud 2003). Henceforth, Mercosur developed as an exclusively intergovernmental organization: although its legal personality enables it to become involved in international negotiations on behalf of its members, internal unanimity is required in order to make any decision. National sovereignty has neither been delegated nor pooled, and all the decisional organs of Mercosur are exclusively composed of senior government officials from the member countries (Peña 1998). However, there are also some non-decisional institutions worth considering, such as the Joint Parliamentary Commission.

The Joint Parliamentary Commission (JPC) was, until 2007, the organ of Mercosur that brought together the delegations of the four national congresses. The Treaty of Asunción, signed in March 1991, foresaw the JPC as a means of facilitating the creation of a common market. The means by which it would contribute to such an end was not clear, though, as the Treaty did not give it any competencies; instead, it mentioned the national executives’ obligation to report to their respective congresses about the progress of the integration project.

It was the Protocol of Ouro Preto, signed in December of 1994, which established a stable design for the JPC, while at the same time defining the overall institutional structure of Mercosur. The JPC was transformed into the representative organ of the national parliaments – its main function, to contribute to the transposition of Mercosur procedures into the national legislation of the member countries. Additionally, it was expected to assist with policy harmonization and perform the role of a consultative assistant to the Common Market Council, the supreme regional body made up of the foreign and economic ministers of the signatory countries (Caetano and Perina 2000; Caetano and Perina 2003). The JPC would accomplish its duty through the elaboration of recommendations, dispositions, and declarations, none of which were binding; it was also assigned the mission of paving the way for the creation of a full parliament of Mercosur.

The Protocol of Ouro Preto determined that the JPC would be constituted by a maximum of 64 members. Each country would elect up to sixteen representatives from active national lawmakers, including members of the two chambers (every Mercosur member country features a bicameral parliament). The representatives would be grouped into national sections that would comprise both deputies and senators. The moment and mechanism for election and the duration of the tenure would be defined by each national parliament, but the Protocol suggested a minimum term limit of two years in order to grant some continuity to intra-parliamentary labour.
Closing or Widening the Gap?

The Protocol also established that the JPC would meet at least twice a year, but in order to be valid, a meeting would have to be attended by representatives from every state. Moreover, all the decisions of the JPC would have to be made by consensus, the same rule that applies to every body of Mercosur. These requirements led to a fully intergovernmental institution and contributed to the blurring of party differences and the neutralization of one of the main activities usually performed within a parliament, that of voting. The presidency of the JPC was not to be elected by the plenary but rotate among the member states every six months, just like the presidency of Mercosur as a whole. A Permanent Administrative Secretariat existed, but its office-holder, who was not a parliamentarian, was also appointed on a mandatory rotating basis involving the four countries – although this tenure lasted two years instead of six months.

The internal statute of the JPC addressed the possibility of creating committees, as long as they were not standing but ad hoc. This regulation did nothing to promote specialization among the parliamentarians or to provide them with a stable career path or progressive training. As a rule, the JPC met in the country that held the temporary presidency. The budget of the JPC was provided for in equal parts by Mercosur member countries.

Since the mid-1990s or even earlier, an increasing number of voices – from both politicians and academics – have demanded the creation and empowerment of a Mercosur parliament (Caetano and Pérez Antón 2003; CEFIR 1998; SM 2004; Vazquez 2001). However, only modest results have been achieved regarding a composition and a set of competences that are acceptable for all member countries. Given the marked demographic asymmetries within the bloc, this is a difficult puzzle to solve. Brazil has roughly 80 percent of the population of Mercosur, so any distribution under which it is allocated less than 50 percent of the seats could be perceived as undemocratically biased and would face resistance. On the other hand, giving Brazil more than 50 percent of seats would mean that it alone would hold a permanent majority. A compromise could be reached by conceding a majority to either party but, simultaneously, stripping that majority of any real power – either by requiring decisions to be made by ‘super majority’ or by denying the parliament any significant competences at all. The former option would diminish democratic legitimacy, while the latter would neutralize effective decision making (Malamud 2005b).

An agreement was finally struck in December 2005, when the Mercosur Council decided to set up the Parliament of Mercosur. It was located in Montevideo and its installation should proceed following two transitional periods. During the first stage, a body similar to the JPC (the only difference being that every country would send 18 instead of 16 parliamentarians) replaced its institutional ancestor. During the second stage, direct elections were mandated to take place in 2011. The first regular elections after the transition are to be held simultaneously in all member countries in 2014. The decision, however, stopped short of prescribing the final composition
of the body. Its competences, on the other hand, were clearly determined: legislating was not among them.\(^8\)

**Comparative Analysis**

Of all the international institutions either known as parliaments or designed in such a way as to resemble them closely, only the European Parliament has developed a truly supranational character and been allowed to hold effective power thus far. The others lag far behind in all respects (see also Vieira Posada 2000). The history, structure, competencies and functions of these institutions vary widely, as does the degree of legitimacy they enjoy. This chapter has presented an analysis of regional parliaments in order, on the one hand, to homogenize the conceptual field and, on the other, to present a comparative state of the art. After examining five regional parliamentary bodies in two continents, the differences between the European Parliament and the four Latin American proto-parliaments are striking – whatever the characteristic considered. Table 5.1 presents a stylized comparison of the five cases.

As far as representation is concerned, only one Latin American parliament, PARLACEN, appoints the majority of its members through popular, direct elections. However, there is no demographic proportionality among the constituencies (that is, the member countries). Input legitimacy is poorly served by any parliament that is neither elected by nor accountable before the citizens. With regard to decision making, no parliament in Latin America has been endowed with any kind of legislative power. Output legitimacy, insofar as this exists, is certainly not a product of any of these regional parliamentary institutions. As for control legitimacy, PARLACEN stands out again as the only assembly to possess any – albeit very weak – powers regarding the monitoring of other regional bodies. In stark contrast to all the Latin American cases, the EP enjoys ever stronger capacities concerning all of the relevant four dimensions. There are many factors that account for such a difference; we outline five of them below and suggest an agenda to promote further research.

The first factor that distinguishes the evolution of regional parliaments across the Atlantic is time: the process of European integration started between two and four decades before the Latin American processes, so differences regarding institutional development may be due to maturity gaps. The second factor is sequence: the current structure of the EU was set up according to the ‘Monnet-method’, meaning that function should precede form and that incrementalism is preferred to early institutionalization. Some Latin American groupings, by contrast, have unsuccessfully attempted to skip phases, admiring the outcome of the European process but overlooking how this had been achieved. Third, there is a wide disparity regarding the level of integration: while the EU is already a common market and is consolidating into an economic union, none of its Latin American counterparts have yet reached the level of a customs union; logically, the institutional structure

\(^8\) An exhaustive list of competences includes: to watch over, to elaborate (reports), to request (information), to invite, to receive, to hold (meetings), to examine, to convey, to issue (declarations and recommendations), to propose (studies and projects), to develop (actions), to maintain (institutional relations), to celebrate (agreements) and to foment (values).
### Table 5.1 Comparative Features of Five Regional Parliaments

<table>
<thead>
<tr>
<th></th>
<th>European Parliament</th>
<th>PARLATINO</th>
<th>PARLACEN</th>
<th>PARLANDINO</th>
<th>Mercosur Parliament</th>
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<tr>
<td><strong>Representation</strong></td>
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<td></td>
<td></td>
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<tr>
<td>(input legitimacy)</td>
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<td></td>
<td></td>
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<tr>
<td>Popular election</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>In transition</td>
<td>No</td>
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<tr>
<td>National representation</td>
<td>Proportional</td>
<td>Identical</td>
<td>Identical</td>
<td>Identical</td>
<td>Identical</td>
</tr>
<tr>
<td>Party groups</td>
<td>Permanent, strong</td>
<td>No</td>
<td>Yes, but loose</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong>Legislation</strong></td>
<td></td>
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<tr>
<td>(output legitimacy)</td>
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<tr>
<td>Decision on regional budget</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Law-making competencies</td>
<td>Co-decision</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Right of initiative</td>
<td>No</td>
<td>___</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Mechanism of decision</td>
<td>Different majorities</td>
<td>Plurality</td>
<td>Different majorities</td>
<td>Absolute majority</td>
<td>Consensus</td>
</tr>
<tr>
<td>Control (control legitimacy)</td>
<td>Government formation</td>
<td>Government censure</td>
<td>Bureaucracy monitoring</td>
<td>Committees</td>
<td>Hearings</td>
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<tr>
<td></td>
<td>Yes</td>
<td>No</td>
<td>Partial</td>
<td>Standing</td>
<td>No</td>
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<td>Standing</td>
<td>No</td>
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<td></td>
<td></td>
<td></td>
<td>Ad hoc</td>
<td>No</td>
</tr>
</tbody>
</table>

Yes: Yes, No: No, Partial: Partial, No: No, Already as national reps.: Already as national reps., Medium: Medium, Weak: Weak.
needed for one type of organization does not necessarily satisfy the requirements of others. Fourth, the degree of success in the creation of regional institutions cannot be dissociated from the effectiveness with which institutions work at home; in other words, weak or unstable domestic institutions are not a good foundation upon which to build international institutions. Fifth, most European countries feature parliamentary or semi-parliamentary regimes, whereas all Latin American countries have presidential ones. An important consequence of such a difference is that a ‘parliament’ does not mean the same thing on both sides of the Atlantic: if, in Europe, it is conceived of as the supreme institution where government is ultimately made and undone, in Latin America the election, authority and survival of the government are independent of parliamentary will. It would be unreasonable to assume that chief executives of presidential regimes would not replicate, on the regional level, a feature that fits them well on the domestic level (Malamud 2005a).

The main implication derived from the last argument is that, also within processes of regional integration, presidential or parliamentary domestic regimes do make a difference – especially regarding the settlement of regional parliaments. As a related consequence, political parties also matter in different ways and for different reasons from one regional setting to another. Political reformers would do well to take these conclusions into consideration, as it has even been argued that a parliamentary system may not be the most appropriate solution for governing a multi-state democracy (Fabbrini 2004; Hix 2002; McKay 2001). The implications of this statement regard the future of regional parliaments not only in Latin America but also elsewhere – including Europe. Bi-regional forums such as the Euro-Latin American Parliamentary Assembly (EUROLAT)\(^9\) could play a role in helping regional parliaments to prevent failure by avoiding the creation of unrealistic expectations.

Apart from the classical functions considered in this chapter, regional parliaments may help to accomplish complementary goals such as nurturing a common regional identity among political elites, strengthening the symbolic presence of the regional organization in the minds of the public and third countries, and facilitating intra-regional communication. They may also promote unexpected spill-over. However, these functions are neither exclusive to nor characteristic of parliamentary institutions. If regional parliaments are to be enhanced, the distinction between their constitutive and complementary functions should not be neglected. Entertaining unrealistic proposals, whether based on ingenious emulation or on insufficient understanding, will most likely doom the enterprise to failure or – at best – irrelevance.

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\(^9\) EUROLAT brings together 120 Parliamentarians from the European Parliament, the Andean Parliament, the Central American Parliament and the Latin American Parliament, as well as national representatives from the Mexican and Chilean legislatures, and members of the joint parliamentary committee of MERCOSUR. Since November 2006 EUROLAT is the successor to a previous forum, the Euro-Latin American Inter-parliamentary Conference.
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políticas de gobierno (Buenos Aires: EUBEBA).


Parliaments’ websites

Andean Parliament: http://www.parlamentoandino.org/
European Parliament: http://www.europarl.eu.int/
International Parliamentary Union: http://www.ipu.org/english/home.htm
Latin American Parliament: http://www.parlatino.org.br/
Mercosur Parliament: http://www.mercosurparlamentario.org/
Chapter 6

Subnational State Actors and their Roles in Regional Governance

Marcelo A. Medeiros

This chapter explores the complex and overlapping relations between the regional, national and subnational levels within Regional Integration Organizations (RIOs). It focuses on the case of Mercosur, taking the European Union as a comparative parameter. The chapter is divided into two parts: the first part will place subnational state actors in the context of the debate on the legitimacy and democracy of RIOs; the second will analyze the role of subnational state actors in Mercosur.

Legitimacy, Democracy and Subnational state actors

The EU is often accused of suffering from a democratic deficit. These accusations are usually based on a comparative exercise which takes the classic Nation-state as its point of reference:

Comparisons are drawn between EU and an ancient, Westminster-style, or frankly utopian form of deliberative democracy. While perhaps useful for philosophical purposes, the use of idealistic standards no modern governments can meet obscures the social context of contemporary European policy making (Moravcsik 2002, 605).

This comparative fallacy, which is discussed by Erthal (Chapter 3 of this volume), has also characterized the analysis of other instances of regional integration – among them Mercosur. In addition to this, for processes of regional integration subsequent to the Treaty of Rome, the point of comparative reference has ceased to be the nation state alone, and has come to include the political system of the European Union (EU) itself, with all the complexity of institutional mimesis this implies (Mény 1993, 7–38). This chapter begins with the premise that to analyze legitimacy and democracy in the Mercosur framework, our reference point must be the contemporary nation state of an increasingly administrative type (Bresser Pereira and Cunill Grau 1999, 15–50), as opposed to the classical Westminster style nation state, as well as the political system of the EU – while bearing in mind the problem of mimesis. The question which then arises is the extent to which subnational actors might contribute to the legitimacy of RIOs and vice versa.
Conceptualization

Subnational state actors are, as Duchacek puts it, ‘Non-central governments (which) presupposes that the local officials and their staffs possess a considerable degree of jurisdictional autonomy in domestic affairs, which they now tend to expand to include closely connected international issues’ (Duchacek 2001, 2). The participation of subnational state actors in regional decision making has been formalized in the Committee of the Regions in the European Union, for instance, which was created by the Treaty of Maastricht (1992). We will argue that this mobilization has also resulted in the exercise of paradiplomacy or constituent diplomacy (see next section).

From the superposition of the subnational, national and supranational (regional) levels results the notion of multilevel governance, defined by Banchoff and Smith as ‘a fluid polity outside the statist mould, a constellation of institutions embedded in a dense and evolving network of informal interactions that brings together supranational, national and subnational actors’ (Banchoff and Smith 1999, 12). Despite the fact that this definition is linked to the European Union, it can also be used in the interpretation of other regional integration organizations, such as Mercosur, as long as certain precautions are taken.

Technical complexity and the need for prompt decision making seem to promote forms of input legitimacy other than those grounded exclusively in direct democratic mechanisms (such as referenda) or indirect democratic mechanisms (via representation). If we assume that legitimacy is based solely on recognition and representation, then RIOs cannot be seen as legitimate. The most advanced of these, the European Union, reveals very low indices of identification among citizens, whose loyalties are indisputably with the nation state, where there is a demos with a historical basis. In the same way, despite the systematic advances of the European Parliament (EP) and the creation of consultative organs such as the Committee of the Regions and the Economic and Social Committee, representation has been limited by the secondary role of these institutions in the decision-making process in the strict sense, and these institutions have been poorly legitimized by low electoral participation. The situation is still more problematic in less politically active RIOs which contain fewer representative elements, such as Mercosur.

Nevertheless, although the classical pattern of recognition and representation is lacking, it can be argued that RIOs are a meaningful space for contestation. In fact, for social actors and economic agents of all types, the regional arena has become a place for the exercise of demands previously confined to the national level. As Banchoff and Smith state, ‘These more informal, fluid forms of representation do not meet the standards of popular sovereignty set by traditional democratic theory. Nonetheless, they reflect the reality of the EU as polity composed of multiple identities embedded at multiple levels of governance’ (Banchoff and Smith 1999, 15).

Control legitimacy or accountability is defined here as the situation in which ‘some actors have the right to hold other actors to a set of standards, to judge whether they have fulfilled their responsibilities in light of these standards, and to impose sanctions if they determine that these responsibilities have not been met’ (Grant and Keohane 2005, 29; see Tholen, chapter 2). We start from the premise that there are two basic models of control legitimacy: delegation and representation.
‘In the participation model, those affected hold power-wielders accountable directly through participation, whereas in the delegation model, those delegating power hold power-wielders accountable through a variety of mechanisms for judgment after fact’ (Grant and Keohane 2005, 32–33). Grant and Keohane identify seven mechanisms of control legitimacy, or accountability as they call it, which can be observed in RIOs. These are labelled hierarchical, supervisory, fiscal, legal, market, peer and public reputational mechanisms (Grant and Keohane 2005, 36). The idea is that these mechanisms create checks and balances to help prevent abuses of power in a regional system characterized by a wide variety of power-wielders and an absence of centralized power. Control legitimacy in RIOs has been increasingly practised not in the form of direct participation in decision-making processes based on a majority principle, but rather through complex systems of representation, the selection of delegates, professional socialization, ex-post review and checks and balances between government sectors (Majone 1996). And this is the reason for ‘the need for greater attention, efficiency and expertise in areas where most citizens remain “rationally ignorant” or non-participatory’ (Moravcsik 2002, 614).

To summarize, by freeing oneself from the analytical constraints imposed by the classical nation state, it is possible to conceive of regional international organizations as legitimate even in the absence of democratic representation. This is possible because of the involvement of other actors in the decision-making process. In this context, it is relevant to make a more general assessment of the role of subnational state actors in regional governance.

Subnational state actors

In the search for legitimacy in the EU, one of the principles which has been introduced is that of subsidiarity. According to this principle, decisions must be taken as closely to citizens as possible. Although subsidiarity was not intended to strengthen subnational state actors, it opened up a window of opportunity for them, offering access to national and supranational levels of multi-level governance. The creation of the Committee of the Regions was the institutional affirmation of this principle (Medeiros 2004). Even though the Committee of the Regions has no decisional power, its opinions contribute to input legitimacy. Yet, this is only the tip of the iceberg. Subnational state actors have also been mobilizing in other, perhaps less formal, arenas within the nation state, and also directly in the supranational sphere. The Treaty of Maastricht established the possibility of subnational entities taking the nation state’s seat at the Council of Ministers and this practice has been used by German and Austrian Länder and Belgian regions. Regional officials have also frequently participated in the administration of structural funds, and the formation of sectoral networks between subnational state actors has been another consistent factor.

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1 Preamble to the TEU and article 5 of the TEC concluded in Nice in 2002; Title III, article I–11 of the Treaty establishing a Constitution for Europe (this Treaty was rejected by referendum in France and the Netherlands in June 2005).
It is in this context that the notions of *paradiplomacy* and *constituent diplomacy* have emerged. Keating (1999, 1) argues that ‘Globalization and the rise of transnational regimes, especially regional trading areas, have eroded the distinction between domestic and foreign affairs and by the same token have transformed the division of responsibilities between state and subnational governments’, in the sense that subnational, national, and international arenas are now more interconnected than before and as a result, an event at one level influences the others. The actual conflict in Mercosur concerning the cellulose plants in the border region between Uruguay and Argentina is an example of the way in which a conflict at the local level concerning an environmental issue may have repercussions at the national and regional levels.\(^2\)

The increased permeability of national borders leaves subnational state actors exposed to their external environment more than before. And even though the ‘end of the territory’ (Badie 1995) is not evident, it is undeniable that the concept has changed. It seems that territory is no longer necessarily associated with the nation state as it had been in the past, and the idea of a hermetic and univocal sovereignty has disappeared along with this association. Today, territory has taken on the role of catalyst between society and the global market, and at the same time it presents itself as locus for political debate and collective action. Subnational state actors present themselves, therefore, as territorial alternatives in a functional approach. They act as a third tier of power, besides the national and the regional tiers, and, given the reduction of the nation state’s capacity for mediation, subnational actors compete with the state for the prerogatives of public character. These actions of subnational state actors have been termed *paradiplomacy*. For Keating,

*Paradiplomacy is not the same as conventional state diplomacy, which is about pursuing a defined state interest in the international arena. It is more functionally specific and targeted, often opportunistic and experimental. … Paradiplomacy is also characterized by a high degree of involvement of civil society and the private sector (Keating 1999, 11).*

*Paradiplomacy is not incompatible with diplomacy. In fact, it also acts internally, attempting to shape diplomacy according to the specific interests of each subnational state actor. Considering this last aspect as essential, and remembering that the paradiplomacy.*
prefix refers to the idea of hierarchy, Kincaid introduces the notion of *constituent diplomacy*, ‘intended to be a neutral descriptor, one that avoids the implication that the activities of constituent governments are necessarily inferior, ancillary, or supplemental to the high politics of nation-state diplomacy’ (2001, 74). This rationale itself is often founded on a federative pact. What is new is that, while in the past this pact was established at an external level, a domain reserved for central authorities, today we discuss the pertinence of the extension of this domain to subnational state actors. Conflict and competition are intrinsic characteristics of domestic politics, so why might they not also be present in foreign policy? One element which remains is the myth of the hermetic and univocal sovereignty mentioned above, which is used by national governments to legitimize the suppression of such extension. As Kincaid reminds us,

> whatever competition may exist, and exist legitimately, within other policy fields, in foreign affairs the seemingly instinctual reaction of national elites is to try to suppress competition and shield foreign-policy-making behind a veil of state secrecy. The nation, it is said, must speak with a single voice (Kincaid 2001, 61).

It is argued that subnational state actors would not necessarily act under the ‘veil of state secrecy’, which would inspire the defence of individual as opposed to general interests, thereby reducing the degree of legitimacy of their actions. However, the *temps mondial* of democracy and market (Laïdi 1993) established at the end of the 20th century is distinct from that which characterized the Westphalian design of the international system. In it, control mechanisms coexist with complex interdependence (Keohane and Nye 1987), providing new mechanisms of external accountability through constituent diplomacy.

In a seminal article published in *International Organization* as early as 1988, Putnam indicated this internal trend of constituent diplomacy imagining the relationship between diplomacy and domestic politics according to a two-level game rationale:

> At the national level, domestic groups pursue their interests by pressuring the government to adopt favourable policies, and politicians seek power by constructing coalitions among those groups. At the international level, national governments seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments. Neither of the two games can be ignored by central decision makers, so long as their countries remain interdependent, yet sovereign (Putnam 1988, 434).

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3 Despite not being a specificity of federal democratic Nation-states or their peers, it is in them that constituent diplomacy has been most practiced.

4 This notion is explored by Rawls: ‘Somehow we must nullify the effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage. Now in order to do this I assume that the parties are situated behind a veil of ignorance. They do not know how the various alternatives will affect their own particular case and they are obliged to evaluate principles solely on the basis of general considerations’ (Rawls 1999, 118).
This rationale, however, did not emphasize, strictly speaking, the action of subnational state actors to the same extent as the concept of constituent diplomacy. Let us now turn to an exploration of the subnational actors, especially those acting within Mercosur, the Common Market of the South.

Participation of Subnational State Actors in Mercosur

The potential role of subnational state actors is influenced by two sets of institutions: those which make up the domestic political system, and the institutional set-up of the regional integration organization. In the case of Mercosur, both the domestic political system of the member states and the original institutional design of this RIO have discouraged the participation of subnational state actors in regional governance. Recent developments at both levels, however, may have had a positive effect upon the opportunities for subnational state actors to participate in decision making and thus enhanced the legitimacy of regional governance. These two dimensions are analyzed in the following section, focusing on Argentina and Brazil.

Member State Political Systems: Argentina and Brazil

Argentina  Argentina was a confederation until 1860, but the formal hegemony of Buenos Aires increased until the re-democratization of the country in the 1980s. The constitutional reforms of 1994 had both internal and external repercussions on the distribution of competences between the levels of government. Article 24 of this new Argentinean Constitution permits the approval of treaties ‘that delegate competences and jurisdiction to supra-state organizations in conditions of reciprocity and equality, and which respect the democratic order and human rights. The norms dictated in their consequence possess hierarchy superior to the laws’.

This innovation makes clear the possibility for the predominance of international law over national law in the classic vision foreseen by monist theory (Kelsen 1992). On the other hand, article 124 establishes that the provinces may ‘sign international conventions as long as they are not incompatible with the foreign policy of the Nation and do not affect the faculties delegated to the federal government or the public credit of the Nation; with the knowledge of the National Congress’. This last article increases the margin of action of Argentinean subnational state actors.

Brazil  Unlike Argentina, Brazil was a centralized monarchy until 1889, when it became a federation. It can be considered to be a system of inverted federalism, in which the central power transfers competences to its parts, rather than a traditional federalist system, in which the parts renounce competences in favour of the center (Abrucio 1998). As in the case of Argentina, it was only after re-democratization in the 1980s that centralization began to be challenged.

The 1988 Brazilian Constitution has a decentralizing character – a counter-reaction to two decades of centralization during which the federal units, as well as the municipalities, had only a narrow margin for manoeuvre. In Article 18, the Constitution states that: ‘The political-administrative organization of the Federal
Republic of Brazil comprises the Union, the States, the Federal District and the Municipalities, all autonomous, in the terms of this Constitution’. This implies that the 1988 Constitution not only extends, up to a certain point, the legislative competence of the states, but that it equally benefits the municipal authorities with this extension (Frazão 1994, 318). Brazilian subnational state actors acquired the potential for more national and, in principle at least, international action, as the 1988 Constitution also attests in article 4 that: ‘The Federal Republic of Brazil will seek economic, political, social and cultural integration of the peoples of Latin America, aiming at the formation of a Latin American community of nations’.

The elements for the practice of constituent diplomacy were therefore in place and, indeed, in 1997, Fernando Henrique Cardoso created the Assessorship for Federal Relations (AFR) in the cabinet of the Minister for Foreign Affairs to stimulate the approximation of States and Municipalities through regional offices. As early as 1996, the then Brazilian Minister of Foreign Affairs Luiz Felipe Lampreia said that ‘New themes, new forms of interaction between ministries and between these and other government organs and civil society, the imperatives of public and federative diplomacy, the imperatives of Heads of State and government diplomacy, exponential mark of our times, the informatization, the search for efficiency and economy in the management of the federal administrative machinery – this is a complex reality which indicates the necessity for constantly updating Itamaraty [the Ministry of Foreign Affairs], the diplomatic career and our methods of work’.5 In 2002, the Lula government transformed AFR into the Special Assessorship for Federative and Parliamentary Affairs (SAFPA) and an Undersecretary of Federal Affairs was created with the objective of coordinating the actions of the executive with those of the States and Municipalities. These states and municipalities, then, took on a pro-active role in foreign relations within their respective constitutional competences. In this way they are now able to include public policies in, for instance, the sectors of health, education, environment and transportation.

To sum up, in both Argentina and Brazil decentralization and an increased role for subnational actors are associated with democratization. At the same time, decentralization relates to the idea of efficiency. Yet, those relationships between decentralization, democratization and efficiency have not been simple, as strong clientele is still present at the local level and inadequate preparation of the bureaucracy has hampered the implementation of new mechanisms of governance. At the domestic level, some mechanisms of accountability have had to be created to stem the private appropriation of public goods and acts of corruption – mechanisms such as the Law of Fiscal Responsibility in Brazil.6 It is possible to say, therefore, that

5 Speech delivered by Lampreia on the occasion of the graduation of class ‘Florestan Fernandes’ from the Rio Branco Institute on 30 April 1996.

the increased role of subnational state actors in Argentina and Brazil can contribute to the legitimacy of the national political process if, and only if, it is combined with strict mechanisms of control. Legitimacy would thus be established by a mixed accountability mechanism, combining, \textit{pari passu}, participation and delegation.

\textit{The Institutional Design of Mercosur}

The intergovernmentalist design of Mercosur is a consequence of the importance that its member states attribute to sovereignty. Sovereignty is so important partly because independence was achieved much more recently than most European states, after the decolonization processes in the first quarter of the 19th century, and partly because of a near absence of military conflicts among the member states, which could have stimulated, as was the case in Europe, an acceptance of limitations on their sovereignty.\textsuperscript{7} The presence of the United States on the continent also contributed to the strength of the principle of non-intervention in Latin American countries, both at the bilateral and multilateral level. Moreover, in view of the blighted experience of the Andean Pact (see Malamud and De Sousa, chapter 5), Mercosur member states have hesitated to launch institutional projects which did not correspond to their true capacities for commitments, especially those of a supranational nature.

Despite this unfavourable institutional design, Mercosur has, since its inception, stimulated discussion over the re-establishment of the federative pacts of Argentina and Brazil, allowing dialogue between its subnational state actors to intensify. This intensification has been conducted through two main channels: participation in formal Mercosur institutions, and the development of regional networks. This process can be defined as a two-track positive feedback path. Democracy and economic liberalization among the nation states promote decentralization with accountability internally and regional integration externally; this regional integration, in turn, reinforces decentralization and enhances the accountability of the multilevel governance of the system as a whole.

In 2004, subnational state actors obtained, finally, \textit{de jure} right of participation within the formal Mercosur institutions when in Belo Horizonte, the Common Market Council (CMC) decided to:

\begin{quote}
Create the Consultative Forum for Municipalities, Federal States, Provinces and Departments of Mercosur, with the intent of stimulating dialog and cooperation between the authorities of the municipal, state, provincial and departmental levels of the member-states of Mercosur.\textsuperscript{8}
\end{quote}

\begin{flushright}
\textsuperscript{7} The only exception would be the Paraguay War from 1865-70 between Paraguay, on the one side, and Argentina, Brazil and Uruguay on the other, and its nefarious consequences, above all for the Guarani people in Paraguay (Chiavenato 1979). For a literary-philosophical reflection on dictatorial power in Latin America, on the controversial figure of José Gaspar de Francia and his importance to Paraguayan development see Rosa Bastos 1974.

\end{flushright}
This Forum succeeded the Specialized Municipalities and Intendencias [Provinces] Meeting (SMIM) which had been created in 2000 by a Common Market Group (CMG) resolution. The new Forum was broader, however, embracing Provinces, Federal States and Departments. The fact that the SMIM had been created by a resolution of the CMG and that the Forum was created by a CMC decision is very significant. The political impact of a CMC decision is much greater than of a CMG resolution, since it expresses the direct will of the Heads of State. Moreover, one may note that the Forum has the status of a Mercosur institution, and is therefore permanent, while the SMIM had only been a meeting. The Forum is formed by a committee of municipalities and a committee of federated States, Provinces and Departments. The Forum may propose measures to the CMG designed to promote political coordination, citizens’ well-being and quality of life.

The formal participation of subnational state actors in the Mercosur institutional framework was preceded by cross-border activities at the heart of the networks: Crecena/Codesul and Mercocidades (‘Mercocities’). Twice a year, the network composed by the Regional Commission for Foreign Commerce of the Argentine Northeast (Crecena) and the Southern Council for Development and Integration (Codesul) brings together in a summit, since June 1995, the governors of the northeastern Argentinean Provinces and of the southern and centre-western Brazilian states. The summit goes well beyond purely administrative issues, and constitutes a political forum in which subnational state actors affirm the importance of their roles in the process of regional governance. They claim to be the major link in the chain of public policies and holders of competences, in areas of integration such as education, culture, the environment and transportation.

The network of Mercocities was established in November 1995 by nineteen cities in Mercosur and Chile. Similar to Crecena/Codesul, this network considers citizen participation to be the prime objective of integration and consequently cities must, then, be included in the decision-making processes of Mercosur in areas where they have decision-making competencies. To this end, ‘Mercocities’ created nine thematic commissions which try to develop cooperation projects to encourage closer coordination of industrial, mercantile and service activities (local productive arrangements, clusters, etc.) at the heart of the Southern Common Market.

An important instrument which may strengthen the role of subnational state actors in Mercosur is the Fund for the Structural Convergence of Mercosur (FOCEM). Created by Decision CMC Nº 45/04, its objective is the financing of programmes to promote structural convergence, develop competitiveness, promote the social cohesion of smaller economies and less developed regions, and support the functioning of the institutional structure and the strengthening of the integration process. FOCEM is funded by annual contributions by member states, totalling a hundred million dollars: Argentina contributes 27 percent, Brazil 70 percent, Paraguay 1 percent and Uruguay 2 percent. Unlike the structural funds of the European Union, contributions to FOCEM depend directly on the member states, meaning that the Fund’s autonomy is limited. It can, however, promote the effective

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participation of subnational state actors in its management, as it operates in those areas constitutionally attributed to them.

**Conclusion**

This chapter has shown that despite unfavourable initial conditions, due to the political systems of Mercosur member states and its original institutional design, subnational state actors are increasingly participating, both formally and informally, in Mercosur regional governance. Central powers hesitate to delegate any more of their original competences: Keating (1999, 7) argues regarding the European Union that ‘... opportunities for regions to act in Europe remain limited and states are still the dominant actors’. In Mercosur, the opportunities are even more limited. The influence of subnational state actors is exercised through constituent diplomacy, which is restricted to action in cooperation with the federal executive government. Despite this, one cannot deny the existence of increasing interconnectivity between different political levels, which is contributing to the development of a multi-level governance system in which subnational state actors are playing a role. These actors are recognized by the nation states as central entities for democratic practice within their borders as well as in regional governance. In these modest ways, they are contributing to the input and control legitimacy of regional governance.

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PART 4
RIOs, Legitimacy and Non-State Actors
Chapter 7

Is There Any Room for Input and Control Legitimacy by Civil Society in Mercosur?

Michelle Ratton Sanchez

Introduction

The Mercosur 1995–2000 Action Program (Decision No. 09/95 of the Mercosur Common Market Council (CMC)) stated that the strengthening of the integration process required more intensive participation on the part of society. The guidelines based on that Action Program were elaborated by the Mercosur Relaunching Project (2000)\(^1\) and the Institutional Strengthening Project (2001).\(^2\) Interestingly, in this context of reform, it was only in 2003, in the 2004–2006 Mercosur Work Program\(^3\), that for the first time the participation of ‘civil society’ was mentioned. Along with the Institutional Strengthening Project, with the support of the Inter-American Bank, the Mercosur Secretariat launched regional bids, hiring experts to analyze ‘Democratic Governance’ in the bloc’s institutions in June 2005. One of the bids was for the issue of ‘Civil society and subnational entities participation in Mercosur’ (SM/BID/04/05 and SM/BID/05/05).\(^4\) Until then, different terminologies had been applied to designate non-state actors’ participation in Mercosur (as will be elaborated below). This chapter addresses the question of what can be considered as ‘civil society’ in Mercosur, and also, what role is ‘civil society’ assigned in the bloc.

This chapter argues that the decisions and norms in Mercosur which aim to increase participation in civil society require a revision of the integration process, and the concepts elaborated by Tholen and Erthal (Chapters 2 and 3) may be of help in this respect. I will apply the indicators of input, control and output legitimacy in RIOS developed by these authors. My objective is, therefore, to evaluate the role assigned to civil society in the participatory mechanisms available in Mercosur, focusing on the potential in such mechanisms to confer input and control legitimacy to the regional decision-making process.

\(^1\) Mercosur CMC Decisions: CMC/DEC/22/00, CMC/DEC/23/00, CMC/DEC/24/00, CMC/DEC/25/00, CMC/DEC/26/00, CMC/DEC/27/00, CMC/DEC/28/00, CMC/DEC/30/00, CMC/DEC/31/00 and CMC/DEC/32/00.

\(^2\) CMC/DEC/01/02; CMC/DEC/16/02.

\(^3\) CMC/DEC/26/03.

\(^4\) None of the reports has been published yet (July 2006); the supposed evaluation and approval by the Common Market Group was not either.
The main argument is that, if there is a consensus that ‘civil society’ participation is one of the components for input and control legitimacy in Mercosur, it is important to have non-restrictive and transparent definitions of norms and procedures for such participation. This argument is based upon previous research showing that the regulation of civil society participation – either by defining which actors are eligible to participate or defining procedures for participation – has negatively affected civil society participation during the last decade (Ratton Sanchez 2005). The main problems identified were the restrictive and inflexible definition of eligible actors and the lack of detailed procedures for participation.

In the next section, I will briefly present the institutional structure of Mercosur and the participatory mechanisms available for civil society’s actors. The third section offers a stocktaking of civil society actors’ participation in Mercosur. The fourth section investigates the potential for input and control legitimacy in the participatory mechanisms; in the concluding section, I will evaluate to what extent the deficiencies which I pointed out influence input and control legitimacy. Not only will the legal provisions be analyzed, but also the empirical data regarding the relation between civil society actors and Mercosur institutions.

**Participatory Mechanisms in the Institutional Structure of Mercosur**

The institutional structure of Mercosur was defined in 1994 by the Additional Protocol to the Treaty of Asunción, known as the _Ouro Preto Protocol_ (OPP). Its current institutional structure is organized around 250 bodies, some of a permanent character and others ad hoc. The main bodies relevant to our analysis of civil society participation are presented in Figure 7.1.

In this institutional structure, representation prevails, especially with respect to the bodies that have deliberative power – namely the Common Market Council (CMC), the Common Market Group (CMG) and the Mercosur Trade Commission (MTC). This ‘deliberative axis’ is basically composed of representatives of the state bureaucracy. Since the establishment of Mercosur, there have been few opportunities
for the participation of civil society. The most regulated of the mechanisms for participation is the Economic and Social Advisory Forum (ESAF). This forum represents the ‘economic and social sectors’ of all member states (Article 28 OPP) and has the right to make recommendations to the CMG. According to the OPP, the ESAF is the only mechanism for the exclusive and direct participation of non-state actors.

Other opportunities for direct participation in Mercosur are through bodies not exclusively for civil society actors. Among these are preparatory meetings for the Working Subgroups (WSGs) and their respective Commissions, the Specialized Meetings and the Ad Hoc Groups. Another route for civil society participation is from the national parliaments, but it has a mere advisory role. As from December 2006, the JPC was replaced by the Mercosur Parliament (CMC/DEC/23/05), which assumes other tasks (including some mechanisms for civil society’s actors’ direct participation). After a period of transition the Parliament will have directly elected members as from January 2011. The mechanisms for direct participation through the Parliament are not analysed any further here, as they are not yet in force.

9 The WSGs are linked to the CMG (CMC/DEC/04/91). Currently, there are 14 WSGs and 45 Commissions. Each WSG covers a specific domain, such as Institutional Aspects (WSG2); Financial Aspects (WSG4); Transportation (WSG5); Environment (WSG6); Industry (WSG7); Agriculture (WSG8); Energy and Mining (WSG9); Labour, Employment and Social Security Questions (WSG10); Health (WSG11); Investments (WSG12); Electronic Commerce (WSG13); and Economic Monitoring (WSG14) (Mercosur website; Ventura 2003, 681 ff.).

10 The Specialized Meetings and the Ad Hoc Groups are linked to the CMG as well. The minutes of meetings of such bodies record the participation of non-state actors; although this is not an explicit requirement of Mercosur regulations, a broad interpretation of the CMG
the procedure allowing the Technical Committees to request, at any time, advice from experts and consult representatives from the ‘private sector’.\footnote{MTC Working Procedures (CCM/DIR/05/96, article 18). The Technical Committees are: Tariffs, Nomenclature and Classification of Merchandise (CT-1); Customs Issues (CT-2); Trade Norms and Regulations (CT-3); Public Policies Distorting Competitiveness (CT-4); Competition (CT-5); and Consumer Rights (CT-7) (Ventura 2003, 687 ff.).}

From this brief description, it may be concluded that each mechanism for participation in the Mercosur institutional structure has one specific rationale: in the ESAF, consultations between the CMG and this forum are at its core; in WSGs (their Commissions), Specialized Meetings and Ad Hoc Groups, the role of civil society groups seems to be more as observers (though oral or written manifestation is not forbidden); and in the Technical Committees, the interaction with the ‘private sector’ seems to be restricted to technical advice. In the next section, the formal provisions for and the effective participation by civil society are discussed.

Stocktaking of Civil Society Participation in Mercosur

The question of who is allowed to participate is inventoried here by examining the treaties and protocols of Mercosur, as well as its soft regulation (all rules created by Mercosur bodies). Legal provisions have limited the development of civil society participation in Mercosur in two ways: the legal definition of civil society actors influences the eligibility of non-state actors and defines who may participate; and the lack of regulation on transparency and procedures (Ratton Sanchez 2005).

Who may participate?

Concerning the definition of ‘who is allowed to participate’, the following legal limitations in Mercosur rules are relevant: confusion concerning the eligibility of actors to participate, the number of participants per country, lack of a regional perspective, and a non-alternate system. As ESAF is the most institutionalized mechanism for civil society participation in Mercosur, these problems occur primarily in relation to this body.

Ambiguous concepts The ambiguity of references to non-state actors is due mainly to the terms of Mercosur’s rules regarding eligible actors. Four expressions are used: ‘private sector’, ‘economic and social sectors’, ‘other economic and social sectors’, and ‘private party’. The most frequent expression applied in official Mercosur documents is ‘private sector’. This expression is found in the Treaty of Asunción (article 14) and in some working procedures of Mercosur bodies (CMG, article 26 ff.; MTC article 18; ESAF article 3). The CMG Working Procedure is the only document that describes the meaning of the term: ‘which has a direct interest in any of the stages of the production, distribution and consumption processes’ (article 29). Such a description is ambiguous enough to allow for varying interpretations. A
restrictive interpretation may consider groups directly related to the economic chain – that is, ‘production’ for industry, ‘distribution’ for retail and ‘consumption’ for consumers – as ‘private sector’. A broader interpretation may consider a vast array of any interest group related to production, distribution or consumption processes, and is open to the possibility of including any individual or group.\textsuperscript{12}

The use of the term ‘private sector’ in 1991 was coherent with the objectives of Mercosur at the time, which was mainly to create a customs union. Nevertheless, in 1994, when the organizational structure was defined and the first steps toward forming a common market were laid down, the term ‘private sector’ was still being used, and regulations passed by the MTC (1996) and ESAF (1996) reiterated the term. This concept is thus applicable to all mechanisms for direct participation in Mercosur. The term ‘private sector’ in these documents does not seem to be the result of thorough reflection; rather, it seems merely to repeat an expression already employed in earlier documents. This has had a clear impact on the daily activities of Mercosur institutions (see next section).

The use of the term ‘private sector’ in 1994 contrasted with the expression ‘economic and social sectors’ introduced into Mercosur regulation at that stage (article 28 OPP; article 1ff. ESAF Working Procedure; GMC/RES/68/96). The ESAF Working Procedure illustrates the use of this expression: entrepreneurs, workers \textit{and other economic and social sectors} (article 12.2). It is important to highlight that this illustration prevented a more restrictive interpretation of the first two groups of actors. In principle, this new concept could allow for the recognition of a wider range of interests related to the integration process than the restricted interpretation of the ‘private sector’, but only ESAF regulations use it.

Another term used in formal Mercosur documents which may refer to the concept of ‘civil society’ is ‘private party’: persons and companies with an interest in defending themselves under the Mercosur dispute settlement system (article 25, Brasilia Protocol; article 40, Olivos Protocol). The use of the term ‘private party’ is not very helpful for terminological precision either, since requesting a consultation may involve a person or a company, either individually or collectively.\textsuperscript{13}

\textit{Number of actors} Besides the terminology used to identify the eligible groups of actors, there are limits to the number of participants from civil society in all bodies, except for the Technical Committees. It is reasonable to limit the number of participants (Vigevani 1998), but combined with other restrictive conditions for participation, this may create an undesirable bias in the system.

There is a limit of three representatives from the ‘private sector’ for the meetings of the WSGs, their Commissions, the Specialized Meetings and the Ad Hoc

\textsuperscript{12} Added to this broad interpretation, not coincidentally, is the understanding that the term ‘private sector’ is composed of everything that does not have a state component.

\textsuperscript{13} This mechanism will not be further examined here since the participation of ‘private party’ occurs through the National Section of the CMG and the presentation of the demand is made on behalf of the State. So far, no form of direct participation has been applied for or requested before the Mercosur dispute settlement system (an example of this could be the practice of \textit{amicus curiae}).
Groups. Yet, in none of these cases are there additional requirements, such as the type of organization, representativeness or parity. Additional rules are formulated for participation in ESAF, alongside the numerical limitation of 36 representatives, with nine seats reserved for each member state (it is not compulsory to appoint representatives for all nine seats). The National Section of each member state is to select the ‘economic and social sectors’ that will compose the ESAF (article 3, ESAF Working Procedures). The following conditions must be met by all National Sections: (i) the actors enrolled must be the most representative of the sector at the domestic level, (ii) parity for labour and business organizations and (iii) a maximum of nine delegates for each Section (ESAF Working Procedures, articles 3.1 and 6.2).

These criteria, in combination with the additional criteria created by each National Section, strongly reduces the potential for viable civil society participation in ESAF. For example, the criteria for the selection of ESAF representatives exclude the possibility of joint representation by regional alliances of civil society groups (the non-regional perspective critic). Combined with the criterion of national representation, ESAF excludes the participation of important actors whose power base is mainly local. The ESAF structure, based on National Sections, has also favoured the consolidation of a non-alternate system – that is to say, organizations and associations are part of a fixed group that participates in that system – a notion which is incompatible with the idea of civil society participation. The criterion of national representativeness defined by each National Section also favours elitist representation, and may be too inflexible to allow for the recognition of new actors (Ratton Sanchez 2005).

Which actors have participated?

Taking into account the limitations outlined above, a complementary exercise is the analysis of how the Mercosur bodies have applied these legal definitions, so that we may identify which actors have in fact made use of the available mechanisms for direct participation. Examining the minutes of the meetings of the WSGs, their Commissions, the Technical Committees, the Specialized Meetings and the

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14 If we accept the broad interpretation mentioned in fn. 12.
15 In the composition of all Mercosur bodies, there is always a concern for maintaining parity among the number of participants from each of the member states. So far, there has been no institute in the bloc that reflects a ‘regional logic’. A regional logic would be identified either (i) in the case of representative(s) named on behalf of the entire bloc or (ii) in the case of proportional representation for each member state taking into account economic or social differences and particularities. The Commission of Permanent Mercosur Representatives (CPMR), established in 2003, includes representatives from each member state and a president (Decision IV CMC EXT/DEC11/03). The position of president reflects a certain regional logic. However, the CPMR president has a purely symbolic function without any deliberative power or even the competence to participate in the decision-making process. Another example of a regional logic will be the Parliament, once it becomes directly elected (see fn 8).
16 This stocktaking is based on the official documents filed in Mercosur headquarters. Unfortunately, the absence of minutes for all meetings from 1991 to 1994 and the incomplete record of meetings taking place since 1994 makes the exercise incomplete and less reliable.
Table 7.1  Members of the ESAF National Sections

<table>
<thead>
<tr>
<th></th>
<th>Argentina</th>
<th>Brazil</th>
<th>Paraguay</th>
<th>Uruguay</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Business</strong></td>
<td></td>
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<td></td>
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<tr>
<td></td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
<td>(1)</td>
</tr>
<tr>
<td></td>
<td>Cámara Argentina del Comercio (CAC); Sociedad Rural Argentina (SRA); Unión Industrial Argentina (UIA)</td>
<td>Confederação Nacional da Agricultura (CNA)/ Confederação Nacional do Comércio (CNC)/ Confederação Nacional da Indústria (CNI)/ Confederação Nacional do Transporte (CNT)</td>
<td>Asociación Rural del Paraguay (ARP); Unión Industrial Paraguaya (UIP); Federación de la Producción, la Industria y el Comercio (Feprinco); Cámara Nacional de Comercio y Servicios de Paraguay (CNCSP); Centro de Importadores (CIP)</td>
<td>Consejo Superior Empresarial (Cosupem)</td>
</tr>
<tr>
<td><strong>Workers</strong></td>
<td>(1)</td>
<td>(3)</td>
<td>(3)</td>
<td>(1)</td>
</tr>
<tr>
<td></td>
<td>Confederación General del Trabajo (CGT)</td>
<td>Central Única dos Trabajadores (CUT); Confederação Geral dos Trabalhadores (CGT); Força Sindical (FS)</td>
<td>Central Unitaria de Trabajadores (CUT); Central Nacional de Trabajadores (CNT); Confederación Paraguaya de Trabajadores (CPT)</td>
<td>Plenario Intersindical de Trabajadores - Convención Nacional de Trabajadores (PIT-CNT)</td>
</tr>
<tr>
<td><strong>Other economic and social sectors</strong></td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
<td>–</td>
</tr>
<tr>
<td></td>
<td>Acción del Consumidor (Adelco)</td>
<td>Instituto Brasileiro de Defesa do Consumidor (IDEC)</td>
<td>Confederación Paraguaya de Cooperativas (Conpacoop)</td>
<td>–</td>
</tr>
</tbody>
</table>

*Source: Elaborated by author based on the Working Procedures of the National Sections in force.*
Ad Hoc Groups, has enabled us to identify the participation of certain civil society actors in those meetings since their creation in 1994. Actors with varied profiles have participated, such as isolated companies, associations of companies, industrial and agricultural confederations and union representatives. These actors may have participated due to their interest or expertise and the objectives of the body. As a result of the lack of criteria and explicit procedures for participation combined with the unreliable minutes and records of participants, I have decided to limit the analysis below to the documented history of ESAF.

ESAF started its activities in 1996. In the beginning, predominantly representatives of the ‘economic and social sectors’ were registered at its meetings: national business associations (industrial and agricultural) and labour unions (Ratton Sanchez 2005, Table 1; Seixas et al. 2000, 21 ff.). The National Sections have neither defined uniform procedures for selecting the national actors, nor for their decision-making process.\(^\text{17}\) Parity was not foreseen for the National Sections, resulting in disproportionate representation for employers as compared to workers, as Table 7.1 clearly shows. Only Uruguay has a balanced representation.

In addition, there are no minimum quotas for the representation of ‘other economic and social sectors’, and no further criteria. The National Sections have accepted the participation of other business actors (such as associations for insurance companies, cooperatives and the agricultural sector) under this category. It further increases the distorted representation mentioned, again favouring employers (see Ratton Sanchez 2005 for full lists of participants admitted by each National Section, in all ESAF meetings from 1996 to 2004). The system of registering entitled actors favours a non-rotating system of participation in ESAF, especially since there is no provision for any periodical review of the Working Procedures (including the list of entitled participants). In addition, the bias in favour of business associations (with the exception of the Uruguayan representatives), is in breach of the requirement of parity by ESAF Working Procedures. This could be a result of the confusing terminology concerning the civil society actors eligible to participate, which is still highly focused on the idea of ‘private sector’ as shown in the previous section.

As ESAF activities and Mercosur itself developed, other non-state actors began to have an interest in participating, which has resulted in better representation of ‘other economic and social sector’, though participation remains unbalanced. Table 7.2 below shows the participation in an ESAF meeting that took place in March 2004. This demonstrates the slight changes in the composition of ESAF since its creation.

An analysis of the ESAF registers (Table 7.2 shows an example) shows that some actors which were not on the initial list for the National Sections later demanded the right to participate. Among them are actors representing cooperatives, insurance

\(^{17}\) The National Section for Argentina in ESAF is composed of a Plenary Session, Coordinating Bench and Advisory Bodies. Brazil has a Plenary Session, an International Representation Committee, Coordinating Bench and Advisory Bodies. Paraguay’s Section is composed of a Plenary Session and Coordinating Bench, while Uruguay has a Plenary Session, Executive Council, Deliberative Board and Advisory and Administrative Support Bodies (Ratton Sanchez 2005, Table 2).
Table 7.2  Participation in an ESAF meeting (2004)

<table>
<thead>
<tr>
<th></th>
<th>Argentina</th>
<th>Brazil</th>
<th>Paraguay</th>
<th>Uruguay</th>
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<tbody>
<tr>
<td><strong>Business</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>(3)</td>
<td>(2)</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Cámara</td>
<td></td>
<td>Confederação</td>
<td>Câmara</td>
<td>Consejo</td>
</tr>
<tr>
<td>Argentina del Comercio (CAC)</td>
<td></td>
<td>Nacional do Comércio- (CNC)/ Confederação</td>
<td>Nacional de Comercio y Servicios de Paraguay (CNCSP)</td>
<td></td>
</tr>
<tr>
<td>Sociedad Rural Argentina – (SRA)</td>
<td></td>
<td>Nacional da Indústria (CNI)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unión Industrial Argentina (UIA)</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Workers</strong></td>
<td>(2)</td>
<td>(4)</td>
<td>(2)</td>
<td>(1)</td>
</tr>
<tr>
<td>Confederación General del Trabajo (CGT)/ Central Trabajadores Argentina (CTA)</td>
<td></td>
<td>Confederação Geral dos Trabajadores (CGT)/ Central Única dos Trabajadores (CUT)/ Confederação Geral dos Trabalhadores (CGT)/ Força Sindical (FS) Central Autônoma dos Trabalhadores (CAT)</td>
<td>Central Unidad de Trabajadores (CUT)/ Central Nacional de Trabajadores (CNT)</td>
<td>Plenario Intersindical de Trabajadores - Convención Nacional de Trabajadores (PIT-CNT)</td>
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<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Acción del Consumidor (Adelco)</td>
<td></td>
<td>Organización das Cooperativas Brasileiras (OCB)</td>
<td>Confederación Paraguaya de Cooperativas – (Conpacoop)</td>
<td>Confederación Uruguaya de Entidades Cooperativas (Cudecoop)</td>
</tr>
<tr>
<td><strong>Other economic and social sectors</strong></td>
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</table>

*Source: Based on the minutes of ESAF meetings on 30 and 31 March 2004, as registered at the Mercosur Secretariat. In bold, the changes in comparison to the National Section Working Procedures (Table 7.1).*
companies and insurance brokers, and some universities (for more details, see Ratton Sanchez 2005). For the latter, it is possible that specific interests with respect to negotiation themes or research projects provided the impetus for such demands. In the case of cooperative associations, the interest demonstrated does not seem to be related to a specific theme but rather to the feeling that the previously registered producers’ associations lacked representativeness. There are further pending demands such as from stakeholders for environmental and gender issues (ABONG 1998; Mello 2001).

National representation is another problematic criterion. It is remarkable how sensitive the concept is among member states. The population of all four member states is concentrated in a few urban centres. In the case of Argentina, 7.6 percent of its population lives in Buenos Aires. In Brazil, of the almost 170 million citizens, over 24 million (14.3 percent) are concentrated in São Paulo and Rio de Janeiro, two metropolitan areas both located in the south-east of the country. In Paraguay, 9.8 percent of the population lives in Asunción; and in Uruguay, 42.5 percent of its population resides in Montevideo. Those regions and cities are the main economic centres of the member states, but actors representing the ‘economic and social sectors’ may be distributed over those countries’ territories. Thus, it is unclear to what extent these actors represent the complexity, the diversity and scope of the sectors that may exist in those States beyond those main population centres, and this must negatively affect any potential for the concept of regional civil society in Mercosur.

**Transparency and procedures for direct participation**

There are few provisions on transparency and procedures for direct participation in Mercosur. This section presents these regulations and evaluates how civil society actors have participated during the last years.

Transparency – defined here as access to information – can be seen as a precondition for participation, and a main factor influencing how civil society participates. The data collected points at significant deficiencies in Mercosur in that regard, such as (i) a non-systematized database; (ii) incomplete publication of Mercosur documents; and (iii) difficulties to get access to documents. All these deficiencies restrain the capacity of civil society as a whole – including those actors that are eligible to participate in the institutional structure of Mercosur – to follow and understand the decisions made and, consequently, the significance of their participation.

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18 According to Fátima Mello, advisor for FASE and a member of REBRIP – a Brazilian movement with growing interest and participation in international negotiations – the initiatives presented so far by these movements are still in the formative stage. She expects that, in the near future, some Brazilian NGOs will obtain approval for a seat on ESAF (Mello 2001).

19 Venezuela has not been included as it does not yet fully participate in all institutions.


21 An example of such deficiencies is the information available at <http://www.mercosur.int> (July 2006), which does not include all official documents produced by Mercosur institutions and provides only partial information. Minutes of the meetings and their annexes
Besides transparency, the lack of procedures is also frequently criticized as an obstacle to civil society participation. With reference to the WSGs, their Commissions, the Specialized Meetings and the Ad Hoc Groups procedures, representatives from the ‘private sector’ can be consulted in preparatory meetings (limited to three representatives per meeting). The representatives that may be consulted by those bodies shall be put on a list of ‘representatives of the private sector’, drawn up by each National Section of the CMG. The wordings of Chapter VII of the CMG Working Procedures do not clearly define how ‘private sector’ representatives are to behave. Its provisions do not explain the criteria for selecting the actors to be invited, whether such actors can issue oral or written opinions, or how and to what extent opinions have to be incorporated (or not) into the final decision of those Mercosur bodies. I have therefore classified civil society participation in such bodies as observer. Given the limitations, it is impossible to evaluate how the private sector participates in the meetings of Mercosur bodies based on an analysis of the available minutes.

Technical Committees may request advice from experts and consult representatives from the ‘private sector’. No criteria or procedures are stipulated with respect to how and under what circumstances these consultations can or should take place. As can be seen from the minutes of these Committees, some actors have indeed participated in their meetings, but it is not known how they were selected or what their contribution to the meeting was.

With regard to ESAF there are specific rules as to how its activities are to be organized and how civil society constituencies are to participate. According to the ESAF Working Procedures the forum holds a Plenary Session at least once every six months. In principle, some of the activities are prepared in the National Sections and should be presented in a report to the ESAF before each joint meeting. The practice of recent years, however, shows that not all Sections communicate their activities and when they do, they rarely follow minimum standards for describing their activities required to permit monitoring of the dynamics of the work and influence of each National Section in ESAF deliberations. It can also be seen from the minutes that in all National Sections there is an internal work division according to thematic and sub-sector interests.

Before each ESAF Plenary Session, the coordinating National Section must notify the other sections of the planned agenda (at least fifteen days beforehand). ESAF decisions are to be adopted by consensus; should this prove impossible, all the divergent positions are subsequently forwarded to the CMG (ESAF Working Procedures, articles 15–16). Through a decision by the Plenary Session, the ESAF can also allow observers selected by the National Sections to express themselves are partially restricted by the member states and no public justification is given for these restrictions. See CMG regulation on this (GMC/RES/08/05).

22 There is a certain lack of continuity in the provision of information on the part of each National Section. The first communication was presented in writing by Argentina at a meeting in December 1997; during the following years, one or another Section presented a report and only in 2002 and 2004 did all of the Sections fulfil the commitment to present reports on their activities.
orally at its meetings (ESAF Working Procedures, articles 6.5 and 8.V). This form of participation can also be considered as consultation by ESAF with other non-state actors.

Based on their deliberations, ESAF members may formulate recommendations to the CMG. In principle, a strict interpretation of its mandate as established in article 29 of the OPP would lead to the conclusion that the forum may only formulate written opinions when consulted by the CMG. However, article 2.I of the ESAF Working Procedures says that the forum can express itself on any subject within its competence, be it on its own initiative, consultations with the CMG, or any other Mercosur body.

Since this broad interpretation of its mandate was defined by the ESAF itself in its Working Procedures and through its practices, nothing in the current regulation of Mercosur guarantees that such voluntary Recommendations to the CMG are taken into account; in fact, the CMG need not even justify its acceptance (total or partial) or rejection of an ESAF proposal. Even concerning the two consultations of ESAF by the Common Market Group (see Table 7.3) which resulted in the Recommendations 01/00 and 02/00, there are no published comments on the part of the CMG (see Table 7.4). Thus a black hole has been created in Mercosur whereby the ESAF cannot rely on any well-founded evaluation or consideration of its Recommendations.

### Table 7.3 Recommendations versus Consultation

<table>
<thead>
<tr>
<th>Recommendations and Consultations</th>
<th>24 (approx)</th>
<th>100%</th>
</tr>
</thead>
<tbody>
<tr>
<td>ESAF/CMG</td>
<td>22 recommendations</td>
<td>91.6%</td>
</tr>
<tr>
<td>CMG/ESAF (01/98; 04/99)</td>
<td>2 consultations</td>
<td>8.4%</td>
</tr>
</tbody>
</table>

*Source: Elaborated by the author based on the minutes of CMG and ESAF meetings (1996-2004).*

Mercosur regulations do not ensure that there is external transparency for ESAF recommendations (cf. CMG/RES/08/05) and, consequently, there is no way to monitor its recommendations and opinions. This has led to the questioning of the credibility and usefulness of ESAF, as well as the difficulty in correlating its dialogue with other bodies in the Mercosur structure. Although the ESAF is considered the most objective and most clearly organized participation mechanism in Mercosur, a recurring criticism is that it is an empty mechanism within the dynamics of the decision-making process in Mercosur. For instance, during the reform of the dispute settlement system in 2002 (the Olivos Protocol), no consultation took place with ESAF or JPC (Ventura 2003).

23 According to Article 2 of the Working Procedures, ESAF Recommendations can cover internal Mercosur questions as well as its relations with other states, international organizations and other RIOs.
To summarize, the analysis of how civil society actors can participate, and how they have done so hitherto, reveals that there are improvements to be made, particularly in developing detailed procedures for participation. There are also other issues that need to be addressed, such as the lack of information and registers concerning civil society participation. These obstacles also hampered the evaluation carried out in the following section.

Looking for input and control legitimacy in Mercosur: contrasting regulations and practices

The purpose of this section is to evaluate Mercosur regulation governing direct participation and its practices, according to the concepts of input and control legitimacy. The mechanisms for direct participation in Mercosur are evaluated only in relation to their capacity to contribute to input and control legitimacy of Mercosur decision making; hence, their own legitimacy is only marginally examined here.

As far as input legitimacy is concerned, the following questions are addressed concerning the mechanisms for direct participation in Mercosur:

- Is it possible for these mechanisms to contribute to more rational decisions in the Mercosur decision-making process?
- Are there institutional tools for social inclusion in such mechanisms?

Concerning control legitimacy, meanwhile, the question is the following:

- Does the dynamic of direct participation in the mechanisms examined enable the control of power in that bodies’ role in the decision-making process?

Input and control legitimacy contributions, generally speaking, vary according to the role granted by such mechanisms to civil society actors. The prevailing roles
in the examined mechanisms are classified in Table 7.5 according to their potential contribution to input and control legitimacy in Mercosur.

The scores attributed to input and control legitimacy of Mercosur decision-making processes listed in Table 7.5 reflect both the regulation and practice of each of these roles, as they both influence the effective capacity of the body in question to promote legitimacy.

**Technical opinions**

**Table 7.5  Input and control legitimacy potential level**

<table>
<thead>
<tr>
<th>Role assigned to civil society</th>
<th>Input legitimacy</th>
<th>Control legitimacy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical opinion</td>
<td>Medium</td>
<td>Low</td>
</tr>
<tr>
<td>Observer</td>
<td>Medium</td>
<td>Medium</td>
</tr>
<tr>
<td>Consultation</td>
<td>High</td>
<td>High</td>
</tr>
</tbody>
</table>

The contribution of the technical opinions of the Technical Committees to input legitimacy is ranked as *medium* because it may influence the analysis of the member states and thereby influence the decision-making process. It is possible to infer the potential for input legitimacy of Mercosur regulation from the description in the previous section, though an accurate analysis of how this potential has been brought into play would require a detailed examination of the technical opinions submitted and their influence on the process of decision making.

The lack of procedures for the request of technical opinions and revision by the Technical Committees, however, might impair their potential for input legitimacy. If it is impossible to obtain information on who can participate, and when and how an actor has participated, the (non-transparent) request of such opinions can easily be biased. Furthermore, such lack of regulation will also limit any affirmative action or program to promote social inclusion within such a mechanism.

The contribution of technical opinions to control legitimacy, on the other hand, is relatively *low* because of the nature of such opinions: clarifications of thematic disciplines or instructions for their application. Technical opinions can influence decisions – in a secondary manner – but not actually control the exercise of power in the Technical Committees. The case of Mercosur follows the general pattern: the regulation of technical opinions is extremely undemanding. In addition, in the case of Mercosur, the major obstacle to making any evaluation of the potential contribution to control legitimacy by technical opinions is the lack of registered practices, which does not reveal the real role that technical opinions have had in the decision-making process.
Observers

Regarding the role of observers – which is mainly exercised, as explained in the previous section, by civil society actors in the WSGs, their Commissions, the Specialized Meetings and the Ad Hoc Groups – its input legitimacy potential is medium due to the non-obligation of Mercosur institutions to formally react to the presence of civil society actors in the meetings (which is in any case limited to the preparatory meetings), even though they have the right to oral or written expression before the institution concerned. In the case of Mercosur, it is not possible to evaluate the potential for input legitimacy since the regulation is not clear enough in respect to the way in which civil society actors can participate – the regulation of the timing of this participation being the sole exception.

As with technical opinions, an analysis of the role of observers in conferring input legitimacy would require a study of the cases in which such participation was allowed or invoked, and the influence of this participation in the process of decision making. The poor registration of direct participation in meetings of the WSGs, the Commissions, the Specialized Meetings and the Ad Hoc Groups all make it impossible to identify (i) which actors participated; (ii) how they participated; and (iii) their contribution to the decision-making process.

Besides the proceedings, the selection of the actors that may participate in the WSGs, their Commissions, the Specialized Meetings and the Ad Hoc Groups must be based on the lists of names suggested by the National Sections. Firstly, based on the collection of empirical data, it was impossible to verify if these lists really exist. Secondly, there is no indication of the criteria for the selection of civil society actors. For these reasons, it is difficult to evaluate the possibilities for social inclusion in such mechanisms. The fact is that in principle regional regulation leaves room for internal regulations by the National Sections and for the practices of all those bodies to promote the inclusion of those often excluded by the process. However, no action in that sense was identified during the research conducted.

The medium degree of potential for control legitimacy by observers is based on the fact that the participation of civil society actors in an interstate body can enable them to check power in that body. Again, the lack of regulation in Mercosur, both on which actors can participate and how they can participate, may encourage biased contribution.

Consultation

As regards consultation, the potential for input and control legitimacy is high due to its closer connection to the decision-making process. During the consultations Mercosur institutions may require the opinion of civil society actors and in theory, at least, they also have to react to it. Accordingly, consultation becomes a sort of cooperative mechanism within the RIO structure. Consultation, therefore, should be based on clear objectives and rules, and be completed within a reasonable space of time so that the participating actor can understand how to cooperate.

As for the consultation provisions for Mercosur bodies, the ESAF being the body with most comprehensive provisions, it can be concluded that the objectives and rules
are still fragmented (Tables 7.1 and 7.2). In addition, the consultation procedures in Mercosur fail to take into account the need for accountability concerning the employment of the results, and their importance to the decision-making process (Tables 7.3 and 7.4). Such deficits influence both the input and control aspects of legitimacy, which could be fulfilled by direct participation in the ESAF. Moreover, particularly for input legitimacy, the inflexible rules of the ESAF for the selection of the participants (emphasis on fixed members of the ESAF National Sections, the non-regional character, and the non-rotating character) distort any potential for social inclusion in the mechanism.

Finally, in all institutions, the ‘inclusion requirement’ for input legitimacy is restrained also by the confusing terminology applied in Mercosur regulation and the restricted character of the predominant terminology (‘private sector’), as well as the way in which it has influenced the activities of the institutions.

Conclusion

Given the analysis presented in this chapter, we may observe that Mercosur regulation concerning the participation of civil society actors could, in principle, strengthen the input and control legitimacy of decision making. However, this does not mean that legitimacy is, in practice, strengthened. Apart from the confusing and restrictive terminology for the identification of the eligible actors, other mechanisms also fail to fulfill the potential to enhance input and control legitimacy. There is a lack of procedures mainly concerning participation and mechanisms for inclusion. Neither the soft regulation (the institutional norms) nor the practices of Mercosur institutions, as described in this chapter, were able to improve the regulation in order to limit the discretionary power of interstate bodies in the Mercosur institutional structure (especially concerning the participation of civil society actors). Main Mercosur institutions presently define when, where, how and who they will consult for almost all mechanisms for participation. As seen in the conclusions of the preceding section, such discretionary power may bias contributions from civil society actors.

Last, but not least, it should be stressed that part of the analysis conducted in this chapter was limited due to the lack of information – either information not generally available, or it was simply absent from Mercosur records. Consequently, as a precondition for direct participation, transparency becomes the most important issue within Mercosur today. In order to improve the participation of civil society and its capacity to bring about a legitimate decision-making process within Mercosur, transparency surely has to be on Mercosur’s institutional reform project agenda.

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GMC, official Mercosur documents, available at <http://www.mercosur.int/msweb/>


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The Contribution of Non-state Actors to the Legitimacy of the Caricom

Gerda van Roozendaal

Over the past decade, Caricom has been paying increased attention to the need to intensify its interaction with non-state actors. This chapter argues that, thus far, this has not led to a strong institutional framework to ensure the participation of these actors. The reasons for this include a lack of funds and capacity, both on the part of the state as well as the non-state actors, a lack of political will, a lack of public understanding of the nature of Caricom, and Caricom’s emphasis on sovereignty. This line of argumentation is illustrated by the case of Barbados, which is not only a prominent member of Caricom, but is also host to a high number of active non-state organizations.

Conceptual Considerations

In chapter 2 of this volume, three related aspects (input, control and output) of legitimacy were highlighted, which need to be addressed in order for a Regional Integration Organization (RIO) to gain legitimacy. The legitimacy of a RIO depends on ‘the extent to which it contributes to the realization of the common good’ (Tholen see p. 000). This chapter investigates the case of Caricom, a regional organization in the Caribbean which currently includes 15 member states and 5 associate members. The question posed is: during the past ten years, have non-state actors contributed to the legitimacy of Caricom? Answering this question should provide insight into the conditions under which non-state actors can contribute to the legitimacy of RIOs and thereby, amongst others, contribute to the development of well-informed policies, (Tholen, see page 28 of this volume).

The concept of non-state actors covers various categories of organizations. For the purposes of this chapter, the term non-state actors refers to national and regional civil society organizations whose purpose is public in nature, and to private purpose...
Closing or Widening the Gap?

groups such as employers’ organizations and business organizations, being interest groups with a mix of public and private purposes (Arts 2003/4, 5–7). In this chapter, I will not only investigate the contribution of non-state actors to input and control legitimacy, but will also address the conditions which have impeded or facilitated such contributions. Input legitimacy concerns the extent to which they participate in agenda setting and decision making in RIOs. Control legitimacy concerns the question of to what extent the arrangements provide checks and balances, for example through creating parliaments (see Tholen, Chapter 2). Scholte emphasizes the legitimacy-enhancing role of non-state actors in (1) developing public education activities; (2) giving the opportunity to stakeholders to represent their interests by providing information to public agencies; (3) stimulating the formation of an informed public opinion on (regional) governance; (4) increasing the transparency of (regional) decision-making; and (5) increasing public accountability of the organizations involved (Scholte 2001, 16-19). Fulfilling the first three roles contributes to input legitimacy, the others to control legitimacy.

Categorizing conditions

The conditions under which non-state actors are able to play such roles and which influence their impact on the legitimacy of a RIO may be divided into three categories: the characteristics of the political process, of the selection process and of the non-state actors themselves (Huberts 1988).

The first category concerns the characteristics of the political process and refers to the institutional environment in which non-state actors operate and select their strategies (Huberts 1988, 75-7). This environment will enable them to assume (or prevent them from assuming) a certain role (Streeck 1992, 105). It concerns the question of whether and how non-state actors gain access to a RIO. They may access RIOs through national representatives (indirect) or directly at the regional level. Particularly in less-developed parts of the world such as the Caribbean region, non-state actors may not deal directly with RIOs, owing to the high costs involved. Instead, non-state actors provide input to RIOs through national routes, in which national representatives consult non-state actors at the national level and act as a relay between the sub-national and the regional level. The strategies non-state actors

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3 When I use the term non-governmental organization (NGO), I refer to non-profit groups with public goals. Trade unions will also be included in this group. When I refer to private sector groups, I refer to private interest groups such as business organizations (see also Arts 2003/4, 5-7).

4 Occasionally I refer to matters concerning output legitimacy (realization of outcomes, see Tholen, p. 23 of this volume), for example concerning the functioning of the Caribbean parliament. However, output legitimacy is not the main focus of this chapter.

5 Scholte actually uses the broader term civil society, but for consistency reasons I will refer to non-state actors.

6 Huberts makes use of four categories to explain influence of protest and pressure groups: characteristics of the protest/pressure group, of the collective action, of the political process and of the context (Huberts 1988, 69–79). His categorization has been adapted to serve the purpose of this study.
choose will depend on the opportunities and constraints of the political process. A number of strategies can be distinguished (Arts 2003/4). Lobbying and protesting, both efforts to influence decision-making without being granted formal access to the decision-making process, are informal strategies. The latter is mainly about publicity, while the former tends to take place behind closed doors. Formal strategies concern advocacy and participation in decision-making, enabling non-state actors to promote their ideas. Monitoring can take place in formal and informal settings, and aims at keeping a close watch on whether promises are kept (Arts 2003/4, 18). Different strategies have different consequences on the contribution that non-state actors are likely to make to the legitimacy of regional policy making. Formal access for non-state actors is a precondition for an increase in input legitimacy. In addition, it is assumed that direct access for non-state actors will increase the transparency of a RIO, providing that the material conditions – such as available funding – are fulfilled in order for full use to be made of this access.

The second category concerns the characteristics of the selection process. If non-state actors are granted access, either through the national level or directly at the regional level, the question is how non-state actors are selected and accredited. In other words, on what grounds is it decided which non-state actors are granted formal or informal access, and who do these non-state actors represent?

The third category refers to the characteristics of the non-state actors, which concern both the nature of the non-state actors involved and the resources at their disposal. It deals with the question of whether non-state actors can contribute to legitimacy in only a limited way because of a lack of resources. Resources relevant in this context are finances, stakeholders, information, expertise, and contacts (Huberts 1988, 71-2). These determine whether a non-state actor will be able to collect new and broadly-supported information and inform the public and policy makers. The above conceptual considerations are summarized by Figure 8.1, which will guide our analysis of Caricom.

Integration and the Participation of Non-state Actors in the Caribbean

Since its establishment in 1973, Caricom has matured into a regional organization with activities in three main areas: stimulating functional cooperation in the field of human and social development and in areas such as air transport and disaster cooperation, increasing economic integration in the Caribbean, and coordinating the foreign policy of the member states (Caricom 2006; Bravo 2005, fn 23). A decade ago, the integration process received new impetus from the decision of the Caricom member states to begin negotiations on the Caribbean Single Market and Economy (CSME).

Like many countries in the world, Caribbean countries see regional integration as a way to shield themselves against global market forces and at the same time take advantage of the expanding world economy. While during the first years the CSME’s focus was limited to the establishment of a common external tariff, common rules of origin and a regional stock exchange, during the 1990s the removal of tariff and non-tariff barriers on the movements of goods and the free movement of limited categories of skilled people was added to the list of tasks. To these basically single
market aspects were added single economy aspects such as the coordination of policies in the field of for instance macroeconomics. The single economy is to be implemented by 2008 (Girvan 2005). The ratification of this single market section of the CSME, the CSM, took place in January 2006.7

In order to facilitate cooperation within the Caricom, several organs and institutions have been created.8 First of all, Caricom has established a cabinet-like system in the form of a Conference of Heads of Government, in which each Head is responsible for a specific portfolio. The Conference is the most important organ and determines the policy of the Caricom. It takes decisions by affirmative voting. The Conference is assisted by the Community Council of Ministers, in which the member countries are represented by their Minister responsible for Community Affairs. The Council votes by qualified majority, and in the case of critical decision making it falls back on unanimous voting. In addition, several Community Councils were established during the 1990s; among these are the Council or Trade and Economic Development (COTED) and the Council for Human and Social Development (COHSOD), which both consist of ministers of the member states which hold the relevant portfolio plus additional national representatives. These organs are all supported by the Secretariat

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7 The Bahamas, Montserrat and Haiti are not currently participating in the CSME (Girvan 2005, 6).

8 In 1997 the structure of the Caricom and the voting system were adapted through the first Protocol of the Revised Treaty of Chaguaramas (Caricom 2006).
of the Community, which is located in Guyana (Caricom 2004, 9-19; Caricom 2006; Bravo 2005, 176–81).

In addition, there are a number of bodies, institutions and associate institutions. One of these institutions is the Assembly of Caribbean Community Parliamentarians (ACCP). The ACCP, created in 1994, was established to increase public involvement in the Caricom. However, its powers are limited to functioning as a consultative institution consisting of a small number of parliamentarians originating from the parliaments of member states and associate member states. There is no right to consultation, the ACCP has no right to initiate proposals with respect to the implementation of integration, and is not required to give its approval to decisions being made by the organs (IDB 2005, 42; Bravo 2005, 197–8). Due to its specific nature and limitations, coupled with other matters such as financial constraints, the ACCP functions poorly. Specific proposals to rectify this have, thus far, been unsuccessful (IDB 2005, 42–3). Consequently, the ACCP hardly contributes to Caricom’s legitimacy, which in turn makes the need to increase legitimacy in other ways more urgent.

As argued in the previous section, involvement in regional decision-making can take place following an indirect track (through national decision-making processes) or through direct involvement at a regional level. These two ‘tracks’ will be discussed below, using Barbados to illustrate the national level.

**Barbados: non-state actors and the national track**

Barbados was one of the first and most active members of Caricom, and at the same time is home to a high number of non-state organizations. According to the 2005 index of the Barbados Association of Non-Governmental Organisations (BANGO), there are 845 organizations active on the island in a wide variety of sectors, including sports clubs, health care and religious organizations (BANGO 2006). Most of these organizations are charitable, and as such not regulated, except for tax purposes (interview CSME focal point government of Barbados 2006).

The traditional social partners (labour and employers’ organizations) are consulted on a regular basis to inform policy-making. While this social partnership in Barbados goes back a long way, over the past 15 years in particular Barbados has developed a formal system of social dialogue between government, employers’ and workers’ organizations. This system, established during the economic crisis of the early 1990s, is considered successful in many respects (Fashoyin 2001, 19–20). There is, according to an ILO study, ‘… hardly any doubt that the tripartite agreements have contributed not only to the reversal of economic decline, but also to the path of sustained growth for eight consecutive years’ (Fashoyin 2001, 58). This experience, however, is by no means representative for the Caribbean. Even though five Caricom member states have created formal advisory committees that include business and labour representatives (IDB 2005, 43), it has been argued that ‘… most governments and social partners in the Caribbean have yet to fully utilize the potential of social dialogue for sustainable growth and development’ (Fashoyin 2001, 51). This means that any observations about the contribution of the social partners in Barbados to Caricom decision making should be regarded as ‘best practise’ in the region.
Trade unions are relatively well-organized in Barbados. The around 25 trade unions registered, plus a further 10 staff associations unregistered in Barbados, are organized under the umbrella of the Congress of Trade Unions and Staff Associations of Barbados (CTUSAB), in which Barbados Workers’ Unions (BWU) forms the largest one. It is estimated that union density is around 52 per cent (Fashoyin 2001, 8–9). The Barbados Employer’s Federation (BEC) organizes more than 200 companies in a wide range of areas such as tourism, agriculture and finances (BEC 2004). According to statistics provided by BEC, these companies employ 26,098 employees. This equals around 20 per cent of the labour force (Ministry of Labour and Social Security 2005). Just as the unions formed the CTUSAB to coordinate their response, the private sector formed the Barbados Private Sector Agency (BPSA) in 1993, which includes, amongst others, the Barbados Chamber of Commerce and Industry (BCoC) and BEC (Fashoyin 2001, 11–12). Given these organizational structures, there does not seem to be a representational problem at the national level (Fashoyin 2001, 17).

The institutional tripartite framework in Barbados currently includes a monthly social partnership meeting (the Sub-Committee of the Social Partners) and a quarterly senior-level meeting, chaired by the Prime Minister. Here, the government, the CTUSAB and the BPSA meet to discuss a wide range of issues and focus not only on resolving existing conflicts, but also preventing potential future conflicts (Fashoyin 2001, 26). In addition, there is an annual private-public sector forum, in which organizations are consulted and informed on specific issues, such as financial services and trade (interview BCoC/PSTT 2006; interview BEC 2006). Only since recently have organizations other than the social partners been able to participate in this forum under their own name, instead of under the umbrella of one of the social partners (interview BANGO 2006).

This institutional set-up is, first and foremost, a framework to address national issues and to solve national problems (Dunlop, Szepesi and Van Hove 2004, 12). To the extent that regional issues such as Caricom are discussed, the role of the Sub-Committee seems to be limited to creating support for Caricom through educational activities for workers and discussing the impact of migrant labour on local labour markets (Sub-Committee of the Social Partners 2005; Sub-Committee of the Social Partners 2004). Also, the 2003 private-public sector meeting concerning the CSME illustrates that creating support for the CSME and addressing the possible negative consequences of opening up the regional labour market are amongst the most important issues. During this meeting Leroy Trotman, President of the Congress of Trade Unions and Staff Associations of Barbados (CTUSAB), reminded the Barbadian Prime Minister of an earlier promise to provide assistance to the trade unions movement to help it adjust to the CSME. At the same time, Trotman pointed out that the labour movement was instrumental in creating support for CSME (Trotman 2003, 21). That this support was welcome was illustrated through the words of the head of the CSME unit of Caricom who pointed out during this annual meeting that the NGOs were expected to ‘provide necessary support’ (Field-Ridley 2003, 8).

While it seems that the current institutional social framework is neither a forum for heated discussions on Caricom in general or its specific policies, nor instrumental
in policy making on matters pertaining Caricom, there are also other ways of trying to influence national positions on regional and international matters, such as through formal ad hoc meetings with ministries and through participation in trade delegations (interview BCoC/PSTT 2006; interview BEC 2006; interview CSME Focal Point of the Barbados Government 2006). However, as far as participation in trade delegations is concerned, many only accept the invitation to participate in a delegation if this is financially supported, which is seldom the case (Dunlop, Szepesi and Van Hove 2004, 13).

In sum, while an elaborate social dialogue system has been developed in Barbados, this is unrepresentative of the Caribbean as a whole. Besides that, contrary to what might be expected, this system does not seem to play an important role in involving non-state actors in Caricom policy. Unlike in Europe, where developments within the European Union have given rise to a heated debate between opponents and proponents of further integration, Caricom does not seem to evoke a similar discussion or critical stance on the part of the non-state actors in the Caribbean. In addition, it seems likely that to the extent that Caricom invites debate, evokes differences of opinion or creates a need for information, this is addressed through ad hoc meetings with the ministers responsible.

**Caricom: non-state actors and the regional track**

Since its establishment, public participation in Caricom decision making has been limited in terms of the frequency of meetings, the consequences of these meetings and the variety of non-state actors involved. For over a decade, Caricom has expressed commitment to strengthening the involvement of non-state actors in policy making. This commitment began in the early 1990s, when the West Indian Commission recommended that the Caricom stimulate the participation of civil society organizations (Caricom no date). Still, today the formal regional ways in which non-state actors are able to express their views on certain subjects are limited to the following:

- The Caribbean Congress of Labour (CCL), the Caribbean Policy Development Centre (CPDC, which counts amongst its members numerous NGOs from different Caribbean states) and the Caribbean Association of Industry and Commerce (CAIC) are invited to address the annual meetings of the Heads of State of Caricom (interview CEC 2006a; interview CPDC 2006; interview Caricom/CSME 2006; interview CAIC 2006).
- Meetings are organized on a regular basis between ministers, regional employers’, workers’ and business’ organizations and organizations representing the NGO community such as CPDC. These often take place within the specific councils or task forces. The most ‘open’ council in this respect is COHSOD (interview CPDC 2006; interview Caricom/CSME 2006).

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9 The importance of the ad hoc meetings could not be determined.
10 Before COHSOD came into existence in 1997, there was a tripartite system in place. The social partners were invited to the meetings of the Heads of State and to meetings with
Other non-state actors are consulted on an ad hoc basis, as for instance during the formation of the Caribbean Court of Justice or to set priorities in the anti-HIV/AIDS programmes (Carrington 2002).

**Charter** Attempts to increase the involvement of non-state actors led to the adoption of a Charter of Civil Society in 1997 (Caricom 2006; Caricom no date). The aims of this Charter were, amongst others, ‘to create a truly participatory political environment within the Caribbean Community which will be propitious to genuine consultation in the process of governance’ (Charter 1997). The Charter, though non-binding, refers to the need to strengthen the fundamental elements of a civil society. By accepting this Charter, states have agreed to establish effective systems of consultations between governments and people on a national level:

> The States undertake to establish within their respective States a framework for genuine consultations among the social partners in order to reach common understandings on and support for the objectives, contents and implementation of national economic and social programmes and their respective roles and responsibilities in good governance (Charter of Civil Society for the Caribbean Community 1997).

There is, however, no mention that such a process should also take place at the level of Caricom. The Charter does, however, determine that all states are required to report periodically to Caricom concerning the progress made on the issue areas described in the Charter. It is stipulated that these reports should be prepared in consultation with the social partners. In addition, every state is expected to establish a National Committee, consisting of state representatives, social partners and ‘such other persons of high moral character and recognised competence in their respective fields of endeavour’ (Charter of Civil Society for the Caribbean Community 1997). This Committee should monitor and ensure the implementation of the Charter’s provisions. It seems, however, that the implementation of the Charter thus far leaves much to be desired (interview CPDC 2006; interview BEC 2006). The fact that the Charter is non-binding has prompted an initiative at the level of the Heads of States to transform it into a legally binding human rights charter (interview Caricom/COHSOD 2006).

**Revised Treaty** While in specific terms the Charter is directed towards the members and associate members of Caricom, it has been an inspiration to consider formalizing the involvement of non-state actors in regional policy making. This renewed attention to the involvement of non-state actors was illustrated in the Revised Treaty of Chaguaramas of 2001, the preamble of which notes the desire to restructure ‘… the Organs and Institutions of the Caribbean Community and Common Market and redefining their functional relationships so as to enhance the participation of their

11 Note that the terms civil society and social partners are not always clearly distinguished.

12 The Charter did provide a basis for the member states to exclude Haiti from the Caricom following the 2004 coup (Council on Hemispheric Affairs 2005).
peoples, and in particular the social partners, in the integration movement’ (Revised Treaty 2004, 1).

Article 26 urges consultation systems to be established at the national and regional level. Moreover, Article 52 under 1(f) and Article 57 under 2(d) mention the necessity of collaborating with social partners in the field of industrial policy and agriculture respectively (Revised Treaty 2004, 34–40). In the original Treaty, the social partners were not mentioned. While the understanding of the term ‘social partners’ can be limited to trade unions and private sector organizations, Caricom seems to understand this term as including ‘… the Government of a state, Associations of Employers, Workers Organisations and such Non-Governmental Organisations as the State may recognise’ (Charter of Civil Society for the Caribbean Community 1997). In addition, under the new Treaty, the COHSOD is designated as the focal point for civil society specifically (Caricom Press Release 28 February 2003). With respect to the CSME, a technical advisory council is in place in which civil society, private sector and trade unions participate (IDB 2005, 37). In fact, Caricom specifically recognizes CCL, CPDC and CAIC as ‘key partners’ (Caricom 2006). Interestingly enough, since 1995 the Caribbean Employers’ Confederation (CEC) has not been invited to speak during the Heads of State Summits. Instead, its position has been taken over by the Chambers of Commerce (interview CEC 2006b), which represent general commercial interests rather than being an organization dealing specifically with labour market and social policies.

Forward Together Conference In 1999, the member states of Caricom called for a regional meeting of non-state organizations – later to be known as the ‘Forward Together’ conference – to involve civil society in the broadest sense, and thereby include the private sector and labour in the Caricom (Caricom Press Release 1 October 2001; Caricom no date). The initiative for the encounter should not be seen, however, as an isolated process. Girvan (former Secretary General of the ACS) goes as far as calling the increased involvement of civil society in the Greater Caribbean policy-making processes ‘the quiet revolution’, illustrating this revolution with examples such as the involvement of non-state actors within the Summit of the Americas, the ACP-EU Joint Assembly and within the ACS (Girvan 2001). In the case of Caricom, this ‘quiet revolution’ is however still in its very early stages, often lacks substance, and depends on the willingness of external donors to pay for the expenses of the meetings when Caricom is unwilling or unable to do so. The Forward Together Conference was financed by the Inter-American Development Bank (IDB), the Canadian International Development Agency (CIDA) and the Caribbean Development Bank (Carrington 2002), for example.

The conference took place in 2002 in Guyana. The main aims were to identify strategies for creating developmental funds and to develop new approaches to

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13 According to the IDB, article 26 has resulted in the implementation of national consultation frameworks (IDB 2005, 43).

14 Also, Girvan argues that ‘(o)fficial commitments to involve NGOs in policy making often lack specific provisions to give them effect, leading to charges of tokenism’ (Girvan 2001).
increase cooperation and consultation between non-state actors and the states, especially within the context of the CSME (Caricom no date). The conference was preceded by a series of national consultations in the Caricom countries (Caricom Press Release 2001). These consultations took place under the auspices of the national governments, or in some cases national consultations were organized or supported by donors such as the InterAmerican Development Bank (IDB).

The results of the Conference have been modest. The Forward Together Conference led to a joint statement, the Lilendaal Statement. The Lilendaal Statement again emphasized the importance of the role of civil society in policy development and agreed on the need to institutionalize the participation of civil society while at the same time improve the participation already existing within Caricom councils such as COTED and COHSOD and establish a Task Force, including regional organizations such as CCL and CAIC and national representatives of civil organizations, to monitor the implementation of these recommendations (Caricom 2002; interview Bango 2006).

Thus far, the result of this Task Force seems to have been limited to preparing a report proposing the follow-up action of non-state actors involvement in Caricom. This report – which was according to BANGO submitted to COHSOD – concentrates on three areas of interest to non-state actors: CSME, human development and governance (interview BANGO 2006). With respect to the CSME, the task force recommendations focussed on improving access to information concerning the possible benefits of the CSME especially with respect to the needs of marginalized groups. Also, the task force advised taking steps in the field of consumer protection and the environment. In the area of human development, HIV-Aids elimination programmes and youth employment were emphasized (Task Force Report, no date).

A Caricom Civil Society Council? Specifically relevant for this study were the proposals in the area of governance, which aimed to make the participation of non-state actors more effective in development at national and regional levels, as this would serve as an enabling framework for success in the other fields. The Task Force advised to strengthen consultative processes between government and non-state actors at the national level. At the regional level, it recommended identifying ways to improve communication between non-state actors and the secretariat of Caricom and, in addition, create a Caricom Civil Society Council, which would organize both national civil society networks and regional civil society organizations (Task Force Report no date). This Council would be able to represent the civil society on the Caricom Councils of Ministers meetings and would include a wide range of

15 For instance, in Barbados, BANGO was invited by the government to take the responsibility for organizing this effort (Report Summary of Barbados National Consultation of Civil Society, no date).

16 However, Caricom did not invite the regional social partners to the conference, which led to a non-acceptance of the Declaration by CEC (interview CEC 2006b).
non-state actors (including all kinds of actors, such as business as well as NGOs) (interview BANGO 2006).  

To date, no such Council is in place. Even if the idea is realized, the challenge will be to create a Council which is able to represent all the major interest groups in the region and which is effectively involved in policy making. Currently, quite apart from the lack of a strong framework to participate in Caricom, the selection of representative organizations to be consulted by Caricom creates problems in itself. For instance, the CPDC – appointed by Caricom as a key partner – is, according to some of the interviewees, not a legitimate representative of civil society interests in Caricom (interviews BANGO 2006; Caricom/COHSOD 2006; Caricom/CSME 2006; CSME Focal Point of the Barbados Government 2006). The CPDC is regarded as a research NGO which helps to inform NGOs on policy issues, rather than as a regional representative. While the CPDC was at times able to fill a gap left by the lack of regional NGO representation at Caricom level, this was not always appreciated by others (interview Caricom/COHSOD 2006).

These problems between the CPDC and some of the national NGOs stem not only from the question of legitimate representation, but also from having to share the limited funds donated by international agencies (interview CSME Focal Point of the Barbados Government 2006). However, there seems to be no alternative available, which illustrates the weakness of NGO organization at the regional level.

**Private interests** A similar problem concerns the representation of private interests. As indicated earlier, Caricom recognizes the CCL, CPDC and CAIC as ‘key partners’ (Caricom 2006). Consequently, since 1995, CEC has been excluded from meetings with the Heads of State in favour of the CAIC, which does not emphasize employers’ interests but commercial interests. Effectively, then, a social dialogue structure at the level of Caricom is absent while Caricom’s structures are meant to incorporate the interests of social partners (workers and employers) and not of commercial interests as such (interview CEC 2006a).

It is clear, then, that while the increased pace of the integration process has been accompanied by a declared commitment to involve non-state actors in Caricom decision making, efforts made thus far have been significantly lacking in substance. Consequently, Caricom policy making remains a top-down process (IDB 2005, 13). It seems that this has created a situation which may be more advantageous to the more powerful and relatively rich non-state actors (those representing business interests), leaving the weaker struggling. Yet this does not mean that business is satisfied with the way in which their interests are represented in Caricom. For instance, they feel that the time reserved for the CAIC to address the Heads of State is very limited (interview BCOC & PSTT 2006). On the other hand, their interest in other ways

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17 A copy of this report was provided by BANGO. An official copy could not be obtained.

18 For this reason, some have proposed a regional NGO forum. Representation issues were also problematic at the national level. In the case of Barbados, BANGO has tried to function as an umbrella-organization for the NGO community, but failed (Address by R.O. King 2005, 2–3).
of participating in initiatives, as presented by the civil society conference, is weak (interview BCOC & PSTT 2006; interview BAS 2006). This reluctance has led to the consideration of alternative ways to communicate with Caricom and other regional and international bodies. Recently, the Prime Minister Owen Arthur of Barbados (responsible for CSME within Caricom) has put forward proposals to organize business separately from other non-state actors in the form of a Caribbean Business Council (CBC). According to his proposal, this Council would become an Associated Institution of Caricom through the amendment of Article 22 of the Revised Treaty. In addition, the CBC would be rewarded with ‘(…) powers and responsibilities as a decision-making Partner in CSME’ (Arthur 2005). The aim of creating the CBC is to involve commercial (business) interests in policy making, business interests being seen as the key in developing the region (interview Caricom/CSME 2006). Such a CBC would act as an interface between regional private interests for specific sectors and organizations such as the CAIC and CEC and the rest of the world (including Caricom). Funding of the CBC would be provided by external donors and membership fees (interview CAIC 2006). However, the issue of representation has again interfered with the enthusiasm of potential members. The CEC argues that the diverse membership of the CBC creates representation problems, since larger firms will tend to dominate (interview CEC 2006b).

Explaining the Limited Impact of Non-state Involvement

There are a number of explanations for this reluctant development towards the institutional integration of non-state actors within Caricom. These will be discussed in this section.

Lack of funds and capacity

All parties involved – Caricom, national governments, regional and national non-state actors – are lacking the necessary funds to integrate non-state actors, which makes them dependent on funding from outside donors (interview CSME Focal Point of the Barbados Government 2006). The IDB concludes that Caricom is experiencing severe financial problems as member states are themselves in financial dire straits. Payments may therefore lag behind, meaning that the institutions of Caricom remain heavily dependent on donor money, which in turn endangers the sustainability of Caricom institutions (IDB 2005, 15). For Caricom itself, the most pressing current problem is the lack of economic competition in the region, not the exclusion of non-state actors (interview Caricom/CSME 2006). Thus, with the limited funds available to finance its operations, priority is not likely to be given to improving public involvement.

Insufficient funds among non-state actors affect their capacity to develop strong and representative regional organizations. To coordinate their policies, organizations need the opportunity to meet on a regular interregional basis, but here the financial problems are aggravated by the unfavourable geographic circumstances (Caricom being an integration effort amongst mainly island nations). Also, if creating a
regional organization means the transfer of donor funding from national to regional non-state actors’ organizations, this would probably lead to conflicts between non-state actors. In addition, while most organizations will be confronted with the same kind of limitations to their operations, the support of Arthur for a CBC illustrates that the private sector has a greater chance of being heard in Caricom than the other non-state actors. This, in turn, will provide no stimulus for private sector organizations to put too much effort in cooperation with other non-state actors.

Lack of political will

According to some of the interviewees, the limited impact is the result of a lack of political will on the part of most governments, aggravated by the weakness of non-state actors domestically (interview BANGO 2006) and by conflicts that Heads of State have with certain non-state actors in their country (interview CPDC 2006; interview Caricom/CSME 2006). Conflicts between governments and non-state actors can be the result of a number of factors, among which are representation/transparency issues (Girvan 2001), the under-regulation of civil society (interview CSME Focal Point of the Barbados Government) and, in some cases, the ties between political parties and some of the NGOs (interview Caricom/CSME 2006; interview CSME Focal Point of the Barbados Government 2006).

Emphasis on sovereignty

Caricom member states have chosen a strong emphasis on sovereignty, which means there is no stimulus to share power with other actors (interview CSME Focal Point of the Barbados Government 2006). Bravo argues that this emphasis on sovereignty is responsible for slow progress within Caricom (Bravo 2005, 167) and maintains that ‘(…) the minor role provided for Caribbean citizens, illustrates the reluctance of Member States and their political leaders to relinquish the sovereign powers they hold dear to effect the economic integration to which they avowedly aspire’ (Bravo 2005, 195). The important role of sovereignty is also emphasized by the IDB, which argues that:

(n)onetheless, sovereignty remains a fiercely guarded asset among countries in the region, perhaps understandably so given their relatively recent independence and status as sovereign nations. This insistence on sovereignty has put severe strains on the regional integration process and has greatly affected its pace, not least through its influence on the governance and institutional structure of the Community (IDB 2005, 14).

19 See for a theoretical discussion of the possible problems related to civil society in global governance, see Scholte 2001, 19–22.

20 Despite the high value Caricom Member States allocate to sovereignty, the Revised Treaty has weakened this emphasis. See for discussion of the changes Bravo (2005) and IDB (2005).
Lack of public understanding

While the limited research available has indicated that there is strong support for Caribbean integration (for example, Barrow-Giles found that in Barbados, St. Lucia, St. Vincent and Antigua, 50 per cent of the population is in favour of intensified integration) (Anonymous, no date), the IDB claims that actual public knowledge about Caricom is extremely limited. A recent study in Jamaica found that 35 per cent of those questioned had ever heard of the CSME, and of this percentage more than two-thirds were unable to produce knowledge about its content (IDB 2005, 43). While efforts have been created to rectify this lack of knowledge, the situation as it stands will not put high pressure on the Caricom to increase public involvement.

Conclusion

This chapter has presented an explorative overview of the nature of the participation of non-state actors in Caricom decision making. On basis of this research the following preliminary conclusions can be drawn concerning the conditions (see Figure 8.1) for non-state actors’ participation and the effects on legitimacy.

The characteristics of the political process do not seem to allow a strong role for non-state actors. The political processes within the member states increasingly use a system of social dialogue, but this does not mean that the actors involved in such systems will necessarily be enabled to play an influential role in policy at the national level, let alone at the regional (Caricom) level. The case study of Barbados shows that within the two forums of social dialogue, matters concerning Caricom do not play a significant role. Nevertheless, the fact that dialogue is taking place may help to foster a relationship between the state and non-state actors, and this may constitute a favourable condition for exercising influence on other matters.

The weakness of non-state actors at the national level does not necessarily lead to the conclusion that more should be expected from the regional track as an alternative means of influencing Caricom policy. As this chapter has shown, the regional track is also limited to occasional meetings and declarations of good intentions, many of which have yet to be implemented. This means that the political process remains weak when it comes to enabling non-state actors, especially NGOs, to gain influence. However, more research in specialized areas of Caricom policy is needed if we are to understand the impact of the current forms of consultation taking place within Caricom.

The selection of non-state actors at both the national and Caricom level is also problematic. In the case of Barbados, BANGO has made unsuccessful attempts to function as an umbrella-organization for the NGO community, while at the regional level the NGO community will also be very hard to organize under one single umbrella, even though Caricom has appointed the CPDC as a key partner. Replacing employers’ interests with business interests has not been received well either. It seems that in the near future, non-state actors representing business interests will be granted a more important role in Caricom than other non-state actors. For that reason they seem to be less willing to participate in a broad non-state actors forum, since
this would limit their ability to express their distinctive interests. Thus, as the case of Barbados illustrates, it is highly likely that the non-state actors originating from the NGOs-circles will participate much more actively in the national consultation processes and the process leading to a Civil Society Council than, for example, Chambers of Commerce.

The characteristics of the non-state actors themselves need to be studied in greater detail, but this research suggests that the pressure on resources, and the subsequent competition for resources, make it very difficult to reach a consensus amongst groups of non-state actors or contribute to the development of expertise. The case of Barbados also illustrates a problem that most small societies have, that is the connections between non-state actors and political parties. This negatively affects the legitimacy of the organizations involved, and consequently often affects the extent to which they can contribute to the legitimacy of a RIO.

Thus, while the attention given within Caricom to the role of non-state actors has strengthened their political role at the national and regional levels, a formal framework which provides direct and meaningful access to Caricom’s political process remains absent. It seems, therefore, not too far-fetched to define the impact of non-state actors on the input and control legitimacy of Caricom policy making as limited. This is unfortunate, in view of the potential impact of the CSME on the region’s economy in the near future.

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PART 5
RIOs and the Member States: Legitimacy and Democracy
Regional integration organizations (RIOs) sometimes intervene to preserve and promote democracy in their member states: Mercosur intervened in Paraguay (see Ribeiro Hoffmann, chapter 10), EU member states agreed sanctions against Austria, Caricom intervened in Haiti and ECOWAS intervened in Sierra Leone to restore an overthrown democratic government. Nonetheless, RIOs also sometimes accept member states’ violations of democratic principles. The Southern African Development Community (SADC) has intervened in Lesotho, but not in Zimbabwe. ASEAN intervenes in Myanmar, but not in Thailand. This chapter explores the conditions under which a RIO is willing to intervene if democratic principles are threatened in its member states, as an aspect contributing to the output legitimacy of a RIO.

RIOs, Interventions and Democracy

For our purposes, an intervention is defined as the interference in the domestic affairs of a member state with the aim of preserving democracy – for instance, ensuring that the outcome of an election is respected or defending a democratically elected government against an actual or imminent military coup. Such interventions may range from verbal condemnation to economic sanctions or military invasion (Nye 2005, 158). There is a large body of literature on interventions, primarily focusing on the humanitarian interventions of the United Nations (see Wheeler 2000). However, these UN interventions differ in both aim and scope from the interventions made on the part of RIOs. The aim of the UN interventions is the protection of civilians against genocide and large-scale killing, rather than the protection of democracy. In terms of scope, meanwhile, UN interventions have an out-of-area character, while the interventions by RIOs studied here take place within the borders of their region. For that reason, decision making concerning ‘regional interventions’ may follow a different logic to out-of-area interventions, due to the perceived consequences on regional and domestic stability. In addition, it is argued that RIOs play a special role in the promotion of democracy.

1 Myanmar is also called Burma, notably by Western states and international non-state actors.
Jon Pevehouse (2005) shows how RIOs influence democratization and democratic consolidation: by changing the costs and benefits of democracy to important societal groups such as business elites and the military. Membership of a RIO confers legitimacy to young democratic regimes. RIOs can be used by domestic elites to socialize other elite groups, such as the military, and to teach them how to behave in a democratic society. Using sanctions, RIOs can pressure member states to democratize or redemocratize. The observation that RIOs are able to promote democracy begs the question of whether a RIO will use this ability. In the following section, four potential explanations are elaborated for the behaviour of RIOs in cases where democracy is under threat in a member state. Next, the validity of these explanations will be explored investigating SADC and ASEAN, two RIOs which have, on occasion, intervened and, on other occasions, refrained from intervention. Both lack a democratic clause, unlike the EU and Mercosur (see Ribeiro Hoffmann, chapter 10), but they both claim to be more than a purely economic organization (see Reinalda, chapter 4).

One caveat should be added. Just as states do not always intervene for primarily humanitarian reasons, the question arises of whether a regional intervention really concerns the preservation of democracy per se, or rather the preservation of the status quo. Interventions may also aim to keep a government in power, even if the democratic credentials of that government are unconvincing. Söderbaum has termed the actions of political leaders who behave ‘as promoters of the goals and values of regionalism which enables them to raise the profile and image of their often authoritarian regimes’ as regime-boosting (Söderbaum 2004, 96). This chapter will show that political leaders not only ‘boost’ their own regime but also the domestic regimes of fellow member states. A RIO is used ‘as an image-boosting arena whereby the leaders show support for each other, regardless of the character of their regimes’ (Söderbaum 2004, 98). The label ‘promotion of status quo legitimized by referring to democracy’ may well cover some interventions better than the label ‘promotion of democracy’.

Explaining Interventions

One potential explanation of RIO behaviour is rooted in social-constructivist thinking. According to Margaret Keck and Kathryn Sikkink (1998), identities, norms and interests are mutually constitutive. If a RIO has internalized democratic values and acquired a democratic identity, non-intervention in case of violation of democratic principles by one of its member states will no longer constitute an appropriate course of action. Keck and Sikkink argue that in the realm of human rights violations, the vulnerability of the target country not only varies according to its material capabilities. Even significant material pressure will be ineffective as long as leaders are unconcerned with the normative message. ‘Pressures are eventually most effective against states that have internalized the norms of the human rights regime and resist being characterized as pariahs. […] certain aspects of national identity or discourse may make some states vulnerable to pressures’ (Keck and Sikkink 1998, 118–9). If we take this argument to the regional level, this may explain both the
differences between RIOs, as well as changes in the behaviour of RIOs over the years. A RIO which has internalized norms of democracy and legitimate governance will feel compelled to act if these values are violated by one of its member states.

A democratic identity, which is produced by and reproduced in the interactions of its member states, presupposes a rather homogeneous membership of democratic states. If member states perceive each other as democracies, they will define the RIO as a ‘club’ where democracy is one of the constitutive norms to be respected and reproduced. The probability that a RIO will intervene to promote or preserve democracy will therefore be higher when democratic values are perceived as part of its identity and when its member states are themselves more democratic. If democratic identity is weak, a RIO will be more reluctant to intervene as its member states will fear that this creates a precedent and may highlight their own weaknesses in this respect. In order to explore the value of this argument, I will assess the strength of the regional democratic identity based on the founding documents of the RIO and on the member states’ democracy ratings.2

A second argument focuses on the role of domestic and transnational pressure. A RIO may offer non-state actors new points of access to the political process. As societal groups gain political access and resources, they are able to put pressure on their own government as well as on other governments (Keck and Sikkink 1998). A RIO would then offer the option of simultaneous action ‘from above’ (transnationally) and ‘from below’ (subnationally), putting a government ‘in pincers’ (Van der Vleuten 2005). The effectiveness of their action is also influenced by the identity of the RIO, because ‘the more homogeneously democratic a regional organization’s membership…, the more likely the regional IO will be used by domestic groups to encourage and cement democracy’ (Pevehouse 2005, 3–4). If non-state actors mobilize nationally and transnationally in favour of democracy and the RIO does not act, its credibility as ‘safeguard for democracy’ will be damaged in the eyes of member-state citizens. Non-intervention will confirm the idea that a RIO is an elite project which does not serve the interests of society. I will investigate the access of non-state actors to regional policy making and the link with (non-)intervention.

A third argument is rooted in realist thinking about the role of power. RIOs are sometimes considered to be the servants of the interests of major powers. Here, we should distinguish between the interests of regional major powers – the hegemon within the RIO – and the interests of ‘external’ major powers (see next section). A RIO is expected to intervene in a member state if it is in the interest of the regional hegemon to do so. The interest of the regional hegemon has several dimensions: a geopolitical dimension, aimed at preserving or strengthening its relative power position; a material dimension, aimed at controlling wealth and resources; and an immaterial dimension, aimed at safeguarding its prestige. Following this argument, a RIO primarily legitimizes an intervention in the interest of the regional hegemon (Pevehouse 2005, 132). To test this proposition, I will try to establish which state is the major regional power in the examples studied, and what its interests are.

2 Democracy ratings are based on Freedom House and Polity IV data. I am aware of the limitations and possible bias of these ratings, but they enable a simple comparison across time, between countries and even between RIOs.
The distribution of power and ideas in the wider international system offers a fourth potential explanation for RIO interventions. An ‘external’ major power or another RIO may exert pressure on a RIO to undertake action in order to stop the violation of democratic values in one of its member states. The effectiveness of this pressure will depend on the material capability of the external actor to threaten the RIO with credible sanctions. However, I contend that this also depends on the match between the identity of the RIO ‘in the dock’ and the identity of the external ‘Other’. A RIO with a regional identity which differs from the identity of the ‘Other’ will be less sensitive to external pressure than a RIO which shares the same identity. The former will consider such pressure as illegitimate interference with ‘domestic’ regional affairs and will be able to legitimize its non-intervention by referring to its own identity, as opposed to the Other’s identity. I will thus seek to establish the nature of this regional identity and its compatibility with external actors’ identities.

In the following sections, guided by these propositions I will analyse interventions and non-interventions by SADC and ASEAN.

Exploring Interventions and Non-interventions by the SADC

The history of the Southern African Development Community (SADC) is rooted in the democratization processes of the region. Its predecessors, the Frontline States and the Southern African Development Coordination Conference (SADCC) were created to resist apartheid South Africa, to coordinate development aid and foster economic integration (Bauer and Taylor 2005). In 1992, SADCC was renamed and reorganized as SADC. It welcomed South Africa as member state in 1994. Since 1997, the organization has had 14 member states. It has so far intervened only once to safeguard democracy in one of its member states. This happened in September 1998, in Lesotho (Operation Boleas).

In May 1998, the Lesotho Congress of Democrats (LCD) party, under the leadership of Prime Minister Pakalitha Mosisili, had won all but one seat in the parliamentary elections. Observers from domestic and international organizations (including SADC) agreed that the elections had been conducted in a manner ‘which should be considered acceptable according to international standards’ (Southall and Fox 1999, 678). The LCD owed its massive victory to the structure of the first-past-the-post electoral system, not to fraud (Polity IV 2004). The opposition parties, however, rejected the results, engaging in violent street protests and turning to the army for support.

Fear of a military coup prompted SADC to act. The SADC Summit of Heads of State or Government appointed a commission headed by Judge Pius Langa of South Africa to investigate the conduct of the elections. The Langa report argued that the

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3 Member states: Angola, Botswana, Democratic Republic of Congo (since 1997), Lesotho, Madagascar (since 2005), Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe. The Seychelles left in 2003 for financial reasons.

4 The SADC intervention in the Congo war in 1998 was aimed at peace enforcement, not at promoting or preserving democracy (President Laurent Kabila came to power through victory in a civil war, the DRC had no constitution and democratic debate was non-existent).
electoral process showed irregularities but that: ‘We cannot however postulate that the result does not reflect the will of the Lesotho electorate’ (cited by Southall and Fox 1999, 681). Meanwhile tensions in the military had mounted and the Lesotho government had lost control of the domestic situation. Mosisili appealed to the SADC for military intervention. On 22 September, a SADC force – made up of troops from South Africa and Botswana – entered Lesotho to prevent an ‘unconstitutional change of government’ and restore the democratic process (De Coning 1998, 8). A disastrous start, leading to many casualties in the first two days and widespread rioting and looting, provoked widespread criticism of this ‘invasion’ (De Coning 1998). Yet, in the end, the intervention had a positive outcome since the SADC troops, later joined by Zimbabwe, succeeded in securing military restructuring in Lesotho and in promoting inter-party negotiations that led to the adoption of a more appropriate electoral system (Southall 2003). The troops left Lesotho in 2000, and elections held in 2002 and 2007 were considered free and fair by all observers.

The success that the SADC enjoyed in promoting democracy in Lesotho contrasts sharply with its reluctance to intervene in Zimbabwe. Since its independence in 1980 Zimbabwe has been a democracy in the sense that parliamentary and presidential elections are held regularly. However, the increasingly authoritarian and violent behaviour of the regime led by President Robert Mugabe has turned Zimbabwe into an international pariah (Bauer and Taylor 2005, 171). The 2002 presidential elections were heavily criticized by the SADC Parliamentary Forum and international election monitors alike. The 2005 parliamentary elections were considered ‘one of the most cynical frauds perpetrated on the international community in electoral history’ (afrol News 2005), but the SADC endorsed the elections as free and fair. In March 2007, the Zimbabwean police killed an opposition supporter and severely battered the leader of the Movement for Democratic Change, Morgan Tsvangirai, and other members of the opposition. Individual SADC leaders, such as the president of Zambia, Levy Mwanawasa, have started to express their discomfort with the political situation in Zimbabwe (IRIN News 2007), but the SADC has decided against an explicit condemnation of the Mugabe government. They prefer ‘quiet diplomacy’ and mediation by South African president Thabo Mbeki between the Zimbabwean government and opposition. In the remainder of this section, we investigate possible explanations for SADC decisions concerning (non-)intervention.

**Democratic Identity**

The promotion and consolidation of democracy is stated as an explicit goal of SADC. One of its objectives is to ‘promote common political values, systems and other shared values which are transmitted through institutions, which are democratic, legitimate and effective’ (Art. 5). The Protocol on Politics, Defence and Security Cooperation (2001) includes the objective to ‘promote the development of democratic institutions and practices within the territories of State Parties and encourage the observance of universal human rights’ (Protocol, Art. 2) and entitles intervention by SADC in case of ‘A military coup or other threat to the legitimate authority of a State’ (Protocol,
Closing or Widening the Gap?

Table 9.1  SADC Member States and Democracy

<table>
<thead>
<tr>
<th>Member States</th>
<th>Freedom House Status, 1995*</th>
<th>Freedom House Status, 2006*</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Africa</td>
<td>1–2</td>
<td>1–2, Free</td>
</tr>
<tr>
<td>Mauritius</td>
<td>1–2</td>
<td>1–1, Free</td>
</tr>
<tr>
<td>Botswana</td>
<td>2–2</td>
<td>2–2, Free</td>
</tr>
<tr>
<td>Namibia</td>
<td>2–3</td>
<td>2–2, Free</td>
</tr>
<tr>
<td>Malawi</td>
<td>2–3</td>
<td>4–4, Partially Free</td>
</tr>
<tr>
<td>Madagascar</td>
<td>2–4</td>
<td>3–3, Partially Free</td>
</tr>
<tr>
<td>Mozambique</td>
<td>3–4</td>
<td>3–4, Partially Free</td>
</tr>
<tr>
<td>Zambia</td>
<td>3–4</td>
<td>4–4, Partially Free</td>
</tr>
<tr>
<td>Lesotho</td>
<td>4–4</td>
<td>2–3, Free</td>
</tr>
<tr>
<td>Tanzania</td>
<td>5–5</td>
<td>4–3, Partially Free</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>5–5</td>
<td>7–6, Not Free</td>
</tr>
<tr>
<td>Swaziland</td>
<td>6–5</td>
<td>7–5, Not Free</td>
</tr>
<tr>
<td>Angola</td>
<td>6–6</td>
<td>6–5, Not Free</td>
</tr>
<tr>
<td>DRC (Congo)</td>
<td>7–6</td>
<td>6–6, Not Free</td>
</tr>
<tr>
<td>SADC Average</td>
<td>3.7</td>
<td>3.5</td>
</tr>
</tbody>
</table>

* Rating depends on the assessment of political and civil rights between 1 (positive) and 7 (negative). First score indicates political rights, second indicates civil liberties; source: Freedom House.

5  The Protocol was tabled for signature on 14 August 2001; it has been ratified by nine member states (including South Africa and Zimbabwe) and has entered into force on 2 March 2004 (SADC website).
all SADC member states are also members. Yet there is no ‘democratic clause’ for candidate member states, unlike the EU and Mercosur, and judging by the level of democracy of its member states, the SADC is not homogeneously democratic (see Table 9.1).

Between 1995 and 2006, major positive changes were recorded for Lesotho and Tanzania while in Malawi and Zimbabwe, the rating has declined (shown in bold in Table 9.1). This decline indicates that an intervention to safeguard democracy could have been justified. The average rating for the SADC improved only slightly between 1995 and 2006, so in spite of its verbal support for democracy, the democratic identity of the SADC remains relatively weak and does not lead to expectations of any increasingly pro-active stance in the case of violations of democratic values. Member states fear that a more interventionist line ‘could set an uncomfortable precedent and scrutiny of their own systems of government’ (Mills 2002, 150; Nathan 2005, 367).

Double pressure by non-state actors

The SADC is a purely intergovernmental organization. In the region, civil society is well developed, including strong women’s movements, churches and human rights organizations (Bauer and Taylor 2005). At the transnational level, in July 1996 the SADC Parliamentary Forum was launched. This Forum is an autonomous institution, composed of members from the national parliaments. It sends observers to elections, whose conclusions are generally more in line with those of international observers than of the official SADC missions, as was the case with the 2005 elections in Zimbabwe. The Forum has no access to SADC Summit meetings and lacks the instruments to influence regional decision making. Other transnational organizations, such as the SADC Regional Women’s Parliamentary Caucus, SADC Youth Movement and the Southern African People’s Solidarity Network (SAPSN), also promote democracy, empowerment and human rights (Mavela 2004; Bauer and Taylor 2005, 322). They have not managed to establish ties with SADC structures. The SAPSN has criticized SADC member state governments for ‘using SADC as a self-serving old boys club’ (Söderbaum 2004, 98). Both the Forum and transnational organizations receive support from the European Parliament and Europe-based non-state actors such as Oxfam. As they have no access to regional-level decision making, they have not been able to put effective pressure on the SADC to intervene for the preservation of democracy or even disapprove of rigged election results.

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6 Malawi’s rating declined due to serious irregularities at the 2004 presidential elections which were deemed ‘free but not fair’ by foreign observers (Freedom House 2006) but were not criticized by SADC observers (SADC homepage). After one month of rioting, the political situation stabilized as the main opposition leader accepted a post in the government (Bauer and Taylor 2005, 21).
The interests of the regional hegemon

From the start, the SADC suffered from the rivalry between South Africa and Zimbabwe. Until 1992, Zimbabwe was the uncontested leader of the Frontline States. When South Africa joined the SADC, Mugabe felt that Zimbabwe had a right to a commanding position equivalent to its former leadership of the frontline states. Other member states, however, preferred South African leadership because of Nelson Mandela’s international prestige. As a compromise, Zimbabwe was granted the chairmanship of the Organ for Politics, Defence and Security, the forum for security and defence cooperation, preventive diplomacy and regional peacekeeping (Neethling 2004).

In terms of its economic capacity, South Africa ranks easily as the regional hegemon (Hammerstad 2005, 83). Its GDP is four times that of the other 13 SADC countries combined (Bauer and Taylor 2005, 334). South Africa had a geopolitical interest in intervention in Lesotho, a landlocked enclave within South African territory: a military coup and political violence in its ‘backyard’ would have damaged the political climate in the region and could have invited other coups. The same argument, however, applies to neighbouring Zimbabwe where there is a risk of instability and insecurity spilling over. South Africa had no clear material interests in Lesotho, whereas in Zimbabwe it may well fear an economic meltdown. The Zimbabwean crisis cost South Africa an estimated US$1.9 billion between 2000 and 2003 alone; South African public and private firms face huge losses of investments in the mining industry, telecom and energy; and millions of refugees from Zimbabwe have ended up in South Africa (Bauer and Taylor 2005, 349; Hammerstad 2005, 74).

Yet, South Africa is reluctant to assume its role of hegemon and take the lead in regional intervention. The hegemon is a Gulliver (Kwasi Tieku 2004), because ‘given the history of apartheid destabilization, South Africa is acutely sensitive to being perceived by other African countries as a bully’ (Nathan 2005, 365). Its vanguard role in the intervention in Lesotho, for instance, was not appreciated by other SADC members (De Coning 1998).

Regional identity and external pressure

There has been strong international pressure on the SADC to withdraw its support from Mugabe, but this has failed due to clashing identities. The identity of the SADC is rooted in anti-colonialism and its anti-apartheid past, as well as in the concept of African renaissance, or Ubuntu in Zulu, which was launched by Mandela in 1994 and is now being championed by current South-African President Thabo Mbeki. The vision of African renaissance refers to the ‘emergence of the continent from a long period of darkness and fear into one of light and a dream fulfilled’ in which ‘through our personal efforts we have redefined ourselves … and succeeded to create a new world of peace, democracy, development, and prosperity’ (Thabo Mbeki, cited in Nathan 2005, 363). This Africanist, anti-colonial identity undermines the legitimacy of Southern African critics of authoritarian regimes in general, and of Mugabe in particular, as they are accused of siding with the former colonial powers. Mbeki’s
open condemnation of undemocratic governments in Africa in the 1990s angered some African leaders, many of whom had supported the ANC during the liberation struggle; they accused him of ‘pursuing a Western project’ and of being ‘little more than the West’s lackey on the southern tip of Africa’ (Landsberg 2000, 107).

Mugabe has skillfully used international pressure to undermine the credibility of Zimbabwean opposition leader Tsvangirai by repeatedly referring to him as ‘Tony Blair’s pet dog’ (NRC 2005, 18 October, p. 4), and claiming that ‘a vote for the opposition is a vote for a return to colonial rule’ (Australian Broadcasting Corporation 2005). He has also undermined SADC credibility, branding the human rights debate as ‘Western’ (Irin News 2007) and arguing that African countries’ interest in Zimbabwe ‘was more to do with pressure from Western governments’ than with their own convictions (afrol News 2006). Zimbabwe considers itself to be ‘under assault from Western countries (…)’. This is a moment for SADC to show solidarity with Zimbabwe’ (BBC News 2007, 29 March). This solidarity, ‘forged in the heat of the struggles against colonialism and apartheid’ (Nathan 2005, 367), is referred to every time the region is criticized by former colonial powers. Many SADC leaders still see Mugabe as a hero of the fight against colonial rule. Mugabe has succeeded in cornering them: they cannot criticize him without being accused of serving ‘colonial’ interests.

Thus, the SADC has condemned international criticisms of Mugabe as an ‘intervention in African affairs’ (Söderbaum 2004, 99) and SADC observers found that the parliamentary elections in April 2005 ‘were credible, legitimate, free and fair’. In July 2005, Tanzania, the then SADC President, cast one of the no-votes blocking the adoption by the UN Security Council of a critical report concerning the situation in Zimbabwe (NRC 2005, 28 July, 4). Mbeki has accused Western powers of using Zimbabwe as a smokescreen in order to avoid facing Africa’s real problems (Neethling 2004), and the Commonwealth of using ‘megaphone diplomacy’ when Mugabe was banned from the Commonwealth Heads of Government Meeting in Nigeria in December 2003 (Australian Broadcasting Corporation 2003). He has stated that the largest single obstacle to free and fair elections in Zimbabwe was ‘the intensive international “campaign” to firmly establish the view that these elections were irredeemably unfree and unfair’ (afrol News 2005). In March 2007, South Africa is reported to have ‘thwarted a British-sponsored motion to put Zimbabwe on the UN Security Council agenda’ because Zimbabwe does not ‘pose any threat to international peace and security and that its political problems did not, therefore, belong to the Security Council’ (The Herald 2007, 29 March).

Yet, soccer – a factor usually not considered in IR theories – has intervened in the situation. South Africa will host the Soccer World Cup in 2010, the first ever on African soil. For that reason, Mbeki does not support Mugabe’s plan to postpone the Zimbabwean presidential elections, scheduled for 2008, until 2010 to have more time in office. Mbeki does not want to see the World Cup disrupted by controversial presidential elections in Zimbabwe and concomitant Western sanctions, as he has told Mugabe (Plaut 2007). African prestige is at stake, and this might contribute to a change in the Southern African attitude towards Mugabe.

From this exploration, we can conclude that SADC decisions for or against intervention cannot be explained by strong regional democratic identity or pressure
from non-state actors. The geopolitical interests of South Africa as regional hegemon, on the other hand, play an important role, while external pressure for intervention has been counterproductive due to the anti-colonial identity of the SADC.

Exploring Intervention and Non-intervention by ASEAN

The Association of Southeast Asian Nations (ASEAN) was set up in 1967 by Malaysia, Thailand, Indonesia, the Philippines and Singapore. Brunei joined in 1984, followed by Vietnam in 1995, Laos and Myanmar in 1997 and Cambodia in 1999. The fundamental goals of the Association are:

(i) to accelerate economic growth, social progress and cultural development in the region … and (ii) to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among the countries in the region and adherence to the principles of the United Nations Charter (The Bangkok Declaration of 8 August 1967, ASEAN 2005).

Stability is a key word in ASEAN documents and non-intervention is its corollary. All member countries except Thailand were subjected to colonial rule and are very keen on preserving their sovereignty. The Treaty of Amity and Cooperation in Southeast Asia (1976) confirms that the member states should be guided in their mutual relations by ‘non-interference in the internal affairs of one another’ (ASEAN 2005). In general, this rule has been strictly respected. Upon closer examination, there have been some interventions, but they have all been done ‘the ASEAN way’ – through quiet, discreet bilateral diplomacy rather than multilateral action. Since the 1970s, for instance, Indonesia and Malaysia have facilitated negotiations between Muslim rebels and the Philippine government. In 1987, ASEAN supported Philippines’ president Corazon Aquino when her regime was under pressure from these rebel groups (Beng 2003a). Most explicitly, Myanmar has been the target of ASEAN interference. In 2003, ASEAN foreign ministers openly departed from the non-intervention principle for the first time, because the military junta in Myanmar had detained democracy activist Aung San Suu Kyi. At their meeting in Phnom Penh on 16–17 June, the ministers issued a joint statement saying that they ‘discussed the recent political developments in Myanmar, particularly the incident of 30 May’, and ‘looked forward to the early lifting of restrictions placed on Daw Aung San Suu Kyi’ (ASEAN 2003). At the 9th ASEAN Summit in October 2003, ASEAN endorsed a seven-step roadmap to democracy in Myanmar, thus making Myanmar’s democratization a regional concern (Areethamsirikul 2007, 13). In November 2004, Myanmar released 400 political activists and dissidents, a move interpreted as an attempt ‘to win good publicity ahead of the ASEAN summit’ and to create ‘some room to argue at ASEAN that the junta remains genuinely committed to democratic reform’ (Cheng 2004). Some months later, in July 2005 at the ASEAN summit in Vientiane (Laos), Myanmar announced that it was renouncing its turn at
It explained that the government was too busy building democracy and it ‘wanted to focus on its ongoing national reconciliation and democratisation process’ (BBC News 2005). In March 2006, ASEAN sent a special envoy, the Malaysian Foreign Minister Syed Hamid Albar, to Yangon to monitor progress of the roadmap to democracy. The visit was a failure: Syed Hamid was denied entry to Pyinmana, the new capital, and was unable to meet either General Than Shwe, the head of state, or Aung San Suu Kyi. ASEAN is increasingly frustrated with the lack of progress in Myanmar, and has implicitly threatened that Myanmar membership could be suspended if there is no improvement (Areethamsirikul 2007, 14–15).

These interventions contrast with the silence of ASEAN vis-à-vis the September 2006 military coup in Thailand which ousted Prime Minister Thaksin Shinawatra. Western countries emphasized that they were very concerned, whereas the ASEAN members ‘gave encouraging words, light words of disappointment, or “no comment’” (Areethamsirikul 2007, 19–20). How can we account for ASEAN’s intervention in Myanmar and non-intervention in Thailand?

### Table 9.2  ASEAN Member States and Democracy

<table>
<thead>
<tr>
<th>Member States</th>
<th>Freedom House Status, 1995*</th>
<th>Freedom House Status, 2006*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Philippines</td>
<td>2–4</td>
<td>3–3, Partially Free</td>
</tr>
<tr>
<td>Thailand</td>
<td>3–4</td>
<td>3–3, Partially Free</td>
</tr>
<tr>
<td>Malaysia</td>
<td>4–5</td>
<td>4–4, Partially Free</td>
</tr>
<tr>
<td>Singapore</td>
<td>5–5</td>
<td>5–4, Partially Free</td>
</tr>
<tr>
<td>Cambodia</td>
<td>6–6</td>
<td>6–5, Not Free</td>
</tr>
<tr>
<td>Brunei</td>
<td>7–5</td>
<td>6–5, Not Free</td>
</tr>
<tr>
<td>Laos</td>
<td>7–6</td>
<td>7–6, Not Free</td>
</tr>
<tr>
<td>Indonesia</td>
<td>7–6</td>
<td>2–3, Free</td>
</tr>
<tr>
<td>Vietnam</td>
<td>7–7</td>
<td>7–5, Not Free</td>
</tr>
<tr>
<td>Myanmar</td>
<td>7–7</td>
<td>7–7, Not Free</td>
</tr>
<tr>
<td><strong>ASEAN average</strong></td>
<td><strong>5.5</strong></td>
<td><strong>4.75</strong></td>
</tr>
</tbody>
</table>

* Rating depending on the assessment of political rights (1–7) and civil liberties (1–7); first score indicates political rights, second indicates civil liberties; source: Freedom House.

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7 ASEAN has a yearly alphabetically rotating chairmanship, which in July 2006 was to go to Myanmar.
Democratic Identity

ASEAN political and security cooperation aims at ensuring that ‘countries in the region live at peace with one another and with the world at large in a just, democratic and harmonious environment’ (ASEAN 2005). At the summit in 1997, the heads of state and government envisioned ‘our nations being governed with the consent and greater participation of the people’ (ASEAN 1997), but most member states have a poor record with regard to democracy. On average, the situation improved slightly between 1995 and 2006, though only Indonesia made a complete and successful transition from ‘not free’ to ‘free’ (see Table 9.2).

Among the ten member states, we find only three countries that respect political rights relatively well – Thailand (until September 2006), the Philippines, and Indonesia. Malaysia and Singapore have improved but still show shortcomings, whereas the remaining five countries have a very bad rating. Colonialism has left almost all Southeast-Asian countries with powerful state apparatuses, state intervention in the market and strong social and political control (Case 2004, 77). Only since the end of the 1990s has a concern for democracy been evident among the newly democratizing countries (the Philippines, Malaysia, Indonesia and – until recently – Thailand) which want to emphasize democratization and a greater respect for human rights (Stubbs 2004, 226). Yet, the weakness of domestic democracy in all member states helps to explain why any intervention is done ‘the ASEAN way’. The Indo-Chinese countries in particular fear being subjected to similar pressure if they accept interference in the domestic affairs of Myanmar.

Double pressure from non-state actors

In 2000, the ASEAN Peoples’ Assembly (APA) was established, a transnational civil society organization, and initiatives have been taken to allow for greater civil society participation in ASEAN (Caballero-Anthony 2005, 232–47). APA has been drawing up a human rights and democracy scorecard to assess the state of democracy in Southeast Asia. There is no ‘pincer mechanism’ in ASEAN, however, as ASEAN has no parliamentary assembly and its institutional structure offers no formal access to non-state actors. Fifty-eight non-state actors are accredited by ASEAN (ASEAN homepage); however, these are predominantly business associations and representatives of professional groups and sports associations which do not promote democracy. Non-state actors which criticize regimes for violations of democratic values are not admitted to ASEAN structures and are predominantly based in the US. The ASEAN Inter-Parliamentary Myanmar Caucus, uniting members of parliament from several ASEAN and neighbouring countries and from China and Europe, tries to put issues of good governance on the agenda. They have urged ASEAN governments to put more pressure on Myanmar (BBC News 2005).

Experts play a prominent role in ASEAN through a process known as Track-Two diplomacy. These are unofficial meetings of think tanks, academics, members of the ‘unofficial’ policy community and government officials acting in their private capacities. ASEAN-ISIS (Institutes of Strategic International Studies in nine member states), which has been registered with the ASEAN secretariat since 1988, is the
most important academic network. It has published policy papers, for instance on the establishment of human rights mechanisms, and it participates in ‘closed door’ dialogues with Burmese exiles, experts and officials from Myanmar and ASEAN government representatives (Caballero-Anthony 2005, 157–72).

The interests of the regional hegemon

Indonesia is considered the regional hegemon, based on its relative size (in terms of both population and GDP) and on its role as a ‘proud member of international society’ and leader of the non-aligned world (Haacke 2003, 66). Its geopolitical interest is, broadly formulated, to find regional solutions to regional problems without interference from major powers such as US, Japan or China. Its attitude towards Myanmar has changed considerably, from supporting its membership in the 1990s to insisting on progress being made on democratization after 1998. Domestic change accounts for this change in attitude. Until 1998, Suharto supported Myanmar’s membership, in spite of widespread criticism of the military junta, because he was afraid that otherwise China would extend its sphere of its influence. After his departure, Indonesia went through a political transformation, and now plays the role of the moral leader, supporting democratization, proposing an ASEAN Human Rights Commission and stating that ‘no country can claim that gross human rights violations are its own internal affairs’ (Areethamsirikul 2007, 14). At the same time, however, it is not in Indonesia’s interest to criticize Thailand, the second major power in ASEAN and with its central position on the Indo-Chinese continent. After the coup in Thailand, Indonesia simply expressed its hope that ‘Thailand would resolve the crisis and return to the principles of democracy’ (Areethamsirikul 2007, 20).

Regional identity and external pressure

The EU and the US have put considerable pressure on ASEAN to take action against the government of Myanmar. This pressure seems to have been effective. The timing of the two ASEAN interventions in 2003 and 2005 is telling in this respect. In 2003, the ASEAN Regional Forum, including the US, was due to meet after the ASEAN Summit and an Asia-Europe meeting was to take place in Bali. American Secretary of State, Colin Powell, urged Myanmar to release Suu Kyi. Some mild criticism of Myanmar was felt to be necessary by ASEAN members, so that they would be in a better position to meet Powell subsequently (The Jakarta Post 2003). When the EU insisted on the inclusion of the Myanmar issue on the agenda of the Asia-Europe meeting, ASEAN preferred to deal with the issue on its own initiative (Beng 2003b). In 2005, the EU and the US said ‘that they might boycott meetings with ASEAN if the meetings take place under the junta’s chairmanship’ (The International Herald Tribune 2005; Morris 2005). The question is then whether ASEAN is sensitive to pressure because of a ‘shared identity’ or because of the potential economic consequences.

In its dealings with the US and the EU, ASEAN accentuates its own, very different identity. ‘Western style intervention’ is associated with sanctions such as
those experienced by Vietnam until 1994, and ASEAN does not want to subject its members to the same kind of treatment (Beng 2003b):

We told them [the US] that Asean does things in a quiet way – that is the meaning of constructive engagement. We’ve spoken to Myanmar leaders and we always express to them “that we look to you as a friend, member of Asean”… we take the approach of a concerned friend rather than the approach of someone who’s ready to condemn them (Hashim 2005).

The ‘Asean way’ of dealing with difficult issues is characterized by three sets of norms: consensus, informality and non-use of force. It refers to a style of decision making that focuses on building consensus (*Muafakat*) through a process of extensive consultations (*Musyawarah*, an old Javanese practice) (Acharya 1998, 211–12; Caballero-Anthony 2005, 72–76). If consensus is not reached, the issue is shelved. In addition, Southeast Asian diplomacy is based on informal, non-official and bilateral relationships; there is an aversion to EU-style institutionalism and multilateralism (Bellamy 2004, 170). As the spokesman of the Thai Foreign Ministry said, ‘It has always been Asean’s stand that domestic issues were not to be discussed during the 10-nation meetings… This is in keeping with Asian tradition. We don’t discuss domestic matters… such matters are always not on the agenda’ (Rajoo 2005b).

ASEAN not only insists upon doing things differently, it also cherishes its regional identity and displays its determination to find ‘Asian solutions to Asian problems’ (Caballero-Anthony 2005, 62). Negotiations take place ‘not as between opponents but as between friends and brothers’ (Acharya 1998, 212). The idea of a ‘family’ is often accentuated, as in ‘Cambodia wants to be part of the Family’ (ASEAN 1998). The theme of the November 2004 summit in Vientiane was ‘Advancing a Secure and Dynamic ASEAN Family’ (ASEAN 2004).

The decision to admit Myanmar as a member, defying the criticism of the US and EU at the time, is testament to the stubborn defence of Asian autonomy against foreign interference. To avoid looking like a servant of foreign interests and alienating Myanmar, ASEAN did not proudly proclaim its victory concerning Myanmar renouncing the chair (Rajoo 2005b; Beng 2003a). On the contrary, ASEAN foreign ministers insisted that it had been Myanmar’s own decision to renounce its turn as chair of ASEAN, and that Myanmar would take over the chairmanship once it felt ready to do so. Malaysian Foreign Minister Syed Hamid explained that: ‘We are not interfering in their affairs but we can give our views as part of the Asean process’ (Morris 2005; Rajoo 2005a). In this way, ASEAN was able to uphold the principle of non-interference and the idea of ‘the Asean way’ and ‘Asean autonomy’, while at the same time avoiding the risk of precedence.

For those reasons, ‘intervention’ in Myanmar cannot be explained by a shared identity between ASEAN, the US and the EU. Vulnerability to the material consequences of international pressure offers a better explanation. ASEAN’s prestige as an area of ‘peace, progress and prosperity’ where investments are secure is highly important for all its member states as they depend substantially on international trade for trade revenue and economic growth. Between 1995 and 2004, about 60 percent
of Foreign Direct Investment in ASEAN came from the US, the EU and Japan, 20 percent of which was in the form of development assistance (Areethamsirikul 2007, 25–7). ASEAN is, therefore, sensitive to threats by donors to cut development assistance and aware of the risk that continuing protection of Myanmar could damage ASEAN’s standing among foreign investors. No such international pressure exists concerning Thailand.

Conclusion: Regional Interventions, When and Why

To answer the question of under which conditions a RIO intervenes to promote or preserve democracy, four propositions were advanced:

1. its member states are democratic and it perceives democratic values as part of its identity;
2. non-state actors which promote democracy have access to the regional decision-making process;
3. intervention serves the interest of the regional hegemon;
4. external pressure is strong and the identity of the RIO matches the identity of the external actor.

As regards the first proposition, by calculating the ratings on political rights and civil liberties of their respective member states, we found that the SADC performs slightly better than ASEAN and that ‘promotion and preservation of democracy’ is mentioned more explicitly and more frequently in SADC documents than in ASEAN documents. Yet, in neither RIO is democratic identity strong or homogeneous. This would explain non-intervention; it cannot explain, however, why there have been some interventions at all.

Concerning the second proposition, the SADC and ASEAN are purely intergovernmental organizations, where decisions are taken by consensus in a Council of Ministers and in Summits of Heads of State and Government. In both RIOS, there has been pressure from non-state actors in favour of democratization of the organization which has not met with any success. A SADC Parliamentary Forum has been created, but it has no formal status within the SADC and has no influence on the decision making process; in fact, its election observer reports have not even been recognized by SADC. ASEAN, meanwhile, has accredited only non-state actors without political aims. They have not been offered formal access to decision making. Academics are able to put forward policy proposals concerning human rights issues, though until now they have not met with success. Pressure in favour of intervention is, therefore, not strong enough to put member state governments ‘in pincers’.

The third proposition concerns the role of the major powers in these regions: South Africa and Indonesia, respectively. Their interests seem to help to explain why the SADC intervened in Lesotho and ASEAN intervened in Myanmar. It also explains why no intervention has so far taken place in Thailand, being a major regional power itself. Still, this explanation is not fully satisfying: why does South
Africa not support an intervention in neighbouring Zimbabwe, in view of the fact that Mugabe’s policies hurt South African economic interests?

The fourth proposition takes the international level into account. There is strong external pressure on ASEAN concerning Myanmar, but not concerning Thailand. In spite of its strong regional identity and its accentuation of the ‘ASEAN way’ of dealing with problems which differs from Western-style interventions, ASEAN has given in to pressure concerning Myanmar because of the high costs of non-intervention. The ASEAN region’s dependence on foreign capital means that its reputation as a stable, well-governed region is a crucial economic asset. Non-intervention, which would undermine this reputation, therefore became too costly. External pressure on the SADC, however, has not resulted in intervention, and in fact any intervention which took place against a background of Western pressure would be ideologically problematic as it would betray African anti-colonialist identity and damage Mbeki’s credibility as the architect of the African renaissance.

To summarize, interventions by RIOs can be explained by taking into account the interests of regional major powers and the costs of external pressure. A RIO acts if intervention serves the geopolitical, domestic political or material interests of regional major powers, or if external pressure increases the cost of non-intervention. In RIOs with a stronger democratic identity than that of the SADC and ASEAN, we may expect the promotion and preservation of democracy to occupy a more prominent place, and to become part of the hegemonic interest.

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Political Conditionality and Democratic Clauses in the EU and Mercosur
Andrea Ribeiro Hoffmann

Introduction

Political conditionality has been institutionalized in the European Union (EU) and Mercosur, to the point that it has been incorporated in their basic treaties in the form of so-called ‘democratic clauses’, which can be used to refuse candidate member states and to expel members failing to conform. Despite the consensus about democratic values among the founding members of these RIOs at the time of their creation, it was much later that they incorporated formal democratic clauses in their treaties: with the Treaty of Amsterdam, signed by EU member states in 1997, and with the Protocol of Ushuaia, signed by Mercosur member states in 1998. The maintenance of a democratic regime changed from an implicit assumption to an explicit condition for the member states of these RIOs.

This chapter first seeks to answer how and why political conditionality has been institutionalized within the EU and Mercosur. To the well-known ‘end of the Cold War’ argument, complementary and more specific explanations will be added, exploring the role of enlargement processes and the cases in which political conditionality was actually invoked, such as during the political crises associated with General Oviedo in Paraguay and Jörg Haider in Austria. The empirical analysis is limited to treaties, and does not take into account the legal rulings and interpretations from regional courts or documents of other RIO institutions (as distinct from Rittberger and Schimmelfennig 2006). As well as explaining the institutionalization of political conditionality in the EU and Mercosur, this chapter seeks to answer the question of whether the political conditionality of RIOs matters after all. In other words, whether it can be considered an effective instrument for guaranteeing democratic values and rules among member states. If that is the case, RIOs can ground their legitimacy in their ability to help achieve member states’ objectives regarding democracy.

Various theoretical approaches cite various factors to explain the institutionalization of norms in RIOs, such as the rational interests of major actors (rational institutionalism), historical path dependence (historical institutionalism),

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1 I would like to thank Danilo Marcondes de Souza Neto for research assistance with a grant from PIBIC/CAPES. The analysis and shortcomings remain my responsibility.

2 The term European Union will be used throughout the text, also when referring to the European Community or the European Communities.
and ideational structures and actor’s identities (sociological institutionalism). In the literature about the institutionalization of political conditionality at the international level, the end of the Cold War is the factor cited most often, as well as the priority given by major external powers – such as the United States – to promoting democracy over stability abroad (Soares de Lima 1998; Pevehouse 2002). Despite this trend, many RIOs have not so far included a democratic clause, such as the SADC, and others, such as ASEAN, have explicitly rejected such a clause. The role of the major powers within RIOs, such as Brazil in Mercosur and France and Germany in the EU is also mentioned. Another factor cited is the background provided by the older international institutions of which EU and Mercosur member states are part, such as the Council of Europe (Pevehouse 2002; Schimmelfennig et al. 2003), the Organization of American States (Ribeiro Hoffmann 2005) and the international and regional agreements referred to as the ‘international regime of human rights’. This chapter acknowledges these factors, but rather than testing their explanatory power in the cases of the EU and Mercosur, it will explore complementary and more specific explanations of the process of institutionalizing political conditionality in these two RIOs: the process of enlargement and specific political crises which occurred in their member states.

**Institutionalizing and Applying Political Conditionality in the EU**

*The institutionalization of the democratic clause*

The six founding states of the EU were all democracies, but no references to democratic conditionality are found in the Preamble of the Treaties of Paris and Rome. Art. 237 TEC, dealing with new member states, accepted the accession of any European state. The shared understanding among EU member states about democracy only became explicit during the process of negotiating the accession of Greece, Spain and Portugal.

One of the first documents referring to political conditionality in the EU was the Birkelbach Report of the European Parliament of 1962, which ‘adopted clear and binding political conditions for admission which precluded acceptance of Franco’s Spain or Salazar’s Portugal, and which resulted in a freeze on relations with Greece during the rule of the Colonels’ (Whitehead 1996). At the time, however, those negotiations did not involve explicit criteria to assess levels of democracy, but focused on economic questions; political conditionality remained informal and implicit. As negotiations with these countries advanced, political criteria were made

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3 For a review of neo-institutionalist perspectives see Pollack (2004).
4 Note that Member States pushing for greater institutionalization of conditionality are not necessarily the same as those Member States pushing for its use in each particular crises (see Van der Vleuten, chapter 9).
more explicit. In 1976, the Commission linked a favourable response to the Greek application for full membership to the consolidation of the new democratic regime. The Commission’s opinion about the (unsolicited) Turkish application for full membership in 1987 also included an assessment of Turkish democracy, stating that Turkey had a parliamentary democracy close to Community models and that it had made progress in the fields of human rights and respect for minorities (Whitehead 1996, 267–9).

Schmitter highlights the fact that these early conditionality provisions did not lay down precise criteria by which to judge the level or quality of democracy, but that, as first advanced by Geoffrey Pridham, they seemed to be genuinely free elections, a reasonably stable government, leadership by a credible (and pro-European) figure, and the inauguration of a liberal democratic constitution (Schmitter 1996). Greece, Spain and Portugal had to take steps to pass most, if not all, of these hurdles in order to be admitted to full EU membership.

The Single European Act, signed in 1986, the same year as the accession of Spain and Portugal, included a reference to democracy for the first time, but only in the Preamble, which has no binding power:

DETERMINED to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice,

CONVINCED that the European idea, the results achieved in the fields of economic integration and political cooperation, and the need for new developments correspond to the wishes of the democratic peoples of Europe, for whom the European Parliament, elected by universal suffrage, is an indispensable means of expression,

AWARE of the responsibility incumbent upon Europe to aim at speaking ever increasingly with one voice and to act with consistency and solidarity in order more effectively to protect its common interests and independence, in particular to display the principles of democracy and compliance with the law and with human rights to which they are attached (SEA, my emphasis).

Almost 15 years later, the prospect of the accession of countries of Central and Eastern Europe (CEECs) again pushed the institutionalization of the principle that EU member states should be democracies onto the agenda (Merlingen et al. 2001). In her study about EU foreign policy towards the CEECs, Karen Smith shows how the concept and use of political conditionality was progressively included in the cooperation programmes and successive agreements signed by the EU with these countries (Smith 2004).

The first treaties signed with the CEECs were standard Trade and Cooperation agreements, like those signed with third countries such as Latin American states. Accession was not an objective, and conditionality was not formally stated. Where it was mentioned, this was without a clear definition. Association Agreements were the next step, but the concept of an Association Agreement was not clear and did
not necessarily imply membership (Smith 2004). In the past, only the association agreements with Greece and Turkey had mentioned the possibility of membership, and other states which joined the EU had not signed such treaties beforehand. The European Council of April 1990 decided that future ‘associates’ would have to fulfil basic economic and political conditions. The Association Agreements signed with the CEECs already articulated the concept of conditionality clearly, even though these states had not yet been guaranteed accession.

Next, the Commission proposed a new type of association agreement, the *Europe Agreements*, to mark the importance of the political initiative which they represented. The Europe Agreements signed in 1992 and 1993 were all very similar. They all stressed in their Preamble five conditions to be fulfilled by the signatories (rule of law, human rights, multi-party system, free and fair elections, and a market economy) and stated that their final objective was to lead to membership. But accession was not yet certain and no time horizon was defined. It was only at the Copenhagen European Council (June 1993) that the EU member states clearly stated that the CEECs could join if specific economic and political conditions were met. The political condition of these so-called Copenhagen criteria was ‘to have stable institutions guaranteeing democracy, rule of law, human rights, and respect for and protections of minorities’.

The Treaty of Maastricht, signed in 1992, before the Copenhagen Council but already against a backdrop of serious discussions concerning political conditionality and the possibility of enlargement, for the first time included a reference to democracy in the body of the treaty, rather than only in the preamble. This reference, however, remained rather timid:

1. The Union shall respect the national identities of its Member States, *whose systems of government are founded on the principles of democracy*.
2. The Union shall respect *fundamental rights*, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law. … (TEU, article F, my emphasis).

The first treaty to define clearly the principles upon which the Union was founded was the Treaty of Amsterdam, signed in 1997, when most CEECs were already formal candidates:

The Union is founded on the principles of liberty, *democracy, respect for human rights and fundamental freedoms, and the rule of law*, principles which are common to the Member States (ToA, Part One, substantive amendments 8 (a) 1; my emphasis)

Yet, EU member states voiced concern that once members, relatively weak democratic regimes might experience a regression into authoritarianism without the EU being able to intervene. This concern led to the inclusion of an article stating:

1. The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the
Commission and after obtaining the assent of the European Parliament, *may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article F(1)*, after inviting the government of the Member State in question to submit its observations.

2. Where such a determination has been made, the Council, acting by a qualified majority, *may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question,* … (ToA, part one, substantive amendments, article 1.9; my emphasis).

In the Treaty of Nice, signed in 2001 shortly after the crisis in Austria which will be discussed below, a paragraph was included adding a preventive mechanism and a sanctions mechanism to political conditionality:

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four-fifths of its members after obtaining the assent of the European Parliament, *may determine that there is a clear risk of a serious breach by a Member State of principles mentioned in Article 6(1), and address appropriate recommendations to that State.* Before making such a determination, the Council shall hear the Member State in question and, acting in accordance with the same procedure, may call on independent persons to submit within a reasonable time limit a report on the situation in the Member State in question. (Treaty of Nice, Part I, substantive amendments, article 1)

**The crisis in Austria**

The political crisis in Austria refers to the participation of the Freiheitliche Partei Österreichs (FPÖ) in the government in October 1999. The origins of the FPÖ went back to the extinct Verband der Unabhängigen (Association of Independents) created in 1949 by former soldiers who had fought in the Second World War and former Nazis, who had regained their political rights that year. In 1956, the Verband was replaced by the FPÖ, which is considered an extreme-right party (Luther 2000). According to a Freedom House Report, Nazis are welcomed in the FPÖ despite the fact that Nazi organizations are illegal in Austria, and a Treaty of 1955 prohibits Nazis from exercising freedom of assembly and association (Freedom in the World, Austria 2002).

Despite its controversial profile, the FPÖ gained 27 percent of the votes in the parliamentary elections of 1999, becoming the second political force in the country, behind only the Sozialdemokratische Partei Österreichs (SPÖ). After an unsuccessful attempt by the SPÖ to form a coalition with the Österreichische Volkspartei (ÖVP), a coalition was formed between ÖVP and FPÖ. Thomas Klestil, Austrian President at the time, requested a declaration from the government affirming, among other things, their adherence to the ‘spiritual and moral values which are the common heritage of the peoples of Europe and the true source of individual freedom, political
liberty and the rule of law, principles which form the base of all genuine democracy’ (Markovits 2002).\(^6\)

The FPÖ’s participation in the Austrian government created apprehension in Brussels as well.\(^7\) On 31 January 2000, president Antonio Gutierres of Portugal, the country holding the EU Presidency, declared that if the FPÖ took part in the government, the other EU member states would impose sanctions on Austria. In spite of this, Wolfgang Schüssel from the ÖVP and Jörg Haider from FPÖ took power on 1 February. On 3 February, Gutierres announced the decision taken by 14 EU member states to implement sanctions against Austria. He stated that the values which formed the basis of European civilization were at stake (Bantekas 2000).

The sanctions consisted of freezing bilateral relations between the 14 member states and Austria, a declaration that the EU would not support the application of Austrian citizens to international institutions, a statement that Austrian ambassadors would only be received by the 14 Foreign Ministers at the technical level, and that no official visit by Heads of State and Government would be made. It is important to notice that the sanctions were not applied by the EU; the decision was not taken in the European Council, but as a series of bilateral initiatives on the part of the 14 EU member-states (Merlingen et al. 2001). According to the Treaty of Amsterdam, the Council could act only after having proved the existence of a serious and persistent breach of principles such as democracy and human rights, which had not been the case.

Besides the Council, other EU institutions also made clear their opinions: the European Parliament approved several resolutions (B5-0101, 0103, 0106, 0107/2000) condemning the formation of a government including the FPÖ. The European Commission disapproved of the practice of coordinating decisions outside EU institutions,\(^8\) but affirmed that it would monitor the situation in Austria and that if a violation of EU principles was found, it would initiate the procedures in the Treaty of Amsterdam to suspend Austrian participation in the European Council, the first step in a procedure that could lead to expulsion.

The immediate reaction of the Austrian population was positive towards the sanctions; people went to the streets to repudiate the coalition. After all, 73 percent had not voted for the FPÖ (Wistrich 2000, 30; Musner 2000, 83). An opinion poll done in February 2000 indicated that 25 percent believed that the sanctions were justified and 40 percent understood why other Europeans rejected the FPÖ (Leconte 2005, 637). On 1 May 2000, Jörg Haider resigned the FPÖ leadership in favour of the Vice-Chancellor Susanne Ries-Passer. On 12 September, the 14 EU member states suspended the sanctions, claiming that they had been a success.

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\(^6\) For more details about the crisis in Austria see Ahtisaari et al. 2000; Bantekas 2000; Leconte 2005; Luther 2000; Markovits 2002; Merling et al 2001; Musner 2000; Wistrich 2000.

\(^7\) The specific concerns regarded the limits on freedom of association and expression of political parties. As defended in the Wise Men Report: ‘the freedom of political parties in the European system is not unlimited’ (Ahtisaari et al. 2000, 21).

\(^8\) See Merlingen et al. 2001, 60; Ramon Torrent calls this practice a 4th Pillar of the EU (Torrent 1998).
Many analysts, however, point out that it had not been proven whether the Austrian government had violated any EU principle (Bantekas 2000; Heinish 2001, 274). In fact, the report issued by the Commission of Wise Men, created by the European Court of Human Rights on the request of the EU Presidency to monitor respect for human rights in Austria, contradicted the conclusion of 14 member states about the success of the sanctions. The Report argued that the Austrian government had not violated any human rights norms, and that the sanctions were provoking nationalist feelings among Austrian population (Ahtisaari et al. 2000; Ford 2000). This last point was emphasized by Falkner, who criticized the sanctions as discrimination against all Austrians regardless of their political preferences, and as such counterproductive in terms of the desire by EU-level actors to strengthen European values and identity (Falkner 2000, 5). However, as Mendez emphasizes, while the Austrian government received support in the Wise Men Report, the same was not true for the FPÖ, which was accused of promoting xenophobic feelings. The Report did not regard the sanctions as unnecessary or excessive and suggested the establishment of a permanent institutional mechanism which would allow member states to react in a more adequate and efficient way to unwelcome challenges from extremist parties (Menendez 2000, 2)

Institutionalizing and Applying Political Conditionality in Mercosur

The institutionalization of the democratic clause

The institutionalization of the democratic clause in Mercosur was a particularly interesting process because the integration of the Southern Cone of Latin America developed in parallel to the re-democratization of its member states. The first democratic elections in Argentina were held in 1983, in Brazil and Uruguay in 1985, and in Paraguay in 1989. Democracy was clearly, therefore, a common value among its founding members and was seen as a prerequisite for integration. However, the constituent treaty of Mercosur, the Treaty of Asunción signed in 1991, did not contain a democratic clause. There is no reference to it in the Preamble, in Article 1 – which refers to the principles and objectives, nor in Article 20 – which refers to the accession of new members (and affirms that accession is possible for any member state of the Latin American Integration Association). The first reference to political conditionality in Mercosur is contained in the ‘Declaration of the Second Presidential Meeting of Mercosur’ of June 1992, which states that:

2. The Presidents affirm that the proper functioning of democratic institutions is an indispensable condition to the existence and development of Mercosur (Declaração Presidencial da Segunda Cúpula Presidencial do Mercosul, my translation and emphasis).10

9 See http://www.aladi.org
In July 1996 Mercosur member states reaffirmed the importance of democratic conditionality by signing the ‘Declaration of the Democratic Agreement’, in which their presidents affirmed that:

1. The proper functioning of democratic institutions is an \textit{essential condition} to the cooperation under the Treaty of Asunción, its Protocols and subsidiary acts.
2. Any alteration of the democratic order constitutes an \textit{unacceptable obstacle} to the continuity of the process of integration regarding the affected member.
3. The Parties will immediately consult each other, in the form they consider appropriate, in case of breach or menace of breach of the democratic order of a Member State. The Parts will proceed in coordination and consult the affected Member State.
4. In the case of unsatisfactory consultation, the Parties will consider the application of pertinent measures. \textit{The measures range from the suspension of the right of the Member to participate in Mercosur’s forums to the suspension of rights and obligations emanating from Mercosur’s norms and agreements signed between its Parts and the state in which the breach of the democratic order has occurred.}
5. The Parties must include a clause of affirmation of the democratic principles in the agreements concluded by Mercosur with other countries or group of countries.’ (\textit{Declaração do Compromisso Democrático}, my translation and emphasis).11

The Agreement was formally incorporated into the Treaty of Asunción by means of the Protocol of Ushuaia, signed in July 1998 and in force since January 2002. The Protocol provides for, after a period of consultation, the suspension of the rights of the member state where the democratic order has broken down to participate in the institutions of Mercosur, followed by the suspension of the rights and duties of the Treaty of Asunción and its protocols, as can be read below:

\textbf{Art. 1} - The proper functioning of democratic institutions is an \textit{essential condition} to the development of the process of integration between the Member-States of the present Protocol. (….)

\textbf{Art. 4} - In the case of breach of the democratic order in one of the Parties to the present Protocol, the other Parties will promote pertinent consultations among each other and the affected State.

\textbf{Art. 5} – When the consultations mentioned in the previous article result to be unsatisfactory, the Parties to the present Protocol, in conformity with the integration agreements in force, will deliberate about the nature and scope of the measures to be implemented, taking into consideration the gravity of the existent situation. Such measures include from the \textit{suspension of the right of participation in the various organs} of the process of integration to the \textit{rights and duties emanating from this process}. .... (\textit{Protocolo de Ushuaia}, my translation and emphasis).12

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11 The associate members of Mercosur at the time, Bolivia e Chile, concluded on the same day a similar protocol (\textit{Protocolo de Adhesión a la Declaración sobre Compromiso Democrático en el Mercosur}). See full text at http://www.mercosur.org.uy/paginabienviendaportugues.htm.
The crises in Paraguay

Compared to the EU, Mercosur has a short history of enlargement. The first country to join as a full member was Venezuela, in September 2006.\footnote{The Accession Treaty of Venezuela is not yet in force (October 2007) because it was not ratified yet by Brazil and Paraguay.} Given the polemic surrounding the democratic credentials of the Chavez government, it will be interesting to follow the impact of the democratic clause in Venezuela. It should be noted, however, that the inclusion of Paraguay in the Treaty of Asunción was only considered in 1989 after the end of the dictatorship (Vaz 2002, 126). So, the institutionalization of the democratic clause in Mercosur has so far not been linked with enlargement, but rather with two crises which occurred in Paraguay, when the political conditionality of Mercosur was directly invoked. The first crisis took place in 1996, after a failed coup attempt by General Oviedo, and the second in 1999, after the assassination of Vice-President Argana and resignation of President Cubas.

First crisis  

In order to understand this crisis, it is important to go back in history. In 1989, an uprising lead by General Andrés Rodrigues overthrew General Alfredo Stroessner, a dictator who ruled Paraguay for 35 years. Rodrigues was elected President in the same year, and during his mandate a new constitution was elaborated and approved, an important step in the re-democratization of the country. In 1993, the civilian Juan Carlos Wasmosy was elected, and named General Lino Oviedo – who had played a prominent role in the uprising against Stroessner – as head of the army. Oviedo, however, became ever more powerful, to the point that Wasmosy decided, on 22 April 1996, to dismiss the General. The refusal of Oviedo to obey this order precipitated a major political crisis. During that day, senators loyal to Oviedo pressed Wasmosy to resign. Supported by the US, Argentinean and Brazilian governments, opposition parties and some street demonstrations, Wasmosy refused to do so, but had to spend the night at the American Embassy – thus, technically speaking, in exile. The next day, supporters of Wasmosy joined the police, navy and air force siding with him, dividing the armed forces. In order to avoid an open conflict, Wasmosy negotiated a political compromise with Oviedo, promising him the defence ministry post if he resigned his command. Despite the discontent of many, Wasmosy named Oviedo Minister of Defence on 25 April.\footnote{For detailed description and analysis of the April crisis see OAS 1996; Stromberg 1997; Valenzuela 1997.}

Second crisis  

Wasmosy’s hopes that Oviedo would be demoralized and lose his influence were in vain; on the contrary, he gradually emerged as a populist political leader, with support from impoverished Guarani-speaking Indian peasants. In 1998, Oviedo won the Colorado Party’s primary to stand in the presidential elections against the party’s president, Luis María Argana. Fearing Oviedo’s election as president, Wasmosy had him tried before a military court on the old coup charges, and he was sentenced to 10 years in prison. However, Raul Cubas Grau, Oviedo’s close ally, won the presidential elections on the slogan ‘Cubas to the government,
Oviedo to power’. Three days after his inauguration, in August 1998, Cubas freed Oviedo. In February 1999, Paraguay’s Supreme Court ordered Cubas to re-arrest him. Cubas, however, defied the ruling, leading the Congress, supported by Vice-President Argana, to initiate impeachment proceedings on the grounds of misuse of power. Argana was assassinated in March, triggering mass protests and massacres in the centre of Asunción in which seven people were killed.

Paraguayan politicians and population alike were divided between those who accused Cubas and Oviedo of the murder of Argana, and those who claimed it to be the work of a faction inside the Colorado Party linked to former President Wasmosy and aiming at destabilizing the government. Cubas was forced to resign amid popular demonstrations, and sought asylum in Brazil. Oviedo left the country as well, seeking political asylum first in Argentina, and then in Brazil.15 Luis Gonzales Macchi, the President of the Senate, also a Colorado Party member and whose father had been Minister for Justice and Labour for a long period under the dictator Stroessner, took power as President.

At the time of the first crisis in 1996, Mercosur did not have a formal democratic clause, but the governments of Argentina, Brazil and Uruguay immediately became involved in the crisis. Some hours after the statement of the American Embassy in support of Wasmosy on the evening of 22 April, the Brazilian ambassador, speaking for his own country as well as for Argentina and Uruguay also publicly condemned any attempt to subvert democracy in Paraguay. Foreign Ministers Guido di Tella (Argentina), Sebastião do Rego Barros (interim of Brazil) and Alvaro Ramos (Uruguay) met in Asunción to discuss the crisis. On 23 April, Oviedo received a phone call from the Brazilian General Zenildo Lucena, who had once been his instructor, with a message from President Fernando Henrique Cardoso that if there was a coup in Paraguay, he would impose severe economic and political sanctions.16

At the time of the second crisis in Paraguay, triggered by the assassination of Vice-President Argana in 1999, Mercosur already had a democratic clause. It had been progressively institutionalized, as mentioned above, with the Declaration of the Democratic Agreement signed in July 1996 (just after the first crisis), and the Protocol of Ushuaia, signed in July 1998. When President Raul Cubas resigned, both Argentina and Brazil immediately granted Cubas and Oviedo political asylum. Julio Sanguinetti, Uruguayan president declared that Cubas’ resignation was ‘the best solution for Paraguay’. All three countries feared a coup by Cubas and Oviedo.

In Argentina, official sources admitted that the order to grant asylum had come from President Carlos Menem himself, who was in Italy, having been in discussions with Bill Clinton and the presidents of neighbouring countries in search of international

15 Ironically, Stroessner had also received political asylum from Brazil. Political asylum is foreseen in the Brazilian Constitution for foreigners pursued in their own country for political, religious or racial reasons. Territorial asylum is granted by the Ministry of Justice. If the foreign country issues a request for extradition on the other hand, this is decided by the Supreme Court and not by the government.

16 Apart from the US and Mercosur member-states, the General Secretary of OAS, César Gaviria, also announced promptly his support for the Wasmosy government. The Permanent Council met and agreed unanimously about the desirability of using resolution 1080. The European Union also issued a declaration supporting Wasmosy. See OAS 1996; Stromberg 1997; Valenzuela 1997.
support. In Brazil, Foreign Minister Luís Felipe Lamprêia stated that by giving Cubas political asylum, the government was seeking to guarantee stability in the region, and that President Cardoso was following the developments in Asunción closely, having talked to President Cubas when violent conflict still seemed a real possibility. Brazilian President Cardoso and Uruguayan Foreign Minister Didier Opertti discussed the option of applying the Protocol of Ushuaia. Ironically, the only country which had ratified the Protocol until that time had been Paraguay itself; it was not due to come into force until January 2002. However, there was in the end no need to use the Protocol as Cubas and Oviedo remained in exile, and Macchi took over the government.

The Effectiveness of Political Conditionality as an Instrument of Preservation of Democracy

Political conditionality has been directly addressed in the literature on democracy promotion. Traditionally, analysts of comparative politics have stressed the importance of domestic factors in the transition to and consolidation of democratic regimes, neglecting or even denying the ‘international aspect’. Recently, the need to reassess the role of the ‘international’ has appeared on the agenda of both comparativists and IR scholars (Anderson 1999; Pevehouse 2002; Stein 2001; Whitehead 1996). Although in 1988, Whitehead argued that international factors played a minor role in the transitions to democracy in Southern Europe and Latin America, he reconsidered this view in the 1990s after summit meetings on democratization in 1994 in Essen (EU), Miami (FTAA) and Ouro Preto (Mercosur). According to Whitehead, new empirical developments seemed to signal a new stage in the promotion of democracy through regional cooperation. Promotion of democracy of this nature would correspond with what he defined as the consent hypothesis, a sophisticated conception of the democratization process which takes into consideration the actions and intentions of relevant domestic groupings in both the country promoting democracy and in the target country, and the interactions between internal and international processes. This hypothesis states that international processes may contribute to (or impede) the generation of consent upon which new democracies are based in four ways:

1. by interfering in the establishment and stabilization of national boundaries;
2. by supporting particular national democratic actors,
3. by having a demonstration effect – when neighbour countries wish to imitate a way of life associated with liberal capitalist democracies; and, most important for this research,
4. by devising instruments that will reinforce consent for democracy in candidate countries wishing to join a regional organization, such as political conditionality.

18 This section assesses only the efficacy of political conditionality upon member states, not upon candidates for accession. For the efficacy of political conditionality during the process of negotiation of accession, see Pevehouse 2002; Schimmelfennig et al. 2003; Zielonka 2006.
Other hypotheses concerning the promotion of democracy are contagion and control. Broadly speaking, contagion refers to the spread of democratization due to the geographical proximity of other democracies. This hypothesis does not consider actors’ motivations or channels of transmission, only simple geographical correlation. The control hypothesis is based on realist approaches, and states that democratization will occur when imposed by hegemonic powers in their unilateral foreign policy initiatives (Whitehead 1996).

For the cases of Greece, Portugal and Spain for instance, Whitehead concludes that the EU was a powerful catalyst for democratization, but emphasizes the complex relationship between domestic and international factors in the process of democratization:

the incentives for consolidation provided by the prospect or reality of EC membership have represented a durable and compelling set of inducements to remould the political regimes of southern Europe (a powerful confining condition of the democratizations process). It is unhelpful to classify such inducements as either external or internal, since they operate at various levels, and reshape the calculations and conduct of numerous political actors both at home and abroad (Whitehead 1996, 272).

In his contribution to the project coordinated by Whitehead, Philippe Schmitter also acknowledges the necessity of reconsidering the impact of what he calls the ‘international context’ upon democratization. However, he adds a fourth grouping of international factors to the three proposed by Whitehead (contagion, control and consent), that of conditionality. He does not consider the impact of regional integration processes upon democracy only as part of voluntary initiatives supported by private actors, under the label of consent, as Whitehead, but also (and mainly) as a coercive initiative backed by states. However, in contrast with the control category of Whitehead, where democracy is pursued unilaterally by hegemonic states, the conditionality category of Schmitter is pursued multilaterally – that is to say, in the context of regional institutions: ‘its hallmark is the deliberate use of coercion on the part of multilateral institutions’ (Schmitter 1996, 30). He considers conditionality, defined in these terms, the most rapidly expanding mechanism for the exercise of international influence upon the development of democracy. The use of conditionality in economic and monetary affairs has been a practice in the post-war period, such as by the IMF, but ‘what is new is the tying of policy responses to political objectives’ (Schmitter 1996, 42). He adds that despite the fact that the use of multilateral conditionality began with the transitions in the Southern Europe, it has increased with the transitions in South America, Asia, Eastern Europe and Africa. Here we consider its effectiveness in preserving democracy.

Austria

Despite the crisis of 1999, Austria can be considered a stable democracy. According to World Audit,\textsuperscript{19} Austria receives 11 points on a scale from 1–150 in the overall

\textsuperscript{19} World Audit is an international NGO which publishes scores and rankings based on information from Freedom House, Transparency International, Amnesty International, Human
Andrea Ribeiro Hoffmann

ranking of 2005 (having 1 on a scale 1–7 for political rights and civil liberties; 25 on a 0–100 scale for press freedom, and 9 on a 0–100 scale for corruption), being in the first division and classified as ‘unquestionably free’ — an excellent result.

After the successful elections of 1999, the FPÖ suffered a series of setbacks. As mentioned, Haider resigned the party’s leadership in 2000 and became governor of Carinthia. When he attempted to intervene at the national level again in September 2003 he inflamed divisions within the FPÖ, leading to the collapse of the coalition and the call for early elections on November. This time the FPÖ won only 10 percent of the votes, 17 percent less than in 1999, ending up entering the government as a junior partner. In the local elections in 2003, this decline in the polls was confirmed. The FPÖ also did poorly in European Parliament elections in 2004.

The role played by EU political conditionality has been, on the one hand, positive for Austrian democracy insofar as it has strengthened the case of Haider’s opponents, and, on the other hand, counterproductive because of the use of sanctions as an instrument of punishment. Yet, it cannot be said that the removal of Haider from national politics and decrease of FPÖ popularity was due only or mainly to EU political conditionality. Some analysts suggest that FPÖ success in 1999 can be better explained by frustration with the grand coalition of the ÖVP and SPÖ which had been in power since 1986, than by an appeal to the FPÖ’s platform. As soon as the population realized the consequences of the FPÖ’s participation in government, its support declined (Freedom House 2004). According to this view, the decline of the FPÖ would have taken place anyway, even without EU intervention. The role of political conditionality as an instrument for the promotion of democracy was therefore positive but not essential, since domestic forces would have performed the same function.

Paraguay

The case of Paraguay is quite different from Austria. The country is positioned in the third division in the World Audit’s ranking, with 73 points in the overall ranking (3 for political rights and civil liberties, 81 for press freedom and 129 for corruption). Countries in the third division are classified enjoying precarious freedom. The stability of the democratic regime in Paraguay cannot be taken for granted. Despite being in prison, Oviedo still manages to influence Paraguayan politics. In May 2000, there was another failed coup attempt against Macchi promoted by his supporters (BBC News 2000). In August of the same year, Oviedo’s ally, Julio Cesar Franco was elected as the new vice-president, in a tough run-off against Felix Argana, the son of the assassinated former vice-president. In the elections of 2003, Nicador Duarte Frutos became President. Although a former ally of Argana, he defended the granting of an amnesty to Oviedo as a gesture to avoid political instability, in view of the number of seats in the Congress under the power of the General.

In 2004, Oviedo decided to return to Paraguay affirming that he ‘returned, will be set free and will govern Paraguay’. He was immediately arrested in order to serve

his sentence for the coup attempt of 1996, but his popularity has increased since then. People have been gathering in his support on the visiting days of the Quartel de Vinas Cué, where he is imprisoned, hoping to be able to vote for him in the elections of 2008 and arguing that Oviedo is a political prisoner (*Isto É* 2005; *EFE* 2005).

Developments in Paraguay lead us to the conclusion that neither the stability of its democracy nor the positive effect of the democratic clause have yet been proven. The effect of Mercosur political conditionality as an instrument of democracy promotion was positive, but had only a superficial effect to the extent that it contributed to avoiding a coup. It did not lead to any deeper transformation of the Paraguayan regime.

**Concluding Remarks**

Regarding the first question addressed in this chapter – the forces behind the institutionalization of political conditionality in RIOs – it can be said that for the EU, both the successive waves of enlargement and the developments following the crisis when it was invoked (Austria) had a positive effect. For the case of Mercosur, enlargement has not played a role so far, but the inclusion of Paraguay in the Treaty of Asunción was only considered after the end of the dictatorship. The two crises in this country can be said to have played a major role in the process of institutionalization of political conditionality within Mercosur. An interesting difference between these two RIOs is the way in which they have reacted to the applicability of political conditionality to a crisis. The Treaty of Nice means that the EU is formally able to act preventively, before any breach of democratic principles occurs. Mercosur, on the other hand, can only act formally after a breach has happened. This might reflect the status of sovereignty and the principle of non-intervention, which are much stronger in Latin America than Europe.  

Regarding the second question – that of whether political conditionality matters after all – the conclusion of both case studies leads to the same result despite the two different realities. Austria can be considered a full democracy; domestic actors reacted against the possibility of threats to the democratic regime. The threat to democracy was hypothetical to the extent that the main problem was the rise of a party which failed to respect certain standards such as the right of immigrants and minorities, but which had risen to power in a democratic way. The fear was based on the history of the party, the declarations and attitude of its main leader, Jörg Haider and the electoral program, but no actual violations had occurred. It can be said that political conditionality had a positive effect in alerting political actors, but was not necessary in order to secure democratic values since domestic forces were also concerned and active. The use of sanctions as an instrument to protect democracy can even be said to have had counterproductive effects in a well-established democracy.

Paraguay, however, cannot be considered a full democracy, despite meeting superficial democratic requirements. The threats to democracy during the two crises were clear, as they referred to coup attempts. Developments following the crises

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20 I thank the anonymous reviewer for highlighting this point.
Andrea Ribeiro Hoffmann

had a positive effect in preventing the country from degenerating into a dictatorship, especially given the weakness of opposing domestic forces, but were insufficient to provoke any profound transformation of the regime.

To conclude, political conditionality and democratic clauses can be considered positive instruments to secure the realization of democratic values of RIO member states and may help deepen democratization if implemented with adequate instruments, and combined with domestic support. Under these circumstances RIOs can therefore be legitimized by their capacity to fulfil their member states’ objectives of strengthening democracy.

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PART 6
Conclusion
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?
Table 11.1 Overview of questions and chapters

<table>
<thead>
<tr>
<th>Question</th>
<th>Chapter/ focus</th>
<th>RIO investigated</th>
</tr>
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<tbody>
<tr>
<td>1. How can we define legitimacy and democracy in non-national political systems?</td>
<td>Ch.2 – concepts of RIOs, legitimacy, democracy</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ch.3 – concept of regional democracy</td>
<td></td>
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<tr>
<td>2. To what extent do RIOs display input, control and output legitimacy mechanisms?</td>
<td>Ch.4 – selection of indicators and mechanisms of input, control and output legitimacy</td>
<td>31 RIOs: 8 from Africa, 4 from Asia &amp; Pacific, 5 from Middle East &amp; Western Asia, from 9 from Western Hemisphere and 5 from Central and Eastern Europe &amp; former Second World</td>
</tr>
<tr>
<td>3. What is the role of regional parliaments and subnational state actors in contributing to RIOs democracy/legitimacy?</td>
<td>Ch.5 – regional parliaments, comparison and explanation of differences with regard to democracy/legitimacy</td>
<td>European Parliament (EU), Parlatino, Parlacen (SICA), Parlandino (CAN), Mercosur Parliament</td>
</tr>
<tr>
<td></td>
<td>Ch.6 – sub-national actors, contribution to democracy and input legitimacy</td>
<td>EU and Mercosur</td>
</tr>
<tr>
<td>4. What is the role of non-state actors in contributing to RIOs democracy/legitimacy?</td>
<td>Ch.7 – non-state actors, input and control legitimacy</td>
<td>Mercosur</td>
</tr>
<tr>
<td></td>
<td>Ch.8 – non-state actors, input and control legitimacy</td>
<td>Caricom</td>
</tr>
<tr>
<td>5. Do RIOs play a role in strengthening democracy in member states?</td>
<td>Ch.3 – relationship between regional and domestic democracy</td>
<td>EU, CARICOM, SICA, Mercosur, CAN, SADC, ASEAN</td>
</tr>
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<td></td>
<td>Ch.9 – interventions, output legitimacy</td>
<td>SADC, ASEAN</td>
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<td></td>
<td>Ch.10 – political conditionality, output legitimacy</td>
<td>EU, Mercosur</td>
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The first question: concepts

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), Parlato, Parlacen (SICA), Parlalino (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 of 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 Roozendaal 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 sub-national 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.