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Regional Organisations and Mechanisms for Democracy Protection in Latin America, the Caribbean, and the European Union

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TABLE OF CONTENTS

Regional Organisations and Mechanisms for
Democracy Protection in Latin America, the Caribbean and the European Union

LIST OF TABLES

LIST OF ACRONYMS AND ABBREVIATIONS

ASEAN	Association of South East Asian Nations
AU	African Union
CAN	Andean Community of Nations
CARICOM	Caribbean Community and Common Market
CEECs	Central and Eastern European Countries
CELAC	Community of Latin American and Caribbean States
CoE	Council of Europe
CSCE	Conference on Security and Co-operation in Europe (see OSCE)
CVM	Cooperation and Verification Mechanism
ECOWAS	Economic Community of West African States
EU	European Union
FTAA	Free Trade Area of the Americas
FTDS	Framework Treaty on Democratic Security
GUAM	Organisation for Democracy and Economic Development
MDP	Mechanisms for Democracy Protection
MERCOSUR	Common Market of the South
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
OAS	Organisation of American States
OAU	Organisation of African Unity (see AU)
ODECA	Organisation of Central American States
OSCE	Organisation for Security and Co-operation in Europe
PHARE	Programme of Community Aid to the countries of Central and Eastern Europe
SADC	Southern Africa Development Community
SICA	Central American Integration System
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UNASUR	Union of South American Nations

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INTRODUCTION

Processes of integration face a continuous dilemma: how can states achieve the provision of certain public goods which they alone are not capable of providing, while, at the same time, clinging to a jealous defence of the national sovereignty inherent in the very notion of statehood. Organisations of regional integration have traditionally provided public goods linked to trade in products and, more generally, those linked to economic activity.

Since the last decade of the last century, regional organisations have also increasingly focussed on the provision of another type of highly political goods. These include mechanisms to ensure the observance of a certain type of regime. Since the fall of the Berlin Wall and the breaking up of communist regimes, the traditional doctrine of non-interference and respect for national sovereignty has gradually yielded to the principle that regional organisations should also provide mechanisms to guarantee that democratic regimes in member states would be maintained. Thus, democracy and integration ended up being linked together.

Examples of this global development can be identified in regional organisations of every continent with the exception of Asia. In Latin America and the Caribbean, as well as in Europe, the earliest expressions of the idea that regional organisations must defend democracy in their member states go back to the organisations created in the immediate post-war period (the Organisation of American States and the Council of Europe) although in practise these were far from being perfect mechanisms. The most important development of this type of mechanisms coincided with the last decade of the twentieth century. Thomas Franck (1992) drew up the thesis of the emergence of a right to democratic governance with the corollary of an assertion of the legitimacy of transnational, international and regional organisations acting against destabilising tendencies in democratic regimes. The growth in statutory instruments in various organisations in this decade seems to confirm the existence of a paradigm shift in which, while not questioning the obligation of non-interference and respect for national sovereignty, the way has been opened for international and regional scrutiny of possible breakdowns or erosions of democratic regimes.

Beyond these "normative" arguments, there are also more functional reasons for the creation of this type of statutory instrument. On the one hand, states facing democratisation processes have an interest to ensure that the recently acquired democratic regimes are irreversible. To this end, they see in the creation of supranational commitments an obligation that national stakeholders will have difficulty altering or ignoring or which will at least increase the cost for those who may be contemplating a return to undemocratic regimes (Pevehouse 2005). On the other hand, ensuring democracy and the rule of law for the member states of regional organisations also serves as an indication and guarantee of their commitment to the objectives of the organisation itself. This correlation is even stronger if the organisation is also committed to these principles (i.e. democracy and the rule of law) as its own objectives. In addition, the more complex the organisation is (gauged by the number and sophistication of its objectives), the more likely it is to acquire such clauses of democratic conditionality. In fact, Mechanisms for Democracy Protection (MDP) are more common in organisations that define themselves as organisations of integration (such as the EU, the AU, ECOWAS, MERCOSUR, UNASUR, etc.).

There is a logical link between the democratisation of states and the creation of Mechanisms for Democracy Protection at regional level. Tracing the causal relationship between these two is not easy (i.e. are the states which are becoming democratic creating MDPs, or is it the MDPs which are contributing to democratisation) and the evidence points in both directions, thus a wise conclusion might be to accept a circular relationship between the two.

This study focuses on analysing MDPs in regional organisations in Latin America, the Caribbean and Europe. The study is organised as follows: Chapter 1 presents an assessment of the state of democracy in both continents, highlighting the potential factors which might pose a threat of breakdown or erosion of democratic regimes. Then, Chapter 2 gives an exhaustive examination of the legal regulations of the MDPs as contained in the various instruments, that is, the Treaties and Protocols. Chapter 3 examines the practise of the various organisations, which is then used as the basis for the evaluation contained in the conclusions, which in turn leads to proposed recommendations.

Information related to Chapter 1 comes from the analysis of secondary sources (bibliography) while Chapter 2 builds on a critical analysis of the original documents (Treaties and Protocols, together with declarations in the case of those institutions which do not have formal instruments (for example, CELAC). Chapter 3 compares various cases in which there has been a breakdown/threat of breakdown. The empirical evidence comes essentially from primary sources, such as texts (declarations, resolutions, and official press statements) from the organisations themselves, together with press releases. To gain a deeper insight, a significant number of semi-structured interviews were carried out

with political figures directly involved in the various incidents (see the list included at the end of the study). The fieldwork was done in two periods, in March and July 2015, and the interviews were transcribed. The information obtained was collated to shed light on the various cases but also, and in particular, to inform the conclusions.

Chapter 4 presents the general conclusions of the study. The general conclusion is that regional organisations respond to the dilemma between non-interference and effective defence of democracy by striking a balance between the two based on institutional devices which grant a wide margin of discretion to the governments of the states that are part of any regional organisation, both in their decisions on whether or not there has been a breakdown or a threat of breakdown in democracy and the rule of law, and in the application of the sanctions laid down. From these conclusions, the study proposes a list of recommendations for the improvement of the MDPs – related to their design and implementation – on the basis of the empirical evidence collected in both regions.

1 REGIONAL ORGANISATIONS AND DEMOCRACY IN LATIN AMERICA, THE CARIBBEAN AND THE EUROPEAN UNION

1.1. Introduction

This study covers the period 1990-2015, a time which saw a sustained increase in the number of democratic regimes together with a parallel decrease in the number of authoritarian regimes both in Latin America and in Europe. Indeed, all the countries of Latin America – with the sole exception of Cuba - have democratically-elected governments which, in addition, have been given authority by another democratically-elected government. Similarly, all the European governments have been democratically elected and, at least since the fall of the Soviet Union and the accession of Central and Eastern European countries and some of the Balkan countries to the European Union, one could say that democratic order is *the only game in town* (Whitehead 1986).

The number of regional organisations which have adopted formal mechanisms for the protection of democracy (MDP) including conditionality clauses for accessing and remaining in the organisation has grown alongside the sustained increase in democracies worldwide. Table 1 summarises the data.

Table 1: Mechanisms for Democracy Protection: Democratic conditionality and accession clauses

Organisation	Original membership	Conditionality clause and year of adoption	New members	Membership denied
African Union (formerly OAU)	31	Yes (Ac)/2001	23	
CAN	4	Yes (Ac)/2000	1	0
CARICOM	4	No	11	0
Council of Europe	10	Yes (1949)	37	2 (Belarus, Kazakhstan)
Commonwealth of Nations	7	Yes (Ac)/1997	47	0
EAC	5	Yes	0	1 (Sudan)
ECOWAS	15	Yes (Ac)/2001	0	0
EU	6	Yes	22	1 (Morocco)
MERCOSUR	4	Yes (Ac)/1996-8	1	0
NATO	12	Yes (Ac)/1992	16	0
GUAM	5	Yes	0	0
OAS	21	Yes	14	0
OIF	21	Yes (Ac)/2000	36	0
SADC	10	Yes (Ac)/2001	5	0
SICA	6	No	1	0
UNASUR	12	Yes (Ac)/2010	1	0

Source: Closa (2013). Note: Ac (acquired; i.e. the formal disposition was added after the creation of the organisation)

No doubt both tendencies – an increase in democracies at national level and an increase in MDPs at regional level - are interrelated; nevertheless it is a matter for academic debate whether one tendency is the cause or the effect of the other. Is it the greater presence of democratic regimes that has driven the emergence of "democratic regional governance"? Or, to the contrary, is it the emergence of MDPs that has contributed to democratisation and democratic consolidation in various regions?

Most likely, these two processes have a sort of two-way relationship: regional organisations have contributed to the processes of democratisation as shown by the example of the countries of Southern and then of Central and Eastern of Europe, those of Central America and of the Southern Cone of South America; then the quantitative increase in democracies – what some have called the "democratic density" (Pevehouse 2005) – has favoured the institutionalisation of MDPs by regional organisations. In other words, there is a mutually constitutive relationship between the increase in democracies at national level and the institutionalization of MDPs at regional level. On this basis, this study seeks to answer the following questions:

- How are MDPs designed in the regional organisations of Latin America and Europe? In which institutional aspects do they differ and in which do they converge? (Chapter 2)

- How have MDPs been implemented in actual cases of democratic breakdown and with what effects? (Chapter 3)
- How is it possible to improve the design and implementation of MDPs in the light of this comparative experience? (Chapter 4)

In this first chapter we will present a general framework and a common basis of definitions and concepts so that we can answer the three questions in greater detail in the subsequent chapters. We should first point out that the quantitative increase in democracies does not negate the fact that there are great challenges to democratic consolidation in the twenty-first century. Indeed, even when authoritarian regimes have decreased relative to democracies, hybrid regimes, usually defined as "anocracies", have remained constant. This indicates that a large number of regimes which might be considered democratic are, nevertheless, politically unstable and may face authoritarian regression. Indeed, in Latin America, during the period of the study, there were over sixty incidents that could be described as democratic crises, and sixteen Heads of State were removed from office before the end of their mandate (Valenzuela 2008; Heine and Weiffen 2014; Marsteintredet et al. 2014). Problems of representation, legitimacy, and tendencies towards democratic disaffection are not unknown, nor are demands from citizens for greater transparency and accountability and improvements in public management. These problems, which are being felt in both regions to a varying degree and with different manifestations, should also be included among those challenges to democracy, but these are questions which are outside the remit of this study.

Table 2: Interruptions to democratically-elected presidential mandates in Latin America and the Caribbean (1990-2015)

Agent	Cause	Head of State/Country	Year
Congress	**Impeachment; political trial**	**Collor / Brazil** **Pérez / Venezuela** **Cubas /Paraguay** **Lugo / Paraguay**	**1992** **1993** **1999** **2012**
	Incapacity or removal from office	**Bucaram / Ecuador** **Gutiérrez / Ecuador**	**1997** **2005**
President own decision under pressure	**Resignation**	**De la Rúa / Argentina** **Serrano / Guatemala** **Fujimori / Peru** **Sánchez /Bolivia** **Mesa / Bolivia**	**2001** **1993** **2000** **2003** **2005**
	Resignation and early elections	**Balaguer / Dominican Republic**	**1996**
Armed Forces	**Coup d'Etat**	**Aristide / Haiti** **Mahuad / Ecuador** **Aristide / Haiti** **Zelaya / Honduras**	**1991** **2000** **2004** **2009**

Note: The case of the resignation of Eduardo Duhalde in Argentina has not been included, as he was not popularly elected. Threats of coups and unsuccessful coups such as those in Paraguay in 1996, Venezuela in 2002, and Ecuador in 2010 have not been included. At the time of writing of this study, President Otto Pérez Molina of Guatemala had his diplomatic immunity removed and was subsequently detained on charges of corruption.

Own elaboration based on Valenzuela 2008 and Marsteintredet et al. 2014.

Although incidents of democratic crisis have occurred less frequently, Europe has also seen a resurgence of regimes which, although they may have been elected in accordance with democratic rules, have led to illiberal or even authoritarian practises during the exercise of power (Jenne and Mudde 2012; Scheppele 2013). As will be seen in Chapter 4 of this study, in many of these incidents of democratic crisis, the regional organisations of both regions have intervened by implementing their formal MDPs and/or taking actions which varied from making declarations of condemnation to applying sanctions.

This introductory chapter is organised in three sections. The first section presents some working definitions which will be used in the rest of the study and examines briefly the various theoretical approaches to the study of these mechanisms. The second and third section describe, respectively, the challenges to democracy confronting Latin America and Europe during the period of the study, emphasising the role of regional organisations. The decade of the 1990s in Latin America and in Europe was mainly characterised by processes of democratic consolidation after the dissolution of the military regimes of South America, the peace agreements of Central America and the fall of the Soviet Union in the countries of Central and Eastern Europe. The role of regional organisations and MDPs must, therefore, be set in the context of these major processes.

In the years post-2000, however, the challenges in both regions came rather from the emergence of a variety of regimes which, while not being authoritarian, may be considered hybrids with features of illiberalism or competitive authoritarianism (Zakaria 2007; Levitsky and Way 2010; Philip and Panizza 2011; Sedelmeier 2014; Vachudova 2014). This variety of hybrid regimes was typical of the context in which the regional organisations and MDPs operated in the last decade. These heterogeneous regimes called into question the consensus around the concept of liberal democracy on which the great majority of MDPs in the various regional organisations were based. Diversity of views on what democracy means opened up a debate on where the area of intervention by these organisations began and ended.

1.2. Defining concepts: Mechanisms for Democracy Protection and democratic crisis

We begin with some basic definitions of what we understand by “Mechanism for Democracy Protection” (MDP), “democratic intervention” and “democratic crisis”, as these will be concepts used throughout the rest of the study. This study uses operationally a liberal and formal conception which describes **democracies** as those regimes which

comply as a minimum with four basic principles (Dahl 1971; Schmitter and Karl 1991; Mainwaring 1992; Pevehouse 2005; Levitsky and Way 2010):

- Competitive elections between multiple political parties
- Universal suffrage
- Protection of the rights of minorities and respect for civil liberties
- The absence of unelected supervisory actors (military, monarchies or religious bodies).

Levitsky and Way (2010: 5-6) add a fifth principle; i.e. the existence of a level playing field between the ruling party and the opposition. Indeed, some governments may severely limit the political opportunities of the opposition by using measures that do not necessarily constitute an attack on civil liberties (the third principle), for example by co-opting the media through informal governance or patronage, as happened in Italy during the administration of Prime Minister Silvio Berlusconi. This did not infringe any rights; however, it did in fact limit political competition (Van der Vleuten and Ribeiro-Hoffmann 2010; Scheppele 2013). The formal definition adopted in this study is certainly not the only one. There are other definitions including more minimalist definitions of democracy which focus exclusively on the electoral aspect (see for example Przeworski et al. 2000), and others which are more maximalist imply that democracies have a substantial focus on the principle of social justice and the reduction of inequality (see for example Whitehead 1986; Streeck 2011; on the pros and cons of minimalist and maximalist definitions, see Schnably 2000: 165).[1] In this study we are limiting ourselves to these four principles we have described in order to differentiate between democratic, hybrid and authoritarian regimes.

By **Mechanisms for Democracy Protection** (MDP) we mean formal, semi-formal and informal rules and procedures by which regional organisations can intervene in case of a potential democratic crisis. MDPs form part of a wider category of mechanisms for the *promotion* of democracy which include, for example, electoral missions or capacity-building programmes such as those implemented by the European Union and the Council of Europe in the candidate countries for membership or in third countries outside of Europe (Schimmelfennig et al. 2003; Pace 2011; Heine and Weiffen 2014: 14-15). The MDPs codify the democratic consensus of the members of a regional organisation and

1 Some MDPs provide definitions of democracy which approach or at least allow for a substantial interpretation of democracy. For example, in the Protocol of Washington which preceded the Democratic Charter of the OAS, we read that the "elimination of extreme poverty is an essential part of the promotion and consolidation of representative democracy" (OAS Charter, Art. 3(f); Art.2(g), 33, 116; modifications of the Protocol of Washington). Similarly the Inter-American Commission established in 1992 that *"Popular participation, which is the aim of a representative democracy, guarantees that all sectors of society have an input during the formulation, application, and review of national policies. . . . [T]he implementation [of economic, social, and cultural rights] creates the condition in which the general population is able, i.e. is healthy and educated, to participate actively and productively in the political decision-making process* (Inter-American Commission, quoted in Schnably 2000: 165).

define mechanisms for implementation and for sanctions when a member state deviates from this consensus (Schnably 2000, 2005; Closa 2013; Heine and Weiffen 2014). When an instrument of international law, such as a protocol or an international treaty formalises this consensus, we typically speak of a **democratic clause** by which the regional organisation requires as a condition of membership that the states *should be* and *should remain* democracies (Genna and Hiroi 2015). As we will see in Chapter 2 of this study, the MDPs vary considerably from one organisation to the next in their degree of formalisation and completeness, as well as in their assumptions of applicability and of the procedures for their application and, when appropriate, of the sanctions which they envisage.

The final basic concept which requires clarification is that of **democratic crisis**. Academically, it is possible to define a democratic crisis as one or several events which, occurring within a brief and limited timeframe, directly threaten the political institutions of a democratic regime (Linz and Stepan 1978; Heine and Weiffen 2014). According to the distinction proposed by Dexter Boniface (2009), it is possible to classify democratic crises as to whether the event which caused them was "ambiguous" or "obvious", and whether the agent of the crisis is "endogenous" or "exogenous" to the regime. An incident is "obvious" when it has flagrantly violated an existing law, typically constitutional law. An incident is "ambiguous" when it does not violate the laws in force, so it can therefore be considered legal or partially legal. As for an agent, it is "endogenous" if it is internal to the government and "exogenous" if it is an actor or organisation that has not been elected, typically a non-state actor or the armed forces. The potential combinations of this typology can be seen in Table 3.

Table 3: Types of Democratic Crisis

		Origin of the Agent	
		Endogenous	**Exogenous**
Incident	**Obvious**	**Self-coup** **Electoral fraud**	**Coup d'Etat** **Threat of a coup** **Attempted coup**
	Ambiguous	**Electoral irregularity** **Conflict between powers** **Constitutional reform**	**Impeachment / Political Trial**

Source: Own elaboration based on Boniface (2009) and Heine and Weiffen (2014)

However, the formalisation of MDPs does not stick to rigorous academic definitions. Defining a "democratic crisis" largely depends on the actors in question, their regulatory and ideological positions and, as will be shown in this study, their degree of formalisation and legal or regulatory development, or the precedents that may exist. And beyond the formalised definition of a specific instrument, the identification of a real "democratic crisis" results from the interaction between the institutionalised consensus in the regional organisation

(perhaps codified in a democratic clause) and, on the other hand, the related deliberations of the governments of the member states when faced with a specific case. The more MDPs are formalised, the more likely it is that the institutionalised consensus will prevail upon the related deliberations. However, as will be shown in Chapter 3, the MDPs envisaged by the regional organisations of both regions in the study tend to be incomplete contracts which leave plenty of room for the interpretation of what type of situations constitute a democratic crisis and of how to intervene (Duxbury 2011; Closa and Palestini 2015).

As may easily be inferred, faced with an ambiguous incident a regional organisation will have greater difficulties determining if the event should be classified as a democratic crisis or not and, therefore, whether MDPs should be activated. Ambiguous incidents leave more room for deliberation, but also for political calculations based on *Realpolitik* or ideological preferences. Nevertheless, to the extent that regional organisations take on a role in Democracy Protection which goes beyond what are flagrant unconstitutional changes of government, they must without doubt be open to a better and more detailed definition of what are currently considered "ambiguous incidents".

1.3. Why do MDPs emerge? Why do they matter?

Academic literature on the emergence, institutionalisation and effects of MDPs has developed in the last 30 years in response to the emergence of the phenomenon. Indeed, although interventions by regional organisations have been recorded in the context of the Cold War – for example, the suspension of Cuba by the OAS in 1962, or the indictment of Greece in 1969 which led it to leave the Council of Europe –, the formalisation of MDPs in democratic clauses gained empirical (and normative) significance from the last decade of the twentieth century in parallel with the so-called third wave of democratisation. A second reason for the development of literature on MDPs is that the phenomenon sits at the crossroads of various sub-disciplines: studies on democratisation, comparative politics, comparative regionalism, international institutions, international relations, etc. Theories and concepts tend to vary across these different branches of political science, making it difficult for a coherent research programme to emerge.

Nevertheless, during the last decade a series of comparative studies have produced a more or less coherent body of knowledge around MDPs and, more importantly, identifying causal mechanisms which explain why governments – by definition jealous of their national sovereignty and meticulous custodians of the principle of non-interference in internal affairs – decide to create such mechanisms, formalise them in clauses and, as if that were not enough, to implement them in concrete cases of democratic crisis.

The first approach is the theory of the diffusion of norms. Back in 1992, Thomas Franck argued that there was an idea circulating globally according to which legitimate governments were those which were in power with the consent of the governed. In Franck's interpretation, this internationally shared expectation would positively reinforce the interest of the governors in gaining legitimacy through the adoption of principles, rules and democratic procedures: democracy, in this interpretation, has become a "global right" formalised and implemented via multilateral and regional institutions (Franck 1992, see also Huntington 1991). Recently Tanja Börzel and Vera van Hüllen (2015) have once again supported this argument maintaining that a "global script" is emerging across the board in various different regions. They argue that a policy transfer was taking place from certain regional organisations (principally, although not solely, located in Europe) towards areas of limited state capacity such as Africa, parts of Asia and Latin America. This general perspective which could be called "diffusionist" (Beeson and Stone 2013; Risse 2016) tells us little, however, about *how* such policy transfers come about, *why* their design varies and *what* their effects are on real democratic crises. What is more, in the area of MDPs no empirical research has proved that dissemination exists nor shown the channels by which it operates. On the other hand, MDPs were established in Latin America at the same time as in Europe.

Other analytical approaches are making more progress in answering these questions. Jon Pevehouse (2005) has drawn up an analytical framework centred on the actors, to explain the role of these organisations in general and of MDPs in particular, in processes of democratic transition and consolidation. According to Pevehouse, regional organisations are a fundamental factor, often forgotten by theories of democratisation, in explaining why democratic regimes become established and do not suffer authoritarian regressions following a process of transition. His general argument is that regional organisations, through MDPs, *lock in* the interests of democratic actors, interests such as respect for the rule of law, respect for property and commitment to free trade (on the *lock-in* mechanism see Arthur 1989 and Pierson 2000; as applied to international institutions see Moravcsik 2000). The actors Pevehouse refers to are not only the political elite but mainly the economic elite. MDPs are used for these "democratic actors" to integrate other actors (principally the armed forces) and turn their attitudes towards democracy. On the other hand, by accessing to regional organisations with MDPs, national democratic actors raise the cost of potential disruptive acts thus dissuading other actors who might be motivated to seek power outside of democratic rules and procedures (Pevehouse 2005; Mansfield and Pevehouse 2006).

It is not, therefore, the diffusion of standards that would explain the rise of MDPs at regional level, but rational calculation by actual actors for whom democracy fulfils a functional purpose. We may summarise Pevehouse's argument in five causal mechanisms through which MDPs influence (positively) the transition and consolidation of democratic regimes.

The first mechanism is **conformity** or what we could also call acquiescence: membership of a regional organisation provides protection for the interests of key groups, especially economic groups. The second, of a regulatory nature, is **legitimisation** through the feeling of belonging to a "club of democrats". The third mechanism is **direct assistance**: regional organisations can offer assistance through capacity building programmes or help with development which, in the words of Pevehouse, acts as a "bribe" towards authoritarian actors. The last two mechanisms identified by Pevehouse are related to "democratic consolidation". The first of these is **lock-in** which, as we have said, consists in ensuring a commitment to democracy (and the associated set of principles and standards) so that breaches and defaults are prevented. Obviously, the "insurance" is greater when MDPs are formalised in a democratic clause. The second mechanism is **dissuasion**: through MDPs and the establishment of sanctions, regional organisations dissuade illiberal actors.

Andrea Ribeiro Hoffman and Anna Van der Vleuten (2007) offer a focus which, while not necessarily refuting the mechanisms identified by Pevehouse, complements them with new explanatory factors. The authors adhere to a theory of "political realism" to explain the intervention and non-intervention of regional organisations in cases of democratic crisis. Their intuition is that intervention depends on the interests of global powers and regional powers. By studying various cases of intervention and non-intervention by the EU, MERCOSUR and SADC, the authors maintain that the main factor explaining the intervention by a regional organisation in a democratic crisis is the existence of "external pressures" normally from a Western global power (in the cases studied by the authors these were the United States and European countries). When there is no external pressure, the factor explaining the intervention is the interests of the leader in the region. The authors also mention a third factor which, even when there is external pressure, can inhibit intervention, namely the "clash of cultural identities". According to the authors, the abstention by SADC when the Mugabe regime in Zimbabwe was facing intervention and sanction is explained precisely by the clash between the pressure from ex-colonial centres (principally through the Commonwealth) and the strong post-colonial identity prevalent in South Africa (Ribeiro Hoffman and Van der Vleuten 2007; Van der Vleuten and Ribeiro Hoffman 2010; Ribeiro Hoffman 2015).

Despite some problems of conceptualisation (what is a "democratic intervention", what is a "clash of identities", etc.) and being based on lower numbers of cases (which can lead to a selection bias), the approach proposed by Ribeiro Hoffman and Van der Vleuten has the merit of emphasising the dimension of "*Realpolitik*" which directs the focus of the analysis to the interests of the governments of the most powerful states in the region, a perspective that is missing in the more normative approach of the diffusionists or the more rationalist approach of Pevehouse.

Gaspare Genna and Taeko Hiroi (2015) have recently developed a study which combines a rationalist and liberal position on international relations with a realistic vision of the interests of the powerful states. In a study of 40 regional organisations in Africa, the Americas, Europe and Asia, the authors argue that the emergence of MDPs is the result of the growing economic inter-dependence at global and regional level. According to this argument the economic actors which interact either commercially or financially across national borders, require governments to provide political stability and legal certainty, so as to ensure the proper functioning of trans-national transactions. From this point of view, MDPs are mechanisms which ensure stable politics and respect for the rule of law, as the credibility of the democratic commitment of political actors in a particular region is increased (Genna and Hiroi 2015: 48-49; see also Moravcsik 2000). According to Genna and Hiroi the formalisation of MDPs in democratic clauses requires not only the existence of a regional consensus, but also the presence of a regional leader who will guide the other governments and pay the costs of the process of institutionalisation. However, the authors distance themselves from the argument of Ribeiro Hoffman and Van der Vleuten, as for them the effects of the democratic clauses are "above" and "beyond" the powers and preferences of the most powerful states in a region. Once the democratic clause has been formalised, Genna and Hiroi maintain, the institutionalisation of conditionality in itself makes it effective. The authors argue that, in fact, democratic clauses are particularly necessary and their effects are stronger in those regions where the leader state does not present a fully democratic regime (Genna and Hiroi 2015: 168).

The comparative study of Genna and Hiroi presents an optimistic picture of the effects of MDPs and in particular of democratic clauses by demonstrating, via econometric analysis, that on average regional organisations which have democratic clauses have a lower propensity to suffer a coup d'état and democratic regression, than those organisations which do not have a democratic clause. In this sense, the authors are producing new empirical evidence for the argument that democracy can be promoted "from above", that is, from the regional organisations towards their member states (Pevehouse 2005).

However, qualitative case studies show that democratic clauses have major problems of implementation and application when confronting a situation of a situation of democratic crisis. As has been said, from the point of view of institutional design the clauses are similar to incomplete contracts often with major ambiguities in respect of the definition and composition of the fact-finding missions, the term and definition of sanctions, and not least the procedures guaranteeing the right to be heard by the parties, as well as that of appeal (Schnably 2000; Berry 2005; Duxbury 2011; Closa 2013). The lack of substantive definitions (what democracy is, what constitutes a democratic crisis) and procedural definitions means that regional organisations apply MDPs in a selective manner, which

generally coincides with the interests of governments, especially the most powerful governments (Duxbury 2011: 214 and following). Even clauses which define rules and procedures more precisely can face problems when they are applied, as seen in the case of the clause of ECOWAS and the AU (Schnably 2005). The self-referential logic underlying the approaches of Pevehouse, Genna and Hiroi according to which the very institutionalisation of the clause would ensure its effectiveness, appears exaggerated in the light of the empirical evidence.

Moreover, as the majority of the regional organisations in Africa, Latin America and Asia are strictly inter-governmental, the governments involved in a democratic crisis are part of the decision-making processes. Ambiguous definitions and procedures coupled with a wide margin of discretion on the part of the governments can mean that MDPs run the risk of being used by democratically-elected governments of member states to give legitimacy to actions which infringe the third principle of the definition of democracy: protection of the civil and political rights of the citizens (Closa and Palestini 2015).

In this sense, clauses may be effective in preventing coups d'état against democratically elected governments, but less suitable for protecting civil and political rights from violations committed by democratically-elected governments. Various authors have pointed out the possibility that regional organisations in general, and MDPs in particular, may in practise operate as "supports for illiberal regimes" (*regime boosters*) (see for example Söderbaum 2004; Duxbury 2011; Rittberger and Schroeder 2016).

In the fourth chapter we will return to a discussion of these theoretical approaches in the light of an analysis of the institutional design of MDPs and of cases of their implementation in Latin America and Europe. Following this we will present a brief contextualisation of the two regions during the period of the study, emphasising what have been the main challenges to democracy to which regional organisations have had to respond.

1.4. Challenges to democracy in Latin America and the Caribbean

In this section we present a succinct contextualisation of the role regional organisations have played and the challenges they have faced in promoting and protecting democracy in Latin America in the period 1990-2015. It is possible to broadly distinguish two different contexts in which democracy promotion and protection have developed via regional organisations. The first forms part of the processes of democratisation experienced by many of the countries of South and Central America which began in the 1980s, and continued up to the last years of the twentieth century.

The second context coincides with the emergence of different regimes in the post-transition period, which vary considerably in the way they understand and practise the principles and democratic standards defined in the previous section, and generally covers the first fifteen years of the new millennium. It is within this context of a range of varying regimes that the distinct democratic crises arose in which the regional organisations of Latin America have intervened.

1.4.1 Regional Organisations and the process of democratisation (1980-2000)

During the 1960s and 1970s, the countries of Latin America were mostly run by authoritarian regimes and dictatorships. Only Colombia, Costa Rica and Venezuela maintained uninterrupted democratic regimes during those two decades. Many of these regimes felt committed to a doctrine of national security in the context of the Cold War and they were therefore tolerated by the United States under the Mann Doctrine and then the Kirkpatrick Doctrine, an approach which was to change dramatically at the end of the Cold War, giving rise to a series of initiatives for cooperation based on liberal market reforms and the adoption of democratic principles according to a doctrine of democratic security (Whitehead 1986; Somavía and Insulza 1990; Feinberg 1997; Domínguez 1998; Hurrell 1998; Valenzuela 2008).

Military intervention forced 104 changes of government between 1930 and 1980 at a rate of two per year, which is more than a third of the total changes of government of that period. In the period from 1980 to 2015 military intervention forced seven changes of government (a rate of one every five years) heralding the period of greater democratic stability in the history of Latin American republics. Currently all the countries of the region – with the exception of Cuba – have governments elected by democratic processes (Valenzuela 2008; Hertz 2012).

In South America, the transition to democracy began with the election of Raúl Alfonsín in Argentina followed by the elections in Brazil and Uruguay (1985), Chile (1989) and the coup against the dictator Alfredo Stroessner (1989) which began the democratic period in Paraguay. A renewed enthusiasm for regional integration and regionalism accompanied the transition to democracy in the Southern Cone. In 1980, leaders of the transition, such as Raúl Alfonsín in Argentina and Tancredo Neves in Brazil, were aware of the institutional weaknesses faced by South American countries in transition to and consolidation of democracy. Through regionalism, the democratic elites sought to construct a network of democratic security which would protect the countries from potential coups d'état (Schnably 2000; Dabène 2004). The Iguazú Declaration (30 November 1985) captured

this perception as it also did the *Programa de Integración y Cooperación Económica* (Integration and Economic Cooperation Programme; PICE) between Argentina and Brazil, the forerunners of the Asunción Treaty which formalised MERCOSUR.

In the 1990s, the perception that economic integration and democratisation were mutually reinforcing processes was to some extent underpinned by a series of initiatives from the United States designed to promote free trade, hemispheric integration, and the promotion of democracy in Latin America. However, the mechanism was differentiated depending on the country in question. In the case of the South American countries the initiative promoted by the Clinton administration to create a Free Trade Area of the Americas (FTAA), encouraged the governments of the time – which shared a neo-liberal ideology – to reinforce their commitment to democracy, free trade and the sub-regional processes of open regionalism such as CARICOM, CAN and MERCOSUR (Arashiro 2011). In the case of Mexico, economic and political liberalisation – the political system being dominated by one party – was accomplished by, among other factors, this being an non-formalised condition of accession to the North American Free Trade Agreement (NAFTA) (Wise 2009).

At the hemisphere level, the OAS began a process of revision and modernisation of its commitment to democracy, in order to support domestic processes of democratisation. The prevailing doctrines of national security in the external policies of the United States influenced the commitment of the OAS to democracy during the Cold War. As a result, OAS' interventions during that period have been questioned as biased and selective, as evidenced, on the one hand, by the suspension of Cuba and, on the other hand, by the tolerance of authoritarian regimes of national security (Whitehead 1986; Cooper and Legler 2001; Duxbury 2011). The Santiago de Chile Commitment to Democracy and the Renewal of the Inter-American System (1991) opened a path which continued with the adoption of Resolution 1080 and the Washington Protocol (1992) and ended with the adoption of the Inter-American Democratic Charter in 2001. The countries of the Southern Cone, in particular Argentina, Brazil and Chile, led the search for consensus in this process of institutionalisation which did not rely on the approval of major regimes of a hybrid nature such as Mexico governed by Institutional Revolutionary Party (PRI). These countries were also fundamental in forging links between the process of institutionalising MDPs in the OAS area and the sub-regional processes in CAN and MERCOSUR (Levitt 2006).

MERCOSUR adopted the antecedent of its MDP in 1996 at the Summit at San Luis, Argentina and then formalised it in the Ushuaia Protocol on Democratic Commitment in 1998 which included Bolivia and Chile as associated countries. As for the Andean Group, it had defined its democratic identity in the Riobamba Charter of Conduct (1980) in the midst of dictatorships in both the Andean countries and the Southern Cone. The election

of Fernando Belaúnde in the same year marked the beginning of the transition of Peru and a milestone in the democratisation of the Andean countries. However, the majority of the Andean regimes in 1990 barely complied with the first principle of electoral democracy as they often failed to protect the civil and political rights of their citizens (Bejarano and Pizarro 2005; Tanaka 2005). In 1998, the Heads of State of the renewed Andean Community of Nations (CAN) signed the Additional Andean Protocol to the Cartagena Agreement on the Commitment to Democracy which stated that the establishment of a democratic order and legally constituted states were prerequisites for participation in the process of Andean integration and cooperation.

With the exception of Costa Rica, many Central American countries were the scene of civil wars during the 1980s (Nicaragua, Guatemala, Honduras and El Salvador) and of interventions by the United States. Severe problems of international security and oligarchical political systems conditioned developments in a way that still today explain the great weaknesses of purely electoral democracies, with the exception of Costa Rica. This also explains the importance of regional security governance in the process of Central American integration. Indeed, in 1995 the member countries of the Central American Integration System (SICA) adopted a Framework Treaty of Democratic Security in Central America, replacing previous agreements on security and defence agreed in the Charter of the Organization of Central American States (ODECA), inspired by doctrines of national security (Sanahuja 1998). This Framework Treaty placed particular emphasis on aspects of security and governability. Its Article 8, for example, states the parties' obligation to "abstain from giving political, military, financial or any other type of support to individuals, groups, unregulated forces or armed groups, who threaten the unity and order of the state or advocate the overthrow or destabilization of the democratically elected government of any other of The Parties" (Framework Treaty 1995, Article 8). On the basis of the Treaty, the Council of the Heads of State of SICA has condemned various acts which have occurred in member States such as the political crisis faced by President Bolaños of Nicaragua (September 2005), as well as the terrorist attacks in El Salvador (July 2006).

1.4.2 Regional organisations and types of regime in Latin America and the Caribbean (2000-2015)

The gradual consolidation of democratic regimes in Latin America changed the context of the actions of regional organisations and their MDPs. Indeed, during the first fifteen years of the twenty-first century, MDPs went from being indicators of the commitment to democracy in countries undergoing transition, to acting as instruments for the defence of democracy in crisis situations. Some of these crises corresponded to typical cases

of coups d'état or attempted coups d'état (Haiti 2004; Paraguay 1996; Venezuela 2002, Honduras 2009 and Ecuador 2010), but many other events were of a more ambiguous nature, involving conflicts between state powers (Nicaragua 2004; Bolivia 2005; Ecuador 1997 and 2005; Paraguay 2012), between the opposition and the government (Venezuela 2013), or between local and central government (Bolivia 2008). We should add to this list the recurrent incidences of violations of human rights and situations of impunity, which in many cases occurred within the context of violence of various kinds, such as the cases of "false positives" and sexual violence in Colombia and/or the murders of journalists and the disappearance of people which occurred throughout the past years in Mexico and which involved sectors of the state system. These are situations which, based on the definition of democracy we adhere to in this study, might also be the subject of attention from regional organisations and their MDPs, without prejudice to the powers invested in the inter-American system of human rights. The fact that these situations do not feature in this study is due in the first instance to the fact that the regional organisations have not addressed them.

The emergence of these incidents of political crisis coincides with a period of great variety in the political regimes of the region in which the relative ideological consensus around economic liberalism and liberal democracy, which came to the fore in the 1990s, became increasingly blurred. Hugo Chávez arrival to power in Venezuela in 1998 opened the way to a period of "turn to the left" with the election of left-wing candidates in Argentina (2002), Brazil (2003), Uruguay (2004), Bolivia (2005), Ecuador (2006), Nicaragua (2007), and Paraguay (2008). The origin of this change in the political spectrum of these countries of the region had its roots partly in the increased social inequality throughout the 1990s, that is, during the implementation of market reforms, which paved the way for non-aligned policy options in the so-called Washington Consensus (Couso 2013). The democratic consolidation itself in the region also explains the assumption of power by left-wing political parties, as argued by Levitsky and Roberts (2011). In fact, the process of democratisation allowed a great majority of political parties and organisations of the left - until then marginalised or persecuted - to legitimately participate in competitive elections, gaining thereby not only political experience but also electoral victories first at local level and then at parliamentary and presidential level.

The processes of democratisation of the 1980s and 1990s succeeded in reinstating the institutions and practise of democratic elections both in South America and in Central America and Mexico. However, these processes were not sufficiently deep-rooted or extensive to transform the historic structures of Latin American societies characterised by profound social inequalities and a high concentration of economic power. The first fifteen years of the millennium show clearly a series of cases in which policies and reforms, which in some way affected these power structures, unleashed a defensive dynamic

against the elected governments (Levitsky and Roberts 2011). Democratic institutions channelled some of these reactions. Others, however, were channelled elsewhere, harking back to the coups d'état of previous decades. A third group of reactions which, while not manifesting themselves as a coup d'état, used political institutions as a means of dismissing elected governments (Marsteintredet et al. 2013).

On the other hand, some governments have also tended to make respect for the rule of law dependent on the implementation of their economic and social reforms. According to some left-wing political views, what liberal political thought calls "rule of law" may be seen as the normalisation and protection of dominant structures in economic, political and social spheres (for a classic expression of this position see Viciano and Martínez 2010). The adoption of legislation via enabling decrees, the use of these decrees to strengthen executive power over other state powers, constitutional reforms aimed at favouring re-election, and the restriction of the media and of the freedom of political adversaries, are examples of measures violating the rule of law and which are normally justified as an attempt to achieve reformist or even revolutionary goals (Kornblith 2005; Couso 2013; Corrales 2015).

These two tendencies – social sectors which react by undemocratic means against elected governments, and elected governments which violate the rule of law for political purposes – made up the complex political arena of the region over the last fifteen years of this century, and they posed an enormous challenge to the regional organisations which have made commitments to protect democracy. What seems to prevail in the region is an interpretation according to which regional organisations and their MDPs are primarily instruments to protect the elected governments from opposition groups of a reactionary nature who oppose the economic and social reforms. Thus, for example, President Hugo Chávez stated in the UNASUR support framework for the government of President Correa at the time of the attempted coup of 2010: "This is a clear message for those who participated in the coup (…) because destabilising movements are still a threat to the region, especially in countries such as Ecuador, Bolivia or Venezuela".[2] At the same time, the Argentinian chancellor, Héctor Timmerman, claimed that the "background" to the attempted coup d'état was "to attack the progressive Governments of Latin America".[3]

The history of coups d'état in Latin America lends empirical support to this interpretation. However, it is also true that violations to the rule of law and to the rights of sectors of society may be committed in the name of reforms. The new millennium leaves open,

2 http://www.cubadebate.cu/noticias/2010/11/26/presidentes-de-unasur-se-unen-contra-intentos-de-golpe-de-estado-en-la-region/#.VzH6zkWlOWg (accessed 1 June 2015).

3 http://www.cubadebate.cu/noticias/2010/10/01/cancilleres-llegan-a-quito-para-expresar-respaldo-de-la-unasur-a-correa/#.VYkulPmqpBc (accessed 1 June 2015).

therefore, the question of whether regional organisations and their MDPs are capable of going beyond the protection of governments, to also protect the civil and political rights of citizens who may be the victims of acts by democratically elected governments (Closa and Palestini 2015). This is a difficult question to answer as it relates to the very definition of democracy and the role that political and social actors are prepared to grant to regional organisations in the framework of this definition.

1.5. Challenges to democracy in Europe

1.5.1 The European Union and the democratisation of post-socialist countries (1990-2004)

In Europe, as well, the process of regional integration and, in particular, the process of creating the single European market, has gone hand in hand with the democratisation and consolidation of democracy in the peripheral countries. The principle of respect for democracy and human rights became a central element in the enlargement of the European Community with the accession of Greece, Portugal and Spain, three countries which were emerging from authoritarian regimes. In this way the European Community and – from 1993 – the European Union (EU) exercised a direct influence on the transition to democracy of the Southern European countries – in the eighties – and of the countries of Central and Eastern Europe – in the nineties and the new millennium – through mechanisms of conditionality which require candidate countries to have established democratic regimes before acceding to the Union (Schimmelfennig et al. 2003; Vachudova 2005; for a critical view of the mechanisms of conditionality in Europe, see Kochenov 2008).

The involvement of Community institutions in the process of democratic transition in the post-socialist countries, in turn, contributed to the development and formulation of regulations for the protection of democracy, human rights and fundamental freedoms as part of the “New Europe” in regional organisations such as the EU and the OSCE (Sneek 1994; Merlingen et al. 2001).

The fall of the Soviet Union and of single-party regimes in the Central and Eastern Europe Countries (CEECs) implied both a huge challenge and an opportunity to advance European integration. Not surprisingly, the EU devoted a large amount of organisational and financial resources – greater than those used for the accession of Greece, Spain and Portugal - to enable the CEECs to accede to the Union. The concern towards the Union’s Eastern enlargement in major sectors of the European political elite resided in the institutional fragility of the CEECs, which could eventually rebound as authoritarian

regression. For this reason, the new ruling elites of the post-socialist countries stressed their commitment to democratisation as a means of inspiring trust and ensuring potential membership.

The accession process therefore consisted of a contract between Community institutions and domestic political elites in which on the one hand, the EU would provide the road map for obtaining membership (including the resources necessary to generate institutional change and the necessary market reforms), and, on the other hand, the domestic elites would make a commitment to implement stable democratic regimes (Pevehouse 2005; Schimmelfennig 2005, 2007).

In 1993, the European Council summit in Copenhagen drew up a series of conditions (known as the "Copenhagen Criteria") which candidate countries must fulfil in order to implement both a functioning market economy and stable democratic institutions guaranteeing the rule of law, the protection of human rights and the rights of minorities, both prerequisites for the adoption of the *acquis communautaire* (Duxbury 2000; Bruszt and Vukov 2014). Fulfilment of these criteria required demonstrating, among other things, strong state capacity, judicial independence, anti-corruption measures and detailed regulations associated with the protection of human rights and of those of minorities (Vachudova 2005). In 1997, the European Commission the Czech Republic, Estonia, Hungary, Poland and Slovenia suitable for proceeding with accession negotiations whereas Bulgaria, Latvia, Lithuania and Romania were deemed deficient in respect of market reforms. The Commission considered that Slovakia could not for the moment proceed with negotiations because of the weakness of its democratic institutions under the government of Vladimir Meciar. The specific case of Slovakia provoked the inclusion of an explicit statement in the Treaty of Amsterdam that the Union was "founded on principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law" (TEU Preamble).

Along with establishing conditionality criteria, the Council of Europa (CoE) and the EU drew up a series of special programmes and plans to assist candidate countries to reach the goals set by the Copenhagen criteria. Already in 1990, the CoE had created the Demosthenes programme with the aim of providing the necessary technical assistance so that CEECs could develop participatory democracy. Through this programme, the CEECs undertook reforms of the judicial system, especially of the criminal codes, bringing them in line with the European Convention on Human Rights (Kritz 1993). But perhaps the most important programme was PHARE (Programme of Community Aid to the countries of Central and Eastern Europe). Commitment to market reforms and to democratisation were requirements for applying for the assistance of PHARE, focussed on the implementation of community regulations, the re-engineering of national budgets, infrastructure projects and the reform of administrative capacity (Pevehouse 2005; Vachudova 2005; Schimmelfennig

2007). The EU penalised those countries with high levels of corruption giving them fewer resources, as was the case with Bulgaria and Romania, countries which received below average funds during the period 2007-2013 (see Chapter 3).

But not only the EU and the CoE have played a fundamental role in the process of democratisation of the CEECs. Regional security organisations, such as the OSCE, via the Charter of Paris, have also contributed to this process through a different mechanism from that of conditionality. In 1992, the OSCE (at that time called the "Conference on Security and Co-operation in Europe", CSCE) suspended the membership rights of Yugoslavia for violations to the human rights of ethnic minorities by the Yugoslav army. OSCE readmitted Yugoslavia once again in 2000 in the light of positive evidence of democratic commitment (see Chapter 3). However, the OSCE also contributed indirectly to the processes of democratisation. According to Jon Pevehouse, the interaction of the military leaders of countries like Hungary with Western military leaders within NATO and the OSCE helped re-orientate the role of the armed forces in accordance with the standards of a democratic society, taking them out of the political sphere (Pevehouse 2005: 119; see also Herring 1994). It is possible to find a similar argument in the case of Latin America, where regional cooperation on security and defence, within the framework of the new doctrines on democratic security of the 90s, contributed to a strict separation of the civil and military spheres, which was essential for the consolidation of democratic regimes (Agüero 1995).

Becoming full members of organisations such as the CoE, the EU or the OSCE granted the political elites of the CEECs great legitimacy with voters and public opinion in general for whom belonging to Europe not only carried a strong identity-giving component, but also held out the promise of economic and social development. For their part, the European regional organisations not only provided the financial and organisational resources to generate political regime change, but also the instruments for monitoring and ensuring that there was no regression to authoritarianism.

1.5.2 The emergence of illiberal tendencies in Europe (2000-2015)

The accession process to the EU for the new member States took place in two rounds of accession in 2004 (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) and 2007 (Bulgaria and Romania). In 2013, Croatia also acceded as a full member of the EU. Today, Europe and the EU institutions are reinforced and also constituted by an increasingly diverse *demoi* in terms of language and historical, religious and cultural heritage. Nevertheless, in some European countries populist regimes and illiberal practises have re-emerged and this has provoked reactions from European regional organisations. The rise in populist governments is a process not

unconnected from the rapid and profound transformation undergone by the economies and societies of former socialist countries, now converted into capitalist market societies. Political parties such as "Law and Justice" in Poland, or "Fidesz" in Hungary proclaim proposals for change which supposedly aim at fulfilling the promises that were not met by the elites who led transitions in the 90s. These are therefore populist parties which are both anti-communist and critical of the elites who headed the transition to democracy and the change to free market economies (Rupnik 2007; Jenne and Cas Mudde 2012; Iusmen 2014).

Jacques Rupnik has argued along these lines, indicating that the transformation of the ex-socialist economies took place on the basis of a consensus between the European elites with two main components. The first of these consists in the primacy of liberal constitutionalism (with the emphasis on the separation of powers and the independence of "neutral" institutions, such as the constitutional courts and central banks) above citizen participation. The second component consists in economic liberalisation based on both the large scale privatisation of the economy and the economic integration of the European economic space (Rupnik 2007; see also Rosamond 2012). Both components are related, as the radical transformation of economies concentrated on free market economies was achieved on the basis of a weak civil society and low political participation (see Schmidt 2006). The reforms were carried out without an adequate legal framework and with recurrent examples of corruption which gave rise to standard-bearing populist movements with an anti-elite and anti-corruption message.

At a more theoretical level, the progress of populist movements in the CEECs might seem to indicate that the effects of "Europeanisation" on democratic consolidation tend to weaken once the candidate countries are accepted as members. Conditionality resulted extraordinarily effective in creating incentives for democratic commitment, but once they were inside, the incentives to undertake new reforms – which enable the move from an electoral democracy to a substantive democracy – were reduced: "The whole EU-accession process was able to promote democracy because of the accepted asymmetry it entailed. It worked best, of course, with those who already shared the assumptions of the European project, but it was also effective in a different way with the illiberal elites, who soon discovered that the costs of nonmembership to them and their respective countries would be prohibitive. Once a country has joined the EU, however, this logic no longer seems to hold, at least not in the short term" (Rupnik 2007: 23; see also Mungio-Pippidi 2007; Jenne and Mudde 2012; for an opposing argument, see Falkner and Treib 2008). While the political elites of the 90s shared a strong commitment to the "historic task" of achieving membership, the new elites of the CEECs, which were already full members of the EU, embraced "Euroscepticism". Through criticism of the EU, the new populist elites supported programmes based on national identity and "economic nationalism" (Jenne and Mudde 2012).

However, the phenomenon of populism is not limited to the new member states. In fact, we can trace a "third wave of right-wing extremism" right back to the beginning of the 1980s when it still had modest electoral success (Beyme 1988; Merlinger et al. 2001). Many of these political parties became established in the 1990s, and parties with populist and Eurosceptic programmes mark the current political scene in Austria, Belgium, Denmark, Italy and the Netherlands (Mungio-Pippidi 2007; Jenne and Mude 2012). The participation of the Freedom Party (FPÖ) – led by the extreme right leader Jörg Haider – in the coalition government in 1999 in Austria was the first event that set alarm bells ringing in Brussels and which, at the same time, demonstrated the limited capacity of the EU to prevent the rise of illiberal movements and parties to power. In fact, the EU had to retract the sanctions applied to Austria when a "committee of experts" concluded that the Austrian government was respecting democratic rules (see Chapter 3). Similarly, the EU and the CoE had to content themselves with a role as critical observer – through the Venice Commission – of the constitutional reform undertaken by the government of Viktor Orbán, which, although it was approved by two thirds of the parliament, was never put to a referendum of the people.

The government of Fidesz has implemented a press law seriously limiting freedom of expression and the capacity for dissent in the public sphere, which was widely criticised by the OSCE and the European Commission (Müller 2013). However, the practise of controlling the mass communication media by a process of acquisition and market concentration was not only a recurrent practise in the CEECs, but also in countries such as Italy especially during the government of Prime Minister Silvio Berlusconi (Mungio-Pippidi 2007; Van den Vleuten and Ribeiro-Hoffmann 2010). EU action in this field has focused on sanctioning strictly economic and legal aspects, while leaving the scrutiny of respect for civil and political rights in the hands of the governments of its member states. Indeed, supranational powers and the EU's mandate remain closely linked to the functioning of the single market. The EU is much less active in problems with the internal functioning of the democracies of member states such as the violation of freedom of press, corruption in public administration, and the concentration of power in the hands of the ruling party (Jenne and Mudde 2012; Closa et al. 2015).

When the European Commission attempted to challenge some of the policies put forward by Fidesz, Orbán responded challenging the democratic legitimacy of the EU institutions. In fact, owing to the level and range of responsibility acquired by its institutions – the Commission, the European Court of Justice, and especially since the Treaty of Lisbon, the Parliament – the EU is, amongst all existing regional organisations in the world, the one which has reached the most sophisticated level of political and institutional development. For the same reason, it has also fostered the widest debate about its own democratic legitimacy. The EU is not a state, but it certainly operates in the sphere of public governance which is precisely the sphere of democracy (Closa et al. 2015: 25 and following).

According to the argument of Philipp Schmitter (2000) there are two good reasons which justify a serious debate on the democratisation of the EU and its institutions, beyond the democracy of its member states. The first is that many of the rules and practises of the EU are increasingly being challenged by European citizens. The second reason is that the people feel that the majority of the community norms which affect their daily lives are drawn up in remote, secret places through processes that are difficult to understand and over which the citizen has no control. At the time of writing his book, Schmitter was already in possession of a large amount of evidence to justify this argument. Certainly, with the beginning of the financial crisis, which became a sovereign debt crisis in 2009, the dissatisfaction of the people of the countries of Southern Europe reached worrying levels, swelling the numbers of those voting for the "Eurosceptic" parties which are now part of the European Parliament (Aguilera de Prat 2013).

1.6. Conclusions

This first chapter provides a general framework for the subject of this study. We have offered a wide definition of mechanisms for Democracy Protection (MDP) which encompasses not only formal instruments (democratic conditionality clauses), but also informal measures and actions which regional organisations may adopt in cases of democratic crisis. At the same time, we have been cautious in the moment of defining democracy and democratic crisis. Although the chapter offers minimal definitions of these concepts that have multiple meanings, we have noted that the political actors are who ultimately supply and alter their content and significance. The following chapters are therefore methodologically careful not to impose a definition of democracy and democratic crisis, but to analyse the uses and meanings that political actors lend them when drawing up their MDPs and implementing them in specific cases.

We have also given a brief review of the academic literature on the emergence and institutional variation of MDPs. Diffusion approaches stress the processes of transmission of norms from one region to another, turning democracy into a *global script*. These approaches normally assume a one-directional view of transmission from the North (Europe and the United States), towards the other regions. The external policy initiatives of North America towards Latin America of the 90s, based on democratisation and liberalisation, as well as the Europeanisation of the CEECs in the European context, may be viewed as processes of diffusion based on both material resources and on socialisation. However, diffusion approaches need to be complemented by approaches *centred on the actors* to explain why MDPs are adopted and formalised and, even more importantly, why they vary from one organisation to another. Thus some approaches emphasise the economic interests of domestic actors who see in the adoption of

democratic regulations a mechanism for ensuring their own preferences. Other approaches highlight the leadership of the powerful states of each region in formalising and implementing MDPs in cases of democratic breakdown.

Finally, we have presented a contextualisation of the period analysed in both regions. We thereby aimed to highlight the challenges faced by regional organisations in the past and today whilst making a commitment to protect democracy. It is tempting to focus on certain parallels between both regions. In the 1990s the adoption and formalisation of MDPs was, in Latin America as in Europe, tied to the processes of democratisation in the context of the end of the Cold War. From 2000 onwards, regional organisations have faced a new context with other complexities. The variety of political regimes tends to be the common theme in both regions. In both, newly elected governments carry out reforms to the limit of what, from a constitutional point of view, might be considered as the rule of law. In Latin America in particular, reactionary sectors respond to these reforms by using and abusing democratic institutions, using legal and legislative powers against the executive, or resorting to political trials and impeachment. Do the MDPs of regional organisations have the capacity to act in the face of these crises? What roles are played by interests and power when such mechanisms are implemented?

2 MECHANISMS FOR DEMOCRACY PROTECTION IN ORGANISATIONS OF REGIONAL INTEGRATION IN EUROPE AND IN LATIN AMERICA AND THE CARIBBEAN: A LEGAL EXEGESIS

2.1. Introduction

In recent decades processes of regional integration have proliferated in various geopolitical spheres and, alongside these, a phenomenon of radical importance has occurred: the linking of these regional integration projects to the promotion of democracy, expressed through democratic mechanisms, clauses and commitments. The academic literature has reflected this phenomenon particularly in regard to Europe (see *inter alia* Grabbe 2001; Schimmelfennig 2007; Youngs 2009), although also, increasingly, in regard to other regional spheres (see *inter alia* Cooper and Legler 2001; Legler and Tieku 2010; Cánepa 2015; Genna and Hiroi 2015; Heine and Weiffen 2015).

The debate around MDPs in organisations of regional integration has in reality a dual dimension: the external, focussed on the rules of democratic conditionality for accession, and the internal, focussed on the rules requiring states which are already members to respect democratic standards (Closa 2013). Democratic conditionality for accession is defined as the requirement for third states to adopt democratic practises and norms as a condition of receiving rewards such as financial assistance, any type of institutional association and, in the final instance, membership of the organisation (Schimmelfenining and Scholtz 2008: 191). In the field of association agreements, the European Union has been a particularly well studied case (inter alia Youngs 2002; Lavenex and Schimmelfennig 2011). Although not the subject of study of these pages, in recent years this type of

mechanism had begun to be also incorporated into other types of agreement, such as free trade agreements. In general, the benefits of accession offer a strong incentive for the candidate states interested in joining the organisation to comply with the established requirements, even when these requirements conflict with other priorities (Grabbe 2001: 1015). This democratic conditionality for accession may however be complemented by requirements related to the democratic commitment of member states while they remain in the organisation, which allows sanctions to be imposed on states which cease to meet democratic standards after accession or in those where there is a breakdown of democratic institutionality (Wobig 2014: 2).

Table 4: Mechanisms for Democracy Protection in organisations of regional integration in Europe and in Latin America and the Caribbean

Organisation (date of creation)	Mechanism for Democracy Protection (year of creation)
OAS (1948)	Cartagena Convention (1985), Resolution 1080 (1991), Washington Protocol (1992), Inter-American Democratic Charter (2001)
Council of Europe (1949)	Arts. 3 and 8 Statute of the Council (1949)
European Union (Treaty of Paris 1951, Treaty of Rome 1957)	Copenhagen Criteria (1993), Arts. 2 and 7 TEU, Art. 354 TFEU (current versions of the Treaty of Lisbon of 2007, although there are explicit references to the democratic nature of the members from the Single European Act of 1986 if not earlier)
SICA (ODECA Charter in 1951, SICA constitution in 1993)	Arts. 3 and 4 Tegucigalpa Protocol (1991), Framework Treaty on Democratic Security in Central America (1995)
CAN (1969)	Additional Protocol to the Cartagena Agreement (1998)
CARICOM (1973)	Charter of Civil Society (1997)
OSCE (1975)	Charter of Paris for a New Europe (1990)
MERCOSUR (1991)	Presidential Declaration on Democratic Commitment (1996), Ushuaia Protocol (1998), Montevideo Protocol (2011)
UNASUR (2008)	Additional Protocol to the Constitutive Treaty (2010)
CELAC (2010)	Special Declaration about the Defence of Democracy and Constitutional Order in CELAC (2011)

Source: treaties and legal regulations. Own elaboration

In this chapter we will provide a legal exegesis of these MDPs in organisations of regional integration in Europe (EU, CoE and OSCE) and Latin America and the Caribbean (OAS, CAN, CARICOM, CELAC, UNASUR, MERCOSUR and SICA). In this sense, this chapter complements recent exegetical efforts such as that of Cánepa (2015), focussed on Latin America. Table 4 shows all the relevant norms in the constituent treaties and the secondary legislation of all the organisations analysed, as well as the date when these were agreed in brackets. All these MDPs will be evaluated in detail later. The purpose of this analysis is two-fold: Firstly, it offers readers a precise description of MDPs from a legal perspective, which helps understanding with greater clarity the analyses of a more political science nature which are presented in the rest of this work. Secondly, this chapter has an interpretative and taxonomic objective, as we propose classifying

MDPs according to their various features and, in so doing, to highlight and clarify the obscurities in interpretation from which they suffer. To this end, this chapter is structured as follows: Following this introduction (2.1.) we will describe the context of the creation and systematic placing of MDPs in the regulatory framework of the respective regional organisations (2.2.). Then the definitions of democracy provided by each organisation will be presented, as these definitions are of vital importance to understand the scope of the MDPs, as well as their precision or, on the contrary, their interpretative ambiguity (2.3.). In the second section, we will examine the external dimension of MDPs, when these are configured as a requirement for accession to the organisation (2.4.); afterwards their internal dimension will be analysed, outlining the sanctions which operate when a state that is already a member ceases to respect democratic standards (2.5.) and the possible sanctions which these cases can incur (2.6.). The chapter ends with a general reference to other aspects of the commitments to democracy by organisations (2.7.) and some final conclusions (2.8.).

2.2. Origin and systematic place of MDPs in the legal context of integration treaties

The process of creating MDPs, and sometimes of placing them systematically in the regulatory framework of the organisation, may be very revealing of the status of these types of regulations and commitments on the political agenda during the genesis of the respective regional organisations. Some organisations introduced MDPs in the very moment of their constitution. This demonstrates that their commitment to the promotion of democracy was part of their *raisons d'être*. In other cases, the MDPs were added in a later moment, complementing thereby the original aims and values of the organisation. Finally, in a few cases, no MDPs as such existed, but they were developed along with the operation of the organisation. In these cases, still without an explicit commitment to democracy, actual political events led to assume that such a requirement was implicit in the norms of the organisation.

The Council of Europe (CoE) provides a clear example of an international organisation which considered its commitment to democracy as part of its constitutive document right from its foundation. The CoE included this commitment in the original draft of its Statute in 1949. The paradox is, however, that the MDP in the Statute of the CoE does not explicitly mention democracy itself, except for a brief reference in the preamble, where it is defined as constituted by individual freedom, political freedom and the rule of law. Instead of a reference to democracy, the provisions of the Statute refer to elements which presuppose it, "human rights and fundamental freedoms". This reference, enshrined in article 3 of the Charter, together with the sanction mechanism in article 8, constitutes the

most basic structure of the commitment to democracy in the organisation. Originating in the post-war impulse towards democratisation, and against the background of the terrible human rights violations which had occurred in the previous years, it is not surprising that the Council made a commitment of this type at such an early stage. It may perhaps be precisely the early nature of the democratic commitment by the organisation which explains its sparse formulation, to which we will refer in greater detail later.

Simultaneously, Rich (2001: 21) mentions the OAS Charter of 1948 as one of the first constituent instruments of international organisations that contained the idea of democracy. However, Levitt (2006: 94) minimises the real value of the initial norms on democracy of this organisation, stating that they were at best a waste of paper, and at worst a cynical form of "Realpolitik". The evolution of the OAS in respect of the protection of democracy was, however, relatively powerful. According to Alda Mejías (2008: 2), the end of the military regimes of the 80s and of the Cold War were the catalysing events that deepened the democratic commitment of the organisation, enabling it "to defend representative democracy in a coherent manner" as one of its central pillars. Thus, the Cartagena Protocol of 1985 incorporated within the Charter of the OAS the obligation to promote and consolidate representative democracy. From the 90s onwards (Levitt 2006: 94) this progression became considerably more intensive: in 1991 Resolution 1080 was approved; it established the convening of a meeting of the Permanent Council if democracy was suspended in one of the member states. In 1997 the Washington Protocol which had been signed five years earlier, came into force; it authorised the General Assembly to suspend the rights of a member state whose democratically elected government had been overthrown. Finally, in 2001 the Inter-American Democratic Charter was approved, which currently constitutes the most complete mechanism within that organisation for the protection of democracy (for a more detailed analysis of these milestones, see Cooper and Legler 2001).

Several organisations did not recognise MDPs in their respective constitutive treaties and they constructed or at least refined them through reforms or complementary instruments. In the case of the European Union, assistance and the creation of institutional linkages were from the start conditional upon respect for democratic standards and human rights, although this democratic conditionality was initially informal (Schimmelfennig et al. 2003: 497). In 1963, the then European Communities refused to negotiate the status of an associated state for Spain because of the authoritarian character of its regime (Closa and Heywood 2004). Since then, and for a period of time, compliance with democracy emerged as an obvious but non-formalised criterion. In 1993 a fundamental step was taken in the institutionalisation of democratic conditionality in the EU with the drawing up of the so-called "Copenhagen criteria", which establish respect for democratic institutions as a condition for full membership of the European Community, together

with acceptance of the *acquis communautaire*. And finally, the Treaty of Amsterdam, anticipating the incorporation of the countries of Central and Eastern Europe with past experiences of totalitarian regimes, formalised "democratic conditionality" (Sadurski 2009-2010: 388). Today the primary legislation of the Union enshrines the requirement for respect for the democratic institutions by the member states in a pre-eminent place, through the combination of articles 2 and 7 of the Treaty of the European Union (TEU) and article 354 of the Treaty on the Functioning of the European Union. The systematic placing of some of these precepts, in particular articles 2 and 7 TEU, in the initial part of the main regulations of the Union, seems to indicate an emphasis on these principles.

In a large number of regional integration organisations, MDPs – beyond any rhetorical mention – were not included in their constitutive documents, but were added later in additional protocols or similar documents. In the case of MERCOSUR, the Treaty of Asunción did not refer to democracy, perhaps because of its marked economic and commercial nature. However, democratic conditionality was included via the Presidential Declaration on Democratic Commitment of 1996 and, above all, via the Ushuaia Protocol of 1998. In 2011, the democratic mechanism was refined in the Montevideo Protocol, also known as "Ushuaia II", which laid down the sanctioning procedure and extended the range of sanctions.[4] The evolution of MERCOSUR in this sense constitutes an interesting example of the gradual institutionalisation, improvement and deepening of the content of the MDP.

CARICOM makes no express mention of the idea of democracy, either in its treaty of origin (the Treaty of Chaguaramas) or in the current reformed version. In the opinion of León (2000: 163), this facilitated the approaching towards CARICOM by the Cuban government, as it could enjoy the institutional diversity of the region and the existence of organisations without an MDP. However, it would not be accurate to say that CARICOM would not have taken any kind of position in respect to democracy, considering that its Charter of Civil Society of 1997 includes a commitment to democracy and makes reference to a wide range of rights; this commitment could be considered an informal MDP which is more programmatic than binding in nature (Berry 2014: 94-95).[5]

The evolution of the CSCE-OSCE is equally interesting and largely reflects the geopolitical changes which occurred on the European continent. The Helsinki Declaration of 1975,

4 We must remember that the situation of this treaty today is "pending" according to MERCOSUR itself (see point 129, referring to the Treaty of Montevideo on democratic commitment, at http://www.mre.gov.py/tratados/public_web/ConsultaMercosur.aspx, accessed 19 August 2015). To date, the Congress of Paraguay has refused to ratify the Protocol. Despite this, in this chapter, when we analyse the MERCOSUR regulations, we will take account of what was added by Ushuaia II, although we will also refer to the previous regulations to clarify the differences between the two regimes.

5 *"However the status of the Charter, despite the strong mandatory language seen in many of its provisions, remains non-binding, and this impairs its overall effectiveness. The non-binding nature of the Charter is evident from its status as a declaration of the Conference (rather than being, for example, a treaty), and also from its weak implementing provision"* (Berry 2014: 94-95). Despite of this, and bearing in mind this important particularity, CARICOM's Charter of Civil Society will be analysed here jointly with the MDPs of the other organisations.

institutionalising the CSCE (renamed in OSCE in 1995), contains references to human rights, although not to democracy as such. However, coinciding with the end of the Cold War, in 1990 the member states signed the Charter of Paris for a New Europe, according to which representative democracy was accepted as binding for all of them (Jawad 2008: 612). In the case of the Andean Community, the MDP was effectively created in 1998, with the Additional Protocol to the Cartagena Agreement as the constitutive treaty of the organisation; in its original version, the document only referred incidentally to democracy in its preamble. The case of UNASUR was similar, as the MDP was not included in its Constitutive Treaty, which only contained superficial references to democracy; however, the MDP was developed in an Additional Protocol in 2010. UNASUR's MDP must, moreover, be read in relation to the operation of the organisation, as the Georgetown Declaration (Guyana) of 2010 is also highly relevant in this respect. CELAC did not include an MDP as such in the first document of the then embryonic organisation, the Latin American and Caribbean Unity Summit Declaration of 2010, although in this document various references were made to democracy as the basis for integration or as a shared value of the region. The real MDP was to appear one year later, with the Special Declaration about the Defense of Democracy and Constitutional Order in the Community of Latin American and Caribbean States signed in Caracas (Sanahuja 2015). We should, however, note the unusual character of CELAC, which does not have a constitutive treaty of *hard law* in the strict sense, and whose MDP therefore does not have the status of a norm of international law, so that, strictly speaking, it cannot be called a democratic clause.

One final and very peculiar case is that of SICA. The Tegucigalpa Protocol (which in reality is the constitutive agreement of SICA) does make reference to the idea of democracy: article 3 considers democratic consolidation as a purpose of the organisation, and respect for it is one of its fundamental principles according to article 4, among other references. Indeed, the Governments of States that are part of the organisation signed a Framework Treaty on Democratic Security in Central America, which contains many commitments relating to the respect and promotion of democratic values. However, neither the Tegucigalpa Protocol nor this Framework Treaty on Democratic Security incorporated a process of sanctions to punish breakdowns in constitutional order, nor is it even clear that membership of the organisation is prohibited to undemocratic countries, although in fact all its members are democracies (see Chapter 3). In reality, this situation is not exclusive to this organisation, and it seems to be also present in other regional spheres (Closa 2013), although it is difficult to explain this institutional design, which appears *a priori* counter-intuitive.

2.3. The definition of democracy and democratic conditionality

One of the most relevant questions in the application of MDPs is the very definition of democracy. Beyond its theoretical and programmatic connotations, this question is relevant because of an obvious practical issue: the application of MDPs, including the sanction mechanisms envisaged by many of them, will depend on what is understood by democracy and how it is defined. The range of situations which could eventually give rise to a violation of basic democratic principles is potentially unlimited, so that regulating all of them becomes impossible. However, in line with what Cánepa suggests (2015), the total lack of precision of the MDPs may lead to situations of legal uncertainty and make controversies around interpretation more likely. In theory, greater levels of regulatory precision would lead to higher levels of certainty and fewer political disputes over the meaning of the regulations and the legitimacy of their application to actual cases. As we will see later, the various integration processes in Europe and in Latin America and the Caribbean show a huge variation in content, breadth and level of specificity in their definitions of democracy, although one frequent feature is a link to the idea of the rule of law.

One of the instruments which makes most effort to define democracy is the Inter-American Democratic Charter of the OAS, which in its article 3 lists what it considers to be its essential elements: "Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free and fair elections based on secret balloting and as an expression of the sovereignty of the people; the pluralistic system of political parties and organisations; and the separation of powers and independence of the branches of government". Furthermore, in its article 4 it mentions as "essential components of the exercise of democracy" transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights and freedom of expression and of the press, as well as the subordination of state institutions to civilian authority and respect for the rule of law. In addition, articles 7 to 10 make a conceptual link between democracy and human rights, including the principles of non-discrimination and respect for workers' rights. Finally, articles 11 to 16 recognise the relationship between democracy and social and economic development, including social rights and the fight against poverty, and article 28 links the political participation of women to the promotion and exercise of democratic culture. According to Legler and Tieku (2010: 466) the Democratic Charter of the OAS – together with the African Charter on Democracy – provides definitions of democracy with unprecedented detail. However, it should be recognised that CARICOM's Charter of Civil Society is even more exhaustive in its definition of democracy. In this Charter, democracy appears closely linked to a series of rights which are an institutional requirement or expression, such as political rights in general and the right to free elections in particular, rights to hold

meetings and demonstrations, or even the right to good governance, among other things. In this sense, the level of detail of the substantive content of the CARICOM MDP contrasts with the great lack of precision in the application mechanism, as will be explained later.

In the Copenhagen criteria for accession to the EU in 1993 "the stability of institutions guaranteeing democracy" is the first in a list of political conditions which also include "the rule of law, human rights and respect and protection of minorities". The Copenhagen criteria are therefore relatively ambitious in this respect, and they seem to underline a conceptual link between all the elements listed. Something of the same is evident in the even more exhaustive article 2 TEU which lists the values of the EU, including democracy along with human dignity, freedom, equality, the rule of law, respect for human rights, the protection of minorities, pluralism, non-discrimination, tolerance, justice, solidarity and equality between men and women. Bear in mind that this article acts as a basis for article 7, which provides for the imposition of sanctions on member states which violate any of the values listed in it.

In the OSCE, Appendix I to the Charter of Paris is particularly relevant. In point 7, the commitment to democracy of member states is made explicit, listing the staging of free elections at reasonable intervals, the elected character of at least one of the legislative chambers, universal and equal suffrage to adult citizens, free voting by secret ballot, etc. These stipulations are particularly valuable, as they add a high level of detail to many procedural and institutional elements of what is understood by "democracy", beyond rhetorical declarations about it.

Other international instruments are comparatively sparse. The Additional Protocol to the Cartagena Agreement "Commitment of the Andean Community to Democracy" does not define the concept of democracy nor its essential traits, nor, as Cánepa (2015) claims, the concept of the breakdown of democratic order, which would give the states "a large margin of discretion to determine which cases produced a situation that merited the application of this Treaty and which cases did not" Cánepa (2015: n.p.). However, we must recognise article 1 of this Protocol refers to democratic "institutions" – without specifying what these institutions are – and they are linked to the "rule of law", with both aspects being considered essential conditions for political cooperation and integration within the framework of the Andean Integration System. This article therefore recognises that democracy is based, beyond general principles, on concrete institutions and on a judicial system in which public powers are subject to the law.

Similarly, this reference to democratic "institutions" is the closest we find to a definition in the Ushuaia Protocol of MERCOSUR (article 1), and Ushuaia II did not add much to this definition, except for the references to human rights, fundamental freedoms

and the rule of law in its preamble. Particularly in documents such as Ushuaia II or the Georgetown Declaration drawn up by UNASUR in 2010, there are some references to the "constitutional order" with major practical consequences, as will be seen in Chapter 3.

The Riviera Maya Declaration of 2010, a constituent part of CELAC, makes abundant references to democracy. In its preamble, as we said earlier, democracy is cited as the basis for integration and as an ideal of the region. Giving the concept a somewhat more tangible dimension, there is also mention of promoting the "establishment of democratic institutions". At times this is mentioned alongside the rule of law or human rights. Article 2 identifies it as a principle common value to be consolidated. In the Caracas Declaration of 2011[6], which establishes a real mechanism of democratic conditionality for member states, a higher degree of precision can be found. Democracy is mentioned alongside other values such as the rule of law, human rights and respect for legitimately constituted authorities, as an expression of the will of the people, but also, very significantly, alongside others such as "non-interference in internal affairs". This last reference reflects a certain tension between democratic commitment at supranational level and the principle of sovereignty which is particularly present in CELAC. The model of institutionalisation of the conditionality mechanism that converts the affected state into the protagonist at the expense of more ambitious regulations and peer evaluations reflects the same tension and it resolution in favour of sovereignty. Note also, as we mentioned above, that the CELAC agreements have the character of political declarations and not of international treaties.

The constitutive Treaty of UNASUR mentions democracy succinctly in articles 2 and 14 although its Preamble pays more detailed attention. Here, it appears as one of the principal premises of South American integration, together with sovereignty, pluralism and human rights, among other things. Moreover, the conclusion of the preamble gives democracy an institutional dimension by attributing to "the democratic institutions and unrestricted respect for human rights" the role of an essential condition for peace, economic and social prosperity and the development of integration. Very significantly, this same declaration opens the preamble to the Additional Protocol of the organisation on Commitment to Democracy which later affirms its commitment to democracy as well as to the rule of law and its institutions, and to human rights and fundamental freedoms, in particular freedom of expression and opinion.

There are two organisations which link the MDP to a broader conception of security and relations between states. In the case of the OSCE, this link is quite obvious, as the Charter of Paris establishes the so-called "Human Dimension" in a document which also tackles

6 Entitled "Special Declaration on the Defense of Democracy" adopted at the Caracas Summit in 2011.

the question of security between the states parties and lays down the functions of the Conflict Prevention Centre (Supplementary document, part I), focussing mainly on military matters. A particular aspect of the SICA Framework Treaty on Democratic Security, in turn, resides in the reference to the "subordination of the armed forces, the police and the public security forces to constitutionally established civil authorities chosen in free, honest and pluralist elections". Article 2 contains this consideration and includes it among the main principles of the Central American Democratic Security Model, together with the rule of law and the ongoing strengthening of democratic institutions. Indeed, this norm is an expression of a more general trait, characteristic of SICA's approach to the question of the promotion of democracy in the sub-region: the connection made between democracy and the issues of security and defence in the Framework Protocol is directly linked to the historic origins and founding objectives of the organisation (Cánepa 2015).

Finally, the most striking regulation may be that of the CoE, which does not in fact mention democracy as such in its MDP. The preamble of the Statute mentions briefly democracy, but it is not cited again as such in the articles themselves. On the other hand, article 3 of the Statute requires each member State to accept the principles of the rule of law, human rights and fundamental freedoms, and to collaborate in the realisation of the aim of the organisation set out in its chapter 1: the attainment of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which constitute their common heritage and facilitate their economic and social progress. It is through this article 3, which does not explicitly mention the concept of democracy, that the MDP is constructed in article 8, in the case of a serious violation of article 3, with the imposition of the corresponding sanctions.

2.4. Democracy as a condition of accession

The MDPs of regional integration organisations have a dual dimension: the external one, concerned with democratic conditionality for accession, and the internal one, concerned with the internal dimension (i.e. remaining a member of the organisation on condition of continuing to be democratic). Analysed together, these two dimensions, lead to a classification with four basic types.

Table 5: Types of Mechanisms of Democracy Protection (explicit)

	Democratic conditionality during membership	No democratic conditionality during membership
Democratic conditionality for accession	**CoE, EU MERCOSUR, CARICOM**	**SICA**
No democratic conditionality for accession	**OSCE, OAS, CAN, UNASUR, CELAC**	**-**

Source: Own elaboration based on treaties and legal regulations.

According to Table 5, the only organisations that are committed to both aspects of democratic conditionality are the European Union, the CoE, MERCOSUR (according to the regime of Ushuaia II) and CARICOM (with important clarifications we will make below). Interestingly, the most frequent type consists of organisations which do not envisage democratic conditionality for accession, yet do establish mechanisms to avoid the decline of democracy in states which are already members (OSCE, OAS, CAN, UNASUR, CELAC). These organisations may be called "preventive" rather than "promotional", as they seek above all to prevent a decline in the democratic institutions rather than trying to extend them to states which are not democratic. Finally, the opposite type is that of organisations which seem to link accession to the fulfilment of democratic requirements, but which do not set out mechanisms of sanction for member states which cease to fulfil them: one such case is SICA. There is no organisation which does not envisage any type of MDP, however informal it may be.

We should caution, however, that given the open nature and frequent ambiguity of regulatory texts, and the developments to which their interpretation may lead, the classification outlined in Table 5 is not set in stone nor is it exempt from potential variations over time. A good example of this regulatory ambiguity and difficulty with classification is CARICOM. CARICOM's Charter of Civil Society (1997) establishes a series of explicit commitments to democracy and human rights. This Charter, however, does not explicitly state that it will deny accession to states which do not fulfil the requirements – although this would seem to be a plausible interpretation – and it does not delineate possible sanctions for the breakdown of democratic order, although the Charter does in fact appear open to this. The case of CARICOM may be the most difficult to classify, therefore its location in Table 5 is purely indicative, and we are better advised to refer to concrete regulations which will be dealt with further below. There are, however, similar ambiguities in the case of other organisations.

The behaviour of organisations during their operation adds another problem on top of the ambiguity of provisions when interpreting MDPs. The case of Cuba exemplifies this, as its membership (as a founding member) of CELAC, an organisation which included a commitment to democracy, raises major doubts of interpretation. From one point of view, one might think that CELAC allows the participation of undemocratic states, and that its MDP – as suggested in Table 5 – is limited to requiring that those which are already democratic should remain so once they become members of the organisation. A second interpretation might state that, given that the MDP was created after the accession of Cuba, it cannot be applied retrospectively, although it could be used to veto undemocratic states which present their candidacy after the MDP came into force. A third interpretation would be that the MDP also implicitly applies to states which are already members, and that the organisation attributes the character of democracy to this country.

This last interpretation, however, would be in open contradiction to the position of a large number of human rights organisations, a majority of the International Community and the OAS itself. One final interpretation is that CELAC has simply disregarded formal interpretation in favour of strategic criteria; among them, for example, the idea that the involvement of the state affected, rather than its exclusion, is the most effective way of promoting democracy. The reality is probably that each actor in the organisation has opted for different interpretations and political motivations when it came to dealing with the case of Cuba, although the result has doubtlessly been that the MDP was subjected to great tension in its interpretation because of the ambiguity in the way it was applied in this case. Similar issues have come to the fore in European organisations, as well, particularly in those situations where democratic standards have been seriously eroded or are not met in states which, nevertheless, continue to be members of the organisation. Russia, Uzbekistan and Turkmenistan – to cite just a few examples – continue to be part of organisations such as the CoE or the OSCE, despite them being considered authoritarian regimes according to various indices of political freedoms.[7]

This section focuses on the first of the dimensions outlined: democratic conditionality for accession, leaving the internal dimension of preserving democracy during membership of the organisation to the following section. The study of democratic conditionality for accession is linked to the ambiguity of the MDPs themselves. This problem occurs because the majority of the organisations make rhetorical commitments to democracy, sometimes in great detail. However, the same organisations do not always state explicitly and unambiguously that the accession of undemocratic states will be vetoed. In this context, member states are given a wide margin for interpretative manoeuvring, even discretion, in how they apply the organisational norms to actual cases. Moreover, this regulatory ambiguity does not exclude the veto referred to for the accession of undemocratic states; it simply does not guarantee it.

In only a few organisations does this veto appears in a clear and unambiguous form in their basic regulations: the EU and the CoE. Article 4 of the CoE Statute states that Committee of Ministers will invite to join the CoE to any European state which is considered as having the capacity and will to fulfil the provisions of article 3 – previously referred to. Very soon, the Committee of Ministers approved Resolution of May 1951 that required to consult the Consultative Assembly of the CoE, later called the "Parliamentary Assembly", on any invitation to a new state – and thus the suspension of any member for violating the principles of article 3. In the view of Closa (2013: 6) the constitution of this procedure enabled limiting, via the political pluralism of the Assembly, the capacity of the governments to ignore the requirement for democratic conditionality. Since 1992,

7 For example, *Freedom in the World 2015*, from *Freedom House*; *Democracy Index*, by the *Economist Intelligence Unit*.

the Venice Commission has advised the Parliamentary Assembly on the candidate states' respect for the democratic standards and human rights of the organisation (Closa 2013: 6). In the case of the EU, we have already mentioned the principal norms in respect of democratic conditionality, which include it as a criterion for access to the organisation. It is worth remembering once again that the Copenhagen criteria require, for the accession of a new state, stability in the institutions which guarantee democracy, the rule of law, human rights and the protection of minorities.

Democratic conditionality for accession to the organisation is obvious in the case of the organisations previously mentioned. This same issue results, however, much more ambiguous in respect of other organisations. One example is SICA, which in its Framework Protocol on Democratic Security incorporated a large number of commitments to democracy. Neither this Protocol nor the Constitutive Treaty of the organisation contain any clause expressly and incontrovertibly expressing a requirement for respect for democracy on the part of candidate states, although the reiterated proclamations about democracy as the basis of the organisation and its guiding principle, as well as the commitments to its strengthening, lead one to think that in practise accession to the organisation by undemocratic states would be vetoed. Something similar occurs in the case of MERCOSUR. Through the Protocols of Ushuaia I and II the organisation establishes clear regulations for the case of a breakdown of the democratic order in states which are already members. Historically, regulations for democratic conditionality for accession were less clear. The new formulation included in the preamble of the Protocol of Ushuaia II of 2011 according to which a commitment to democracy, the rule of law and human rights is regarded as essential condition for becoming part of MERCOSUR seems to dispel doubts on interpretation.

2.5. Conditionality for members: sanctioning rupture of the democratic order

In addition to conditionality for accession, the regional integration organisations may fulfil a complementary function in the protection of democracy through the creation of sanctions for member states which cease to fulfil democratic standards. Empirical evidence found in literature on the effectiveness of these mechanisms in the survival of democratic regimes is inconsistent. While Ulfeder (2008) did not find any evidence suggesting that the member states of this type of organisation are more likely to remain democratic, Wobig (2014) argues that the threat of sanctions by the organisation may be effective in democracies with a moderate level of wealth (see also Pevehouse and Mansfield 2006; Genna and Hiroi 2015).

Table 6: Sanction mechanisms in the internal dimension of democratic conditionality

	Prominence of other states	Prominence of the affected state	Both
With no explicit range of sanctions	-	**CARICOM**	-
Only diplomatic sanctions and the suspension of rights	**CoE, EU, OSCE**	**CELAC**	**OAS**
In addition, economic sanctions and the opportunity for others to be drawn up	**CAN**	-	**UNASUR, MERCOSUR**

Source: Own elaboration based on treaties and legal regulations.

Table 6 summarises the sanction mechanisms of the regional integration organisations studied in respect of the internal dimension of democratic conditionality. SICA does not appear in the table, because it does not have norms that are sufficiently explicit in this respect. The first aspect of the analysis shows which actors take the lead in adopting mechanisms of sanction. Although there is a certain margin of regulatory ambiguity, a group of organisations rely on leadership mainly (although not solely) from the other states in the organisation, with the sanction mechanism being one of monitoring by peers in which each state guarantees fulfilment of democratic standards by the others. The three European organisations (CoE, EU and OSCE) notably belong to this type (although the EU Commission plays an important role aside from member states). In addition, CAN also follows this model. CELAC represents the opposite type. In this model, the state affected by the potential or actual decline in democracy actually activates the sanction mechanism. As will be explained later in greater detail, and contrary to the previous model, this second model appears to envision the danger to democracy originating not as much from established governments abusing their power and damaging the quality of democracy, but from external threats to the established power which could subvert democracy in the affected state. Finally, a third model seems to integrate both the leadership of the affected state and that of the other states in the organisation, opting for a mechanism that can be activated upon the request of a high number of actors. Very few of the organisations studied, and none of the European ones, have incorporated this model, which however would seem *a priori* to offer the best guarantee. Finally, Table 6 also shows a second dimension: the type of sanctions that may be imposed, which in the majority of cases refers to the restriction of rights derived from membership of the organisation (CoE, EU, OSCE, CELAC, OAS), although in a few cases they also seem to touch on sanctions external to the organisation (UNASUR, CAN, MERCOSUR). CARICOM is a special case, as its Charter of Civil Society hardly even outlines any sanction mechanism, not does it provide for any explicit range of sanctions. However, we will analyse this second aspect, referring to types of sanction, in the following section.

2.5.1 Procedures led by other member states

We previously mentioned the fact that the three European organisations studied, as well as CAN, seem to share similar characteristics in their sanction mechanism: leadership is given to the other states, which seems to produce a system of peer evaluation. This does not imply that the affected state may not also in fact take some initiative in managing the situation affecting it, but only that the regulatory framework appears to focus primarily on the other states in the organisation. In this sense, organisations such as CELAC, OAS, MERCOSUR or UNASUR contain somewhat clearer mechanisms that allow for the activation of sanctions by affected states themselves. Once again, however, regulatory ambiguity appears as a problem in the drawing up of clear taxonomies, as some regulations are particularly concise. The Statute of the CoE, for example, only mentions in its article 8 that any state which violates article 3 – which as we saw listed principles such as the rule of law and fundamental rights, although not democracy as such – could have its rights of representation suspended; according to this precept, the Committee of Ministers could ask such a state to withdraw voluntarily from the organisation, and if it did not comply with this request, the Committee could decide that the state would cease to be a member of the Council.

In the case of the EU, article 7 TEU details the procedure for sanctions and article 354 TFEU, which establishes the procedures and majorities which have to be attained in these cases in institutions such as the European Parliament, the European Council or the Council supplements it. Article 7 TEU, which outlines the basic structure of the sanction mechanism, establishes a procedure to determine the existence of a risk of violation of any of the values in article 2 TEU (including democracy), a second procedure to determine any actual violation of these, and a sanction procedure in response to the latter. In order to determine the existence of a risk, there should be a reasoned proposal by one third of the member states, the European Parliament or the Commission; the Council will examine this proposal and will decide on whether such a risk exists, by a majority of four fifths of its members and with the consent of the Parliament, - having listened to the state concerned, and being able to make recommendations to this state in accordance with the same procedure. In the opinion of Sadurski (2009-2010: 397) and Shaw (2001: 200), this mechanism for assessing risks which have not yet become reality was added specifically as a consequence of the experience of the sanctions imposed on Austria in 2000. The procedure for determining that the violation has in fact occurred is more demanding, therefore requiring the unanimity of the European Council and the consent of the European Parliament on a proposal from one third of member states or the Commission, after having invited the state concerned to submit its observations. Finally, when this procedure determines that one of the values of article 2 TEU has been violated, the Council may impose sanctions acting by qualified majority and taking account of

the consequences of such sanctions on the rights and obligations of individual persons or legal entities. The Council may decide by the same majority to revoke or modify the sanction in response to changes in the country's situation. In 2014, the Commission proposed a new Framework that created a preliminary procedure previous to the activation of article 7 (Closa et al. 2014). The Commission activated this Framework for the first time on the Polish government in January 2016.

The OSCE is as usual a special case. In principle, the organisation functions by consensus, and although it has a mandate to promote democracy laid down in the Charter of Paris, no clear procedures exist to be applied in cases of violation of democracy by a member state. The only similar precedent – that of the suspension of the former Yugoslavia in 1992 - may, however, offer some information by inductive reasoning. In this case, the Permanent Council of the organisation took the decision to invoke the idea of "consensus-minus-one" which had been created in their meeting in Prague in 1992, and which enabled it to undertake actions when a state was violating the norms of the Helsinki Declaration or other later decisions of the organisation (Galbreath 2007: 86). In the case of Yugoslavia, this idea of "consensus-minus-one" made it possible to avoid using the veto against the affected country. It must be borne in mind, however, that the trigger for these sanctions was not so much a violation of democratic norms by the affected country as the violence unleashed by it, which in the view of the OSCE presupposed the violation of the norms of the organisation.

Finally, one of the American organisations, CAN, also seems to have opted for systems in which monitoring by peers is at the forefront of the imposition of sanctions. The Additional Protocol to the Cartagena Agreement of CAN is relatively detailed. Article 2 claims that the Protocol will be applied when there is a disruption of the democratic order of any of the member states, without specifying what is considered a "breakdown", just as it was not specified in any detail what was understood by "democratic order" (Cánepa 2015). Faced with this situation, consultations shall be set up with other member states and, where possible, with the affected country to examine the nature of this breakdown (article 3). After these consultations, the Council of Foreign Ministers may be convened to make a definitive judgment on the disruption of the democratic order, in which case "appropriate measures shall be adopted for its prompt reestablishment" (article 4). According to article 5, the Andean Council of Foreign Ministers will adopt the measures considered adequate by means of a decision without the participation of the affected country, which will be notified of these measures. The Protocol envisages the parallel development of diplomatic measures by member states aimed at re-establishing the democratic order (article 6), as well as a cessation of sanctions decided upon by the Andean Council of Foreign Ministers once such order has been re-established (article 7).

2.5.2 Procedures led by the affected state

Two organisations leave the leadership to the affected state: CELAC and CARICOM. CELAC's procedure contains a series of peculiarities. The preamble of the Declaration about the Defence of Democracy and Constitutional Order of 2011 lays special emphasis on the principle of non-interference and links it to the democratic principle, when in other contexts both principles have been in a very tense relationship. Moreover, in the latter part of the preamble the member states express their "rejection and condemnation of any attempt to alter or subvert the constitutional order and normal functioning of institutions of any Member State". The sanction procedure is consequently focused above all on the government of each state which must notify the Pro Tempore Presidency of the existence of a threat of disruption or alteration of the democratic order which substantially affects it. That is to say, the mechanism is devised as a type of self-defense for governments which are already constituted, with less attention than other organisations to evaluation by peers and the activation of the MDP by third states where a government has violated democratic standards in internal order. When a government reports a threat of disruption in the democratic order, the Pro Tempore Presidency, with the assistance of the Troika, will inform the member states so that they can take joint actions. When the breakdown does in fact take place, an Extraordinary Meeting of the Ministers of Foreign Relations of member states shall be convened in order to adopt measures decided by consensus. The CELAC model also differs from that of other organisations in this respect as it provides for offering assistance at this meeting to the legitimate government affected. The measures will come to an end when it is determined on the basis of periodic evaluations that the reasons giving rise to them have ceased. It is also worth mentioning the consultation procedure approved in the Statute of Procedure approved at the Caracas Summit in 2011, which attempts to give the organisation flexibility and efficiency by urgent consultation and tacit approval. This procedure enables a plan for a declaration or resolution to be raised with the Troika, which will then be passed to member states and approved quickly if there are no objections raised within a short frame of time.

For its part, CARICOM constitutes a case *sui generis*. Its Charter of Civil Society establishes that states are obliged to report periodically on their progress towards democratic objectives and human rights, but it does not prevent the Commission of the organisation from asking for special reports at any time. Simultaneously, it establishes that a National Committee or evaluation body must be created for each state to assess how the Charter is being fulfilled and report on this to the Secretary General of the organisation; this National Committee will be made up of representatives of the state, civil society ("social partners") and people of high moral authority. From this point, the Charter restricts itself to stating that the Secretary General will inform the states of the organisation about this matter, issuing recommendations whenever necessary.

2.5.3 Twofold procedures

Finally, three organisations seem to have opted for comprehensive mechanisms, in which the system of peer evaluation and that of an alert from the affected state itself both play a role: OAS, UNASUR and MERCOSUR. The UNASUR procedure is halfway between the CELAC mechanism and that of other organisations such as the CoE. According to article 1 it will be applied "in the event of a breach or threat of breach against the democratic order, a violation of the constitutional order of any situation that jeopardises the legitimate exercising of power and the application of the values and principles of democracy". In these cases, according to articles 2 and 3, the Council of Heads of State and Government or alternatively the Council of Ministers of Foreign Affairs will meet, either at the request of the affected state, or at the request of another UNASUR member state, to determine jointly the nature and scope of the measures to be applied. This twofold route to convene a meeting thus enables the mechanism of peer evaluation to be combined with the possibility of the MDP being invoked as a means of self-defense by a government under threat. Moreover, article 6 enables a constitutional government which considers there to be a threat to the democratic order in their country to turn to the organisation to report about the situation and to request the adoption of measures. Article 7 makes provision for the measures to cease once the democratic order is restored.

The dual route has also been adopted in the case of the OAS. The procedure is established in article 9 of the Charter of the Organisation, which is in turn detailed in the Democratic Charter of 2001. According to article 17 of its Democratic Charter, a member state which considers its democratic political process to be in risk may turn to the Secretary General or Permanent Council to seek assistance. However, according to article 20, when there is an alteration in the constitutional regime that seriously impairs its democratic order then "any member state or the Secretary General" may request that the Permanent Council be convened to adopt diplomatic measures. Equally, if these measures prove unsuccessful or the urgency of the case so warrants, the Permanent Council may convene a special session of the General Assembly which may adopt sanctions by a vote of two thirds of the member states. According to article 22, when the situation which gave rise to the sanctions has been overcome, these may be lifted by a vote of two thirds of the member states at the request of any of them or of the Secretary General.

Lastly, in the case of MERCOSUR, the Ushuaia I protocol stipulated that in the case of a disruption of the democratic order in a state which had signed the Protocol, the other states parties would hold consultations between themselves and with the affected state (article 4). In this case, although the affected state was mentioned, leadership seemed to stem from the other member states. It would seem, however, that things could be different under the Ushuaia II Protocol, whose article 2 refers to the convening of a

meeting of Ministers of Foreign Relations at the request of the party affected or any other party when there is a disruption of the democratic order. Moreover, article 4 of Ushuaia II stipulates that when the constitutional government of a party considers that a disruption of democratic order is occurring within its jurisdiction, it can request cooperation to preserve the democracy of the other member states. According to Cánepa (2015), leadership by the affected state under this new regime is one of its principal innovations.

2.6. Sanctions in the case of disruption of democratic order for members of an organisation

In the previous section we analysed the mechanisms which the organisations can activate to determine that there has been a disruption of normal democratic life of a member state. However, the question of the sanctions to be imposed in such circumstances is equally important. Generally speaking, the literature has classified these types of sanctions as diplomatic, economic and military sanctions as well as those of suspension (Youngs 2012; Heine and Weiffen 2015). Table 6 summarises these types and demonstrates that the majority of the organisations only envisage diplomatic sanctions and the suspension of the rights derived from belonging to the organisation. This does not prevent some organisations from imposing sanctions of an economic nature or others that may be determined.

2.6.1 Organisations without explicit sanction mechanisms: the case of CARICOM

CARICOM constitutes a special case in terms of democratic commitment but also in respect of the sanction mechanism. The Charter of Civil Society establishes only the need to inform the Secretary General of the violation of any of the principles and rights contained within it, or of its incapacity to achieve its objectives. The role of the Secretary General, according to article XXV, is limited to informing the member states and formulating recommendations. In this respect CARICOM's MDP is one of the most ambiguous of all those analysed. No explicit range of sanctions is foreseen, although this does not prevent the Secretary General from considering sanctions in his recommendations. And while it is established that allegations of violations or of failure to comply with the Charter do not impose on the state any obligation to abstain from applying the decisions of its courts or authorities[8], just below, in article XXVI, the commitment of the states to observe the provisions of the Charter is established. Leadership from the affected state and trust

8 *"Allegations of violations or non-compliance shall not impose any obligations on a State to refrain from carrying out any decision of its Courts or other authorities pending consideration under this Article".*

in its voluntarism rather than external coercion defines the CARICOM mechanism. At the same time, its ambiguity could potentially allow different interpretations from those contained *a priori* in its text.

2.6.2 Sanction mechanisms restricted to diplomatic measures and the suspension of rights in the organisation

In many cases organisations envisage the suspension of rights derived from the organisation itself as a sanction mechanism. In this sense, the sparse nature of provisions for sanctions is striking in at least two of the European organisations: the CoE and the EU. The concise text of the Statute of the CoE lays down, in its article 8, suspension of the rights of representation for the state concerned as a possible sanction, together with its withdrawal from the organisation. In the case of the European Union, article 7 TEU is also relatively concise in its description of the range of applicable sanctions; this article refers only to the suspension of certain rights derived from the application of the Treaty to the state in question, including suspension of voting rights for representatives of the state on the Council. Article 7 TEU clarifies that the obligations to the Treaties of the sanctioned state will remain in force, but even so, the clause in article 7 is relatively open, since the Treaties recognise a wide range of rights of member states which can be suspended. The Treaty of the European Union in this sense diverges from other much more precise models, such as the abovementioned Additional Protocol to the Cartagena Agreement. In the case of the third European organisation, the OSCE, the paucity of *hard law* makes it necessary to resort to actual precedents in order to understand how the sanction mechanisms work. The OSCE lacks any regulations that are sufficiently explicit and detailed in this respect. In the case of Yugoslavia the sanctions, which were adopted *ad hoc*, consisted in the decision that the country would cease to attend summit meetings. According to Galbreath (2007: 87), this meant that the OSCE could manoeuvre around the crisis in Yugoslavia avoiding vetoing the country, although it also implied losing a direct line to Belgrade and therefore having less ability to influence events on the ground.

Two organisations in the American arena also use the suspension of rights within the organisation as a sanction: these are the OAS and CELAC, although in these cases the wording of the MDPs is slightly more detailed than those of its European counterparts. In the OAS, the Democratic Charter lays down in its article 19 that an interruption of the democratic order of a member state constitutes an insurmountable obstacle to this government's participation in the sessions of the General Assembly, the Meeting of Consultation, the Councils of the organisation and the specialised conferences, commissions, working groups and other bodies of the organisation, thereby reflecting article 9 of the Charter of the organisation. In the same sense, article 20 of the Democratic

Charter lays down that faced with an "alteration of the constitutional regime that seriously impairs the democratic order" the Permanent Council may initiate the necessary diplomatic initiatives. When these prove unsuccessful or if the urgency of the situation so warrants, the General Assembly may be convened, and according to article 21 of the Democratic Charter it may suspend the member state from participation in the OAS, although this will release the state from its obligations towards the organisation "in particular its human rights obligations". According to Levitt (2006: 96), article 21 of the Democratic Charter implies a codification of the provisions of the Washington Protocol and gives the impression of compelling – rather than authorising – the OAS to punish disruptions of democracy. In the case of CELAC, the Declaration on the Defence of Democracy of 2011 envisages a parallel implementation of diplomatic measures towards the affected state, the suspension of this state from the right to participate in the bodies and courts of the organisation, and from rights deriving from membership of the organisation. Measures adopted in this respect must respect International Law and the internal legislation of the affected state, referring in this latter case to the legislation which was in force before the subversion of the constitutional order.

2.6.3 Sanction mechanisms extended outside of the organisation

In other cases the sanction mechanisms are slightly more imaginative, and it was intended to add a range of sanctions that go beyond diplomatic actions and suspension of the rights derived from belonging to the organisation. This is the case for three Latin American organisations: CAN, UNASUR and MERCOSUR. In fact, the similarities between some of these organisations are obvious, as for example those between the assumptions of application and the sanction mechanisms of the Constitutive Treaty of UNASUR and of the Ushuaia II Protocol (Cánepa 2015), which may indicate dynamics of observation and training between organisations in the region.

Article 4 of the Additional Protocol to the Cartagena Agreement of CAN establishes a detailed list of measures which may be adopted in the case of a breakdown in the democratic order which will be applied "in accordance with the seriousness and the evolution of political developments in the country in question" and which include: suspension of the affected country from any of the bodies of the Andean Integration System, or from the cooperation projects carried out by the member states, extension of the suspension to other bodies of the Andean System (including disqualification from access to facilities or loans of Andean financial institutions), suspension of rights to which it is entitled under the Cartagena Agreement and the right to coordinate external action in other spheres and, finally, "other measures and actions that are deemed pertinent under International Law". Article 4, therefore, lists various measures and concludes with an

open clause. This latter offers a wide margin of manoeuvre for member states to adopt sanctions they consider relevant, including those which are not expressly laid down in the non-exhaustive list of the aforementioned precept.

Article 4 of the Additional Protocol to the Treaty of UNASUR is relatively extensive in the sanctions envisaged and includes some not specified by other organisations. Of course, they include the usual clause on the suspension of rights derived from being a member state and of participation in the bodies of UNASUR. But in addition, other, relatively more ambitious sanctions are included. These envisage the entire or partial closure of territorial borders, including the limiting or suspension of trade, air and sea transport, communications, the provision of energy, services or supplies. There is the possibility of encouraging the suspension of the affected state from other regional and international organisations, or of its rights derived from cooperation agreements with other organisations or third states. Finally, there is a clause of openness to other sanctions in which is simply laid down the "adoption of additional political and diplomatic sanctions". Moreover, according to article 5, all of this does not prevent the implementation of parallel diplomatic actions.

Finally, in the case of MERCOSUR, the Presidential Declaration on Democratic Commitment of 1996 only envisaged the suspension of rights derived from membership of the organisation. This sparse wording was replicated almost identically in the Ushuaia Protocol of 1998, which in its article 5 only referred to measures which range from suspension of the right to participate in the various bodies of the respective processes of integration, to suspension of the rights and obligations arising from these processes. However, the Montevideo Protocol (Ushuaia II) has now established in its article 6 a much more ambitious range of sanctions, which include, to mention only a few, and besides the organisational ones, the closure of land borders, the suspension or limitation of trade, communications, the provision of energy, services or supplies, encouraging the suspension of rights by third party or in other organisations, collaboration with international or regional efforts to establish a peaceful and democratic solution, and a generic clause of openness to other sanctions. The widening of this range of sanctions is precisely the commonly provided reason why Paraguay has refused to ratify the Protocol.

2.7. Other aspects of MDPs

There are other aspects of MDPs which deserve a brief review before we finish with this chapter, as they enable us to understand how they not only provide mechanisms of conditionality of access or of sanctions for states facing a disruption of the democratic order, but also how these extend to other and equally relevant considerations. In some cases, for example, the provisions on democratic conditionality have the objective of

being reproduced in other international instruments ratified by the organisation. This is the case in the EU with its association agreements.[9] It is also the case with CAN, which in article 8 of its Additional Protocol to the Cartagena Agreement stipulates that "The Andean Community shall seek to incorporate a democratic clause in the agreements it signs with third parties, in accordance with the criteria set out in this Protocol". Point 5 of the Declaration on Democratic Commitment in MERCOSUR makes a similar commitment. Another interesting example is that of the regional organisations which envisage support for the democratic processes of their member states. This is the case with the OAS, which in articles 23 to 25 of its Democratic Charter envisages sending electoral observation missions at the request of an interested member state. Moreover, in its article 26, the Charter commits the OAS to activities and programmes to promote a culture of democracy. The OSCE, in turn, provides for the presence of observers from other states in the organisation of its electoral processes (point 8 of Appendix I to the Charter of Paris). MDPs, therefore, are complemented by arrangements of this type, which envision the supervision of the appropriate functioning of democracy by multilateral as well as distinct forms of democracy promotion and conditionality outside of the organisation.

2.8. Conclusions

Although regional organisations share a common tendency towards the increasing inclusion of MDPs in the regulations of their functioning, their concrete design displays a high diversity. In this chapter we have analysed some of the fundamental aspects of this variation, and these are summarised in Table 7.

As may be seen in Table 7, far from all following the same wording, MDPs seem to follow differentiated guidelines: peer revision mechanisms versus mechanisms which leave leadership to the affected state; organisational sanctions versus extra-organisational sanctions; concise definitions of democracy versus others that are more detailed. In reality, the differences between the institutional design of the MDPs are so large that it is possible that they could lead to completely different consequences. MDPs present great differences between regions, but also within the same region. The European organisations are generally characterised by an explicit democratic conditionality at least during their membership (and for access in the case of the EU and the CoE), with leadership taken by peer monitoring and sanction mechanisms consisting, above all, in the restriction of organisational rights. The OSCE, however, presents major peculiarities, as it appears not to include any explicit democratic conditionality for accession and is characterised by a certain lack of precision in its democratic mechanism, which has often been constructed by

9 See the communications of the Commission of 2001: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:51995DC0216 and 2005 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52001DC0252 (accessed 1 June 2015).

decisions applied to concrete cases. In Latin America and the Caribbean there is even greater heterogeneity, although this is probably correlated with the greater number of organisations. In this region, we find organisations that range from very ambitious ones (CAN, UNASUR, MERCOSUR), to others which have hardly any explicit procedure to make their regulations effective (CARICOM). At the same time, it is possible to observe organisations whose MDP seems to emphasise access (SICA) alongside others which seem to focus mainly on respect for democratic institutions for member states (CELAC).

Table 7. Summary of MDPs (explicit norms) in Latin America, the Caribbean and Europe

Organisation	Formalisation of the MDP	Access conditionality	Membership conditionality	Agency in the sanction procedure	Range of sanctions
OSCE	**Formal**	**No**	**Yes**	**Other states**	**Diplomatic and organisational**
CoE	**Formal**	**Yes**	**Yes**	**Other states**	**Diplomatic and organisational**
EU	**Formal**	**Yes**	**Yes**	**Other states**	**Diplomatic and organisational**
SICA	**Formal**	**Yes**	**No**	**No procedure**	**No categories**
CAN	**Formal**	**No**	**Yes**	**Other states**	**Diplomatic, organisational, economic or other**
CARICOM	**Informal(*)**	**Yes**	**Yes**	**Affected state**	**No categories**
OAS	**Formal**	**No**	**Yes**	**Affected state and other states**	**Diplomatic and organisational**
MERCOSUR	**Formal**	**Yes**	**Yes**	**Affected state and other states**	**Diplomatic, organisational, economic or other**
UNASUR	**Formal**	**No**	**Yes**	**Affected state and other states**	**Diplomatic, organisational, economic or other**
CELAC	**Informal**	**No**	**Yes**	**Affected state**	**Diplomatic and organisational**

Source: Own elaboration based on treaties and legal regulations. (*)Not binding.

Although the objective of this chapter is not to offer a causal explanation of these differences, it is worth mentioning that these variations undoubtedly follow deliberate decisions taken by the leading actors when they created the MDPs. Beneath these differences, there may therefore lie differing preferences and motivational backgrounds, processes of imitating other organisations or learning from their mistakes, as well as different political contexts and institutional constraints. In this sense, the evolution of regional integration organisations, which are experiencing a moment of great success, shall show which models will prevail and, above all, which institutional designs are most successful when it comes to guaranteeing the ultimate objective of all these norms: to ensure the preservation and promotion of democratic regimes in the regional context within which the organisation operates.

3 THE IMPLEMENTATION OF MECHANISMS FOR DEMOCRACY PROTECTION IN LATIN AMERICA, THE CARIBBEAN AND THE EUROPEAN UNION

3.1. Introduction

After the analysis of the institutional design of MDPs of the ten organisations covered by this study, this chapter concentrates on their implementation in concrete cases of democratic crisis in member countries. Institutional design and implementation are, of course, interconnected. The design of a democratic clause establishes the regulatory and procedural framework within which a particular intervention must fit in cases of democratic crisis. To be sure, different institutional designs lead, in theory, to different types of intervention: designs that are more precise and detailed in their procedural definitions reduce "legal uncertainty" providing political actors with better road maps when they face a concrete case of democratic crisis (see Chapter 2). However, this does not imply an automatic relationship between design and implementation. A fundamental assumption of this chapter is that, between "design" and "implementation", there is a space for the articulation of interests and preferences at play in any particular situation. These interests influence the way the actors interpret both the concrete situation they are facing, and the texts that lay out the legal basis for their actions.

The chapter analyses 25 cases of democratic crisis in the period 1990-2015, in which regional organisations have intervened, either by implementing their formal mechanisms or by adopting measures from without these mechanisms (Table 8). Due to the considerable number of cases and organisations involved, we will prioritise the identification of patterns and common tendencies over the particular detail of each case. Table 8 also shows that the events that trigger the intervention by the organisations were very varied in nature, including "coups d'état, "self-coups", "political violence", "removals from office", and "electoral questioning" among others.

Table 8: Cases of Intervention by Regional Organisations at times of political crisis (1990-2015)

Case	Year	Type of crisis	Regional Organisation	Invoking of formal MPDs
LATIN AMERICA				
Haiti	1991	Coup d'état	OAS	Yes (Resolution 1080)
Peru	1992	Self-coup	OAS	Yes (Resolution 1080)
Venezuela	1992	Attempted coup	OAS	No
Guatemala	1993	Self-coup	OAS	Yes (Resolution 1080)
Dominican Republic	1994	Questioning of electoral outcome	OAS	No
Paraguay	1996	Attempted coup	OAS MERCOSUR	No No
Ecuador	1997	Removal of the executive	OAS	No
Paraguay	1999	Assassination and destabilisation	OAS MERCOSUR	No No
Paraguay	2000	Attempted coup	OAS MERCOSUR	No No
Peru	2000	Questioning of electoral outcome	OAS	No
Ecuador	2000	Coup	OAS	No
Venezuela	2002	Coup d'état	OAS	No
Haiti	2000-2004	Electoral challenge - Coup d'état	OAS CARICOM	Yes (Democratic Charter) Yes (Charter of Civil Society)(*)
Nicaragua	2004-2005	Attempted removal	OAS SICA	Yes (Democratic Charter) No
Bolivia	2005	Removal of the executive	OAS CAN	No No
Ecuador	2005	Removal of the executive	OAS CAN	Yes (Democratic Charter) No
Bolivia	2008	Destabilization and political violence	UNASUR OAS CAN	No No No
Honduras	2009	Coup d'état	OAS SICA	Yes (Democratic Charter) No
Ecuador	2010	Attempted coup	UNASUR OAS	No No
Paraguay	2012	Removal of the executive	MERCOSUR UNASUR OAS CELAC	Yes (Ushuaia Protocol) No No No(**)
Venezuela	2013-2015	Questioning of electoral outcome and political violence	UNASUR	No
EUROPE				
Yugoslavia	1992	Political violence and violation of human rights	EC OSCE	No Yes (Prague Document)
Austria	2000	Challenge to the political platform of the elected government	EU-14 (Council of the EU)	No

Table 8: Cases of Intervention by Regional Organisations at times of political crisis (1990-2015)

Case	Year	Type of crisis	Regional Organisation	Invoking of formal MPDs
Hungary	**2011-2014**	**Challenge to constitutional reforms**	**EU (European Parliament, Commission) – CoE**	**No**
Romania	**2012**	**Adoption of anti-constitutional measures, and attempt to depose the President**	**EU (Commission and Parliament)**	**No**
Poland (***)	**2015-2016**	**Questioning of laws and constitutional reform.**	**EU (Commission)**	**Yes *(Rule of Law Mechanism,* preliminary instrument)**

Notes: (*) Is not of a binding nature.
(**) The organisation does not have a constitutive treaty, therefore the MDP is of an informal nature.
(***) This case happened while this study was already completed, thus has not been included in the analysis below.

Source: Compiled by author.

As may be appreciated from Table 8, in various cases – particularly in Latin America – more than one regional organisation tackled the same crisis. In order to make the analysis intelligible, we will group the organisations into four geographical groups: the OAS as a hemispheric organisation (3.2.); CAN, MERCOSUR and UNASUR, as South American organisations (3.3.); CARICOM and SICA, as organisations of Central America and the Caribbean (3.4.); and EU, CoE and OSCE as European organisations (3.3.).

Each group of organisations will be analysed according to three dimensions of implementation:

Activation

As we have seen in Chapter 2, the organisations have formalised more or less explicit activation procedures. We are therefore interested in investigating whether these decision-making procedures have been respected, identifying which actors call upon the regional organisation and which invoke, if applicable, the democratic clauses. Similarly, we are interested in investigating the "justifications" for the invocation, that is, what reasons the actors give for activating the MDPs. This is an important dimension for analysis since, as it can be seen in Table 8, most interventions were carried out without invoking the formal MDPs, hence the actors had to call upon some kind of reasoning to give them legitimacy.

Verification and evaluation

Once the MDPs are activated, the regional organisations must first verify the facts supposedly leading to a breakdown of democracy and, second, evaluate progress or regression in the political process of the affected state. Several different mechanisms serve to verify and to evaluate facts although missions on the ground have become the

most common one. These missions can be organised in an intergovernmental way through diplomatic representatives of the member states, or by assigning to the Secretary General/ Commission a leading role, by which the governments implicitly delegate a greater level of authority to the regional organisation vis-à-vis the member states. The missions may also be composed of members of civil society, such as an NGO or representatives of the academic world, which confers upon the verification and evaluation a greater degree of independence. We are also interested in identifying the objectives of the missions. They may derive from the democratic clauses – in case the organisations contain such clauses – or they may be determined *ad hoc* in each case of intervention. The missions may be limited to objectives of verification and evaluation as in the case of fact-finding missions, they may have objectives of mediation, or they may have both objectives – investigative and of mediation – at the same time, which could, in theory, overburden the mission and jeopardise its success.

Sanctions

As we argued in Chapter 2, the organisations stipulate sanctions in their clauses that these may be of varied nature including suspension of the rights of membership, as well as political, diplomatic or economic sanctions. There is abundant literature on sanctions in international organisations (see *inter alia* Wallensteen and Staibano 2005; Gottemoeller 2007; Hubfauer 2007; Hellqvist 2010). In this chapter we are interested in analysing precisely how sanctions are decided upon, identifying whether they conform to what is stipulated in the clause or whether they are determined *ad hoc* depending on the incidence in question. Other aspects of interest are determining the duration of the sanctions and whether they include a procedure of appeal.

Primary sources, such as declarations, resolutions and official press statements provided the ground material for the analysis of these three dimensions. Where this was possible, semi-structured interviews with political actors who took part in both the negotiation and adoption of the MDPs provided confirmation for the information, as in the cases of implementation analysed here. The textual sources used and the actors interviewed are listed in the Appendices of this study.

3.2. The Organization of American States (OAS)

The OAS is the hemispheric organisation that includes all the countries of the Americas. In January 1962 the Ministers of Foreign Affairs of the member countries decided to suspend the government of Cuba from the organisation, even though the OAS Charter did not at that time envisage formal MDPs or sanction measures. The meeting of the Ministers of Foreign Affairs resolved that a Marxist-Leninist government was incompatible

with the Inter-American system, an action which must be interpreted in the context of the Cold War (see *inter alia* Magliveras 1999 and Duxbury 2011). Despite the suspension being adopted against the "current" government of Cuba and not against the Cuban people, in practise the representatives of the Caribbean country were excluded from all bodies of the organisation for almost five decades. With the approval of Resolution AG/RES. 2438 in June 2009, OAS cancelled Resolution VI (by which OAS suspended Cuba from its rights of membership) and this paved the way for Cuba's reincorporation.

Because of its vast membership of 35 states, the OAS has participated in practically all events of political crisis in Latin America we analyse in this chapter. Moreover, the period analysed – 1990-2015 – coincides with a process of formalising and improving the MDPs which already existed in the OAS; a milestone in this regard was the approval and ratification of the Inter-American Democratic Charter in 2001 (see Chapter 2; see also Cooper and Lagler 2001; Hertz 2011; Heine and Weiffen 2014).

3.2.1 Activation

Cross-sectional analysis of the cases of intervention by the OAS reveals two noteworthy elements. The first, of a procedural nature, is a marked adherence to the formal activation procedures for MDPs stipulated in Resolution 1080 and later in the Democratic Charter. The second element of relevance is that the organisation has shown difficulties to activate its MDPs when facing incidents which do not correspond to a flagrant breakdown of the constitution, such as coups d'état or the threat of a coup d'état.

Let us start with the first element. In accordance with what its instruments stipulated, the Secretary General convenes the Permanent Council to analyse the situation in question and determine the implementation of specific measures that in most cases consist in designating a special mission headed by the Secretary General himself. In addition to this procedure, the Inter-American Charter envisions other two activation mechanisms. The first – contained in Article 17 - authorises the government of the affected state to have recourse to the Secretary General or the Permanent Council. The case of the attempt to destabilise President Enrique Bolaños of Nicaragua in October 2004 illustrates the application of this procedure. On that occasion, the Nicaraguan executive itself - together with the Pro Tempore President of SICA - requested that the Permanent Council of the OAS should grant an audience to the representative of this country and invoke the Democratic Charter, within the concept of "preventive diplomacy".[10] In April 2005, the Ecuadorian President Lucio Gutiérrez repeated the same procedure. He entered into contact with the

10 http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-185/04 (accessed 1 July 2015).

Secretary General of the OAS to report on the events that eventually led to his removal by the national Congress[11], giving rise to an extraordinary session of the Permanent Council and the invocation of the Democratic Charter.[12]

Article 20 of the Democratic Charter also allows for the activation by "any member state", which may request the immediate convocation of the Permanent Council.[13] Despite this option provided by the Charter, we have not identified a case where a "third state" would have activated the MDPs. The only case, albeit unsuccessful, was in fact prior to the adoption of the Charter, and therefore still under the framework of Resolution 1080. The incident occurred when an electoral mission of the OAS issued a report challenging the electoral results in the elections in 2000 in Peru under the government of Alberto Fujimori. On this occasion, the permanent representative of the USA insisted on the need to invoke Resolution 1080 and convene a meeting of Ministers of Foreign Affairs to decide on the actions to adopt. However, the representatives of the Latin American governments rejected (with subtle differences in the tone of the rejection) this US government proposal. The opposite and stronger position, supported by countries such as Mexico and Ecuador, argued that the OAS could neither interfere in nor replace the national institutions of a member state. It also argued that OAS had designed and approved Resolution 1080 in order to deal with situations that were different from those that Peru had experienced. This debate led the government of the USA to suggest that there was a need to revise and possibly strengthen Resolution 1080 whose area of implementation was proving too restricted (see Levitt 2006; Hertz 2012).

The incident of the Peruvian election of 2000 introduces the second element we mentioned: the OAS faces difficulties when it has to activate its MPDs to intervene in cases where there has not been a flagrant breakdown in the democratic order. In the case of the Peruvian election, the Mexican representative maintained that questioning the electoral results did not fall within the type of situations for which the Resolution had been created, referring to the fact that the strict area of implementation of the Resolution was solely and exclusively coups d'état, and particularly coups by the military (see Duxbury 2011). In fact, in those cases which were "obvious coups d'état" or "threats of a coup d'état", the action by the OAS was clear: Haiti (1991), Paraguay (1996) and Honduras (2009). In the cases of Haiti and Honduras, for example, the Secretary General activated the protection mechanisms despite the government of the United States' – for these purposes, the hemispheric power – adoption of a position of doubt in the Permanent Council.

11 http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-075/05 (accessed 1 July 2015).
12 CP/RES. 880 (1478/05) Support by the OAS for the Republic of Ecuador.
13 Inter-American Democratic Charter, Article 20.

Under this interpretation, electoral fraud - as reported by its own OAS electoral mission to Peru - did not correspond to a "sudden or irregular interruption of the democratic political institutional process or the legitimate exercise of power by the democratically elected government"[14] and did not merit the activation of Resolution 1080. Indeed, there are a number of cases which do not correspond to "obvious" interruptions of the elected government, but to political crises with various shades of ambiguity and where the action of the OAS has been considerably less assertive than in cases of coups d'état. In the cases of the self-coups by Presidents Fujimori in Peru and Jorge Serrano in Guatemala which were perpetuated in 1993, the OAS first took an investigative position, invoking Resolution 1080 to gather information on what had happened; only later, it classified the events as a "coup d'état" and adopted measures which eventually included sanctions. Even less assertive was the action of the OAS when the Vice President of Paraguay, Luís María Argaña, was assassinated; it invoked Resolution 1080, but did not adopt any measures. The representative of the United States criticised this by maintaining that the Resolution was only effective when states "faced the worst possible scenario", in clear reference to coups d'état and, as in the case of Peru, he advocated for the amendment of Resolution 1080.

The case of Haiti in 2004 clearly illustrates the complexities involved when justifying whether or not to implement MDPs. The incident began with the questioning of the results of the parliamentary elections that had favoured the party of President Aristide, by an electoral mission of the OAS on 21 May 2000. Up to this point the case was identical to that of the Peruvian elections one month earlier, with the important difference that economic sanctions were in fact imposed on Haiti. OAS did not directly implemented these sanctions, rather, multilateral financial institutions (the World Bank and the Inter-American Development Bank) did. Paradoxically, facing accusations of electoral fraud, the government of Aristide itself through its Minister of Foreign Affairs requested the sending of an OAS mission. The Permanent Council issued Resolution 796 that authorised the Secretary General to carry out "consultations" with the government of Haiti and with sectors of the political community.[15] The escalation of violence together with the increasing difficulty of the Haitian government in maintaining governability and the pressures from CARICOM to reinstate financial assistance to Haiti and to engage the international community in a more active way in the resolution of the crisis led the General Assembly of the OAS to issue Resolution 1831 in Support of Democracy in Haiti, in June 2001. Although the resolution continued to justify the actions of the OAS in terms of the negative conclusions of the electoral mission, the Secretary General was authorised to participate in the efforts of CARICOM and other interested countries to "strengthening democracy in Haiti".[16]

14 See para. 1 Resolution 1080.
15 CP/RES. 786 (1267/01).
16 AG/RES. 1831 (XXXI-O/01). With this resolution the Group of Friends of Haiti was formed.

The OAS did not activate the Democratic Charter either during the controversial deposing of President Fernando Lugo of Paraguay in June 2012, event that will be further discussed later when we analyse the interventions of the South American organisations which played a leading role in this crisis. In the case of the OAS, the Secretary General did not hesitate to condemn the removal of President Lugo:

> "There are several situations in which, in some countries, democratic principles that should have universal validity are violated, based on written law."

However, the OAS did not deem the removal from office as an "unconstitutional act" and, therefore, the Democratic Charter was not invoked. As a consequence, the hemispheric organisation played a secondary role in the management of the crisis.[17]

3.2.2 Verification and evaluation

The OAS sent missions in all the cases in which the Democratic Charter had been invoked, normally under the leadership of the Secretary General. Nonetheless, Resolution 1080 did not entail any explicit provision about these missions, leaving their composition and objectives to the discretion of the Permanent Council. The Democratic Charter does not add much either to the definition of the missions. In Article 18, the Charter lays down that the Secretary General or the Permanent Council, with the consent of the affected government, may arrange visits and other actions in order to analyse the situation, namely fact-finding missions. Article 20 stipulates that the Permanent Council, depending on the situation, may undertake the necessary diplomatic initiatives, including good offices, to foster the restoration of democracy. This may be considered the legal basis for missions of mediation.

In some cases, the Secretary General of the OAS has sent missions even without having invoked the Democratic Charter. This was the case of the acts of violence aimed at destabilising the government of President Evo Morales in 2008, which culminated with the massacre of Pando. Despite the fact that the Charter was not activated, the Secretary General and the Secretary for Political Affairs of the OAS travelled as special envoys to La Paz at the request of the Morales' government and in collaboration with an UNASUR mission (see OEA 2011: 97). Something similar occurred in 2012 when Paraguay's

Parliament impeached President Fernando Lugo. The Secretary General travelled to

17 Secretary General José Miguel Insulza also talks about illegal, although not unconstitutional, acts, and maintains that there is a dangerous tendency for these type of acts, camouflaged as constitutional, to be repeated throughout the region, see http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-229/12 (accessed 1 July, 2015).

Asunción on a mission of an informal nature without the support of the Charter or any resolution, but at the suggestion of the President of the Permanent Council and under the general mandate of the OAS Charter.[18]

Cross-case analysis shows that organisations design the missions according to a lax criterion of representation including various diplomatic representatives of countries in the hemisphere under the leadership of the Secretary General or a special envoy of the Secretary. The abovementioned case of Paraguay is interesting in this respect because for the first time the Secretary General of the OAS tried to form a mission following a strict criterion of representation from each of the sub-regions that make up the hemisphere.[19] We may infer that the decision stems from the fact that Paraguay is also a member of MERCOSUR and UNASUR, as well as of the OAS, and that both sub-regional organisations showed interest in intervening in what they considered – as we will see below - the unconstitutional removal of an elected President. However, the attempt failed, and the OAS mission took on a purely information-gathering objective and was made up of representatives from the United States, Canada, Honduras, Mexico y Haiti.[20]

The majority of the cases analysed demonstrate that the interaction between the OAS missions and the parties involved is normally positive. In accordance with what the Charter stipulates, these are missions which seek to employ good offices and which usually exhaust diplomatic mechanisms and national dialogue before taking any measures of a coercive nature. A recurrent activity of the missions is that of warning those groups or actors who offended the democratic order of the possible consequences of their actions at a diplomatic and economic level. That being said, there are cases where one of the parties rejected the missions. After the coup d'état against Aristide on 29 February 2004 and four years of "consultative diplomacy", the OAS faced serious problems in guaranteeing the work of its missions in Haiti, *de facto* delegating the initiative to the UN Security Council. Similarly, the *de facto* government of Honduras took a hostile position towards the mediating role of the OAS, especially when the organisation suspended the country (see Vicente 2009). On 22 September 2009, an express order of the *de facto* government prevented an OAS mission headed by the Secretary General from landing at Tegucigalpa, which unleashed general condemnation from the international community.[21]

18 http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-234/12 (accessed 1 August 2015).
19 http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-234/12 (accessed 1 August 2015).
20 http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-243/12 (accessed 1 August 2015).
21 http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-312/09 (accessed 1 July 2015).

3.2.3 Sanctions

When diplomatic actions prove unfruitful and do not succeed in restoring democratic order, Article 21 of the Democratic Charter stipulates that suspension of the right of participation in the OAS requires an affirmative vote by two thirds of member states. As was said in Chapter 2, the Democratic Charter of the OAS does not provide for any other sanctions apart from suspension, which has only been applied once in the period being studied, in the case of the coup d'état in Honduras in 2009. In addition, Resolution AG/RES.2 (XXXVII-E/09) which applied Article 21 of the Democratic Charter, encouraged member states and international organisations to revise their relations with the Republic of Honduras during the period of diplomatic actions to restore democracy and the rule of law in the Republic of Honduras, in order to reinstate President José Manuel Zelaya in office.

The effectiveness of the actions deserves some comments. In the first place, the OAS did not achieve its objective of reinstating President Zelaya despite actions and sanctions. Bilateral actions by a mission from the U.S. headed by the Assistant Secretary of State for Western Hemisphere Affairs, Thomas Shannon facilitated the termination of the conflict and the formation of a Government of National Unity and Reconciliation. A letter of safe-passage allowed Zelaya to leave the Brazilian Embassy in Tegucigalpa where he had been in asylum for almost eight months. The effects of the sanctions were also far from immediate. The suspension of Honduras interrupted the communication channel between the OAS and the *de facto* government, and diplomatic actions had to be taken from outside, firstly through the initiative of the Ex-President of Costa Rica, Ricardo Arias, and then in the context of the Guaymuras dialogue.[22] In accordance with Article 22 of the Democratic Charter, any member state or the Secretary General may propose to the General Assembly to lift a suspension once the situation that led to the suspension has been resolved. In the case of Honduras, this occurred on 12 May 2010 when the Vice President and the Foreign Minister of Panama called for opening a debate on the re-incorporation of Honduras, which eventually took place in May 2011 with 32 votes in favour and one against from Ecuador.

It is interesting to note that in some cases the OAS has recommended economic and diplomatic sanctions despite that its formal MDPs did not envisage them. In the case of the first coup d'état against President Aristide in 1991, the Permanent Council issued an *ad hoc* Resolution which recommended member states to consider diplomatic and economic sanctions against Haiti. OAS members accepted the recommendation, although the United States was doubtful about its application. In the opinion of certain analysts, this was due to the negative image the North American government had of Aristide (see Schnably 2000: 169-196).

22 http://www.abc.es/20110601/internacional/rc-honduras-regresa-201106011917.html and http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-020/10 (accessed 1 August 2015).

3.3. CAN, MERCOSUR and UNASUR

Three South American regional organisations – CAN, MERCOSUR and UNASUR - have formalised MDPs (see also Chapter 2). Both, the Additional Protocol of CAN Commitment to Democracy, and the Ushuaia Protocol on the Democratic Commitment of MERCOSUR, were agreed upon in 1998. In the case of MERCOSUR, the Montevideo Protocol (also known as Ushuaia II) amended the Ushuaia Protocol in 2011. The former remains unratified. As for UNASUR, it adopted the Additional Protocol on Democratic Commitment in 2010, which entered into force in 2014 after obtaining nine of the twelve national parliaments' ratifications.

The cross-case analysis shows an emergent tendency of increasing leadership of the sub-regional South American organisations to the detriment, to some extent, of the role exercised by the OAS. Thus during the attempts to destabilise the government of Evo Morales in Bolivia (2008), the OAS had to act in coordination with UNASUR in a special mission, at the express request of President Morales. Later in Paraguay in 2012, MERCOSUR and UNASUR invoked their respective democratic clauses while the OAS Secretary General exercised his good offices without implementing the Democratic Charter. Finally, the OAS was side-lined from managing the crisis in Venezuela during the contested electoral process which brought Nicolás Maduro to power (April 2013), and it was UNASUR which took the leading role in mediation between the parties. It remains to be seen whether the OAS will cede the management of democratic crises in South America to the sub-regional organisations or whether, on the contrary, it will resume a role of greater leadership.

The increasing leadership by the South American organisations has not, however, been of a similar nature across the three organisations. Although the MDPs of CAN and MERCOSUR were formalised in a contemporary manner in 1998, CAN has never implemented its democratic clause and in general has limited itself to issuing declarations, and in some cases to *ex post* support measures once the severe phase of the crisis has been overcome. MERCOSUR, on the other hand, took proactive action in the three crises affecting Paraguay, including suspending its rights of participation when President Lugo was impeached in June 2012. UNASUR, a much more recent regional organisation whose democratic clause was adopted in 2010 and ratified in 2014, participated actively in the crisis in Bolivia (2008), and during the attempted coup in Ecuador (2010), suspended Paraguay (2012) and had been the main international actor in the mediation of the crisis in Venezuela (2013-2015).

3.3.1 Activation

Cross-sectional analysis of the cases of intervention in South America also show two general tendencies which are worth highlighting. The first is the high level of discretion enjoyed by executive powers of the member states. As was seen in the case of the OAS, the hemispheric organisation is also subject to inter-governmental dynamics that may inhibit its actions. However, in the case of MERCOSUR and UNASUR the discretion enjoyed by the Heads of State and Government translates into greater innovation outside of the procedures stipulated in the respective legal texts. The second tendency that stands out is that MERCOSUR and UNASUR are more proactive in intervening in controversial cases where the OAS has adopted a much more reluctant position as has already been described earlier.

Let us start by the discretion in following the activation procedures. It is worth remembering that the activation procedures of the MDPs of CAN, MERCOSUR and UNASUR grant the ability to activate established actions exclusively to the Heads of State and Government (CAN, MERCOSUR and UNASUR) or, otherwise, to the Council of Ministers of Foreign Affairs (UNASUR, MERCOSUR).[23] This is in contrast to the OAS, where the Secretary General is also competent to activate the mechanisms. The democratic Protocol of UNASUR, as well as the Montevideo Protocol (Ushuaia II) of MERCOSUR – whose texts share an extraordinary level of similarity – also grant to the affected state the capacity to activate the mechanisms requesting cooperation to defend and preserve the democratic institutionality.[24] In this sense the Montevideo Protocol (Ushuaia II) is somewhat more specific on the activation procedure than the original Ushuaia Protocol of 1998.[25]

Neither MERCOSUR nor UNASUR confer to a "third State" the capacity to activate the mechanisms – for example, by convening a meeting of ministers. CAN leaves room for a certain ambiguity concerning this procedure in Article 3 of the democratic Protocol. This stipulates that "In the event of development that could be considered as a disruption of the democratic order in any Member Country, the other Andean Community Member Countries shall consult with each other and, if possible, with the country involved in order to examine the nature of those events" (see also Chapter 2).

23 Additional Protocol "Andean Community Commitment to Democracy", Art. 3; Additional Protocol to the Constitutive Treaty of UNASUR on Commitment to Democracy, Art. 2; Montevideo Protocol on Commitment to Democracy in MERCOSUR (Ushuaia II), Art. 2.

24 Additional Protocol to the Constitutive Treaty of UNASUR on Commitment to Democracy, Art. 6; Montevideo Protocol on Commitment to Democracy in MERCOSUR (Ushuaia II), Art. 4.

25 The original Ushuaia Protocol in its Article 4 established that in the case of a disruption of the democratic order in a state that was part of that Protocol, the other states parties would initiate the relevant consultations between themselves and with the affected state.

Discretion in the interpretation of the procedures is apparent in several cases. For example, in the case of the attempted coup d'état in 1996 and the assassination in 1999 in Paraguay, the Brazilian executive acted as spokesperson for MERCOSUR and announced measures which the block took in respect of this country. In 1996, the Brazilian ambassador in Asunción announced to General Oviedo the measures that Brazil, MERCOSUR and the international community would adopt if the mandate of the elected president, Juan Carlos Wasmosy, was not respected. The fact that the organisation had not yet adopted a democratic clause may explain the evident bilateral nature of the interventions by MERCOSUR in that incident. However, Brazil repeated again this bilateral approach three years later in the wake of the assassination of Vice President Luís María Argaña even though MERCOSUR had already adopted and ratified the Ushuaia Protocol by then. In this case, the Presidency of Fernando Henrique Cardoso acted again as spokesperson for MERCOSUR and warned the government of Raúl Cubas of the consequences of departing from the constitutional order.

In the case of the removal of President Fernando Lugo on 22 June 2012, the activation of the Ushuaia Protocol did not explicitly follow the procedure stipulated in the Protocol either. The Heads of State and Government of MERCOSUR condemned on the same day the removal from office of President Lugo that was executed through an impeachment *(juicio politico*). Two days later, the Heads of State and Government of MERCOSUR (including the associated countries Bolivia and Chile) declared the suspension of Paraguay in a declaration that did not specify the place of the meeting where this decision had been taken (Paz 2012).

Despite the fact that CAN has never implemented its democratic Protocol, it has taken actions regarding political events that have affected its member states. These actions did not follow the procedure laid down in Article 3 of the Protocol. For instance, CAN issued a statement only two weeks after the removal from office of the President of Ecuador, Lucio Gutiérrez. In this case, the Secretary General of CAN visited Ecuador invited by the interim President, Alfredo Palacios, to participate in the setting up of the round-tables for political dialogue and consensus *(mesas de diálogo politico y concertación).* The interim President also invited the Secretary General to participate as an observer in the process of appointing a new Supreme Court in Ecuador. In the case of the removal from office of the Bolivian President Gonzalo Sánchez de Lozada, the Secretary General of CAN took again the initiative and he sent a message of support to the President. In this message, the Secretary General cited the Democratic Protocol of CAN, although the instrument was not officially invoked. In other situations, CAN played a secondary role, delegating the role of mediator to other organisations. This occurred, for example, in the case of the coup d'état against President Hugo Chávez in 2002 when CAN delegated the diplomatic initiative to the OAS. At that moment, CAN had already adopted the Democratic Protocol

although it was not yet ratified. CAN was also rather absent from the mediation between the government of Evo Morales and the opposition during the Pando massacre in 2008. While UNASUR took on a leading role, CAN limited itself to issuing an *ex post* communiqué congratulating President Morales on the national agreement reached. The actions of CAN were also limited to a declaration in the case of the attempted coup d'état against President Correa in 2010.[26]

UNASUR, the most recent of the South American regional organisations, has participated actively in all the political crises that have taken place since its creation in 2008. However, it is important to reiterate that the organisation adopted the Democratic Protocol only in 2010 and national parliaments ratified it in 2014. In other words, UNASUR implemented interventions without the framework of its democratic clause. In the case of the Pando massacre in Bolivia in September 2008, the Pro Tempore President, Michelle Bachelet, convened the other Heads of State and Government to a meeting in Santiago to examine what had occurred in Pando. At that extraordinary meeting the "La Moneda Declaration" introduced UNASUR as an instrument for democracy protection and political coordination. During the attempted coup in Ecuador in September 2010, President Rafael Correa himself acted as the Pro Tempore President of UNASUR. Because of this, the Secretary General of UNASUR – the ex-President Néstor Kirchner – and the President of Argentina – Cristina Fernández de Kirchner –jointly called an extraordinary meeting in Buenos Aires to deal with the situation.

The case of the removal from office of Fernando Lugo is also an example of inter-governmental discretion. Notwithstanding the Democratic Protocol pending ratification, the Heads of State and Government of UNASUR suspended Paraguay from its rights of membership. On the same day as the Chamber of Representatives in Paraguay was voting to remove the President from office, the Heads of State and Government of UNASUR were meeting extraordinarily in Rio de Janeiro, where they happened to be attending the United Nations Conference on Sustainable Development, and they agreed to send an investigative mission to Asunción.

UNASUR was the only international player acting as a mediator between the government of President Nicolás Maduro and sectors of the opposition which they not only challenged the election results of April 2013 but also accused the government of violating the political and civil rights of its militants and leaders. UNASUR implemented actions, including the sending of various missions made up of foreign ministers and the Secretary General, without officially invoking the democratic Protocol. The Council of the Heads of State and Government recognised and supported the government of Nicolás Maduro the day

26 http://www.comunidadandina.org/webcan/Prensa.aspx?id=3314&accion=detalle&cat=NP&title=comunicado-de-prensa-de-la-secretaria-general-de-la-can-sobre-la-situacion-del-ecuado (accessed 1 August 2015).

after the election results, and appointed the first mission to support investigations of the violent acts after the elections (Closa and Palestini 2015).

The South American organisations (basically MERCOSUR and UNASUR) have proved to be more proactive than the OAS (and for these purposes, CAN) in intervening in cases which contain a certain degree of ambiguity. In so doing, MERCOSUR and UNASUR have widened the scope of interventions aimed at protecting democracy. In the case of Bolivia 2008, the justification for acting given by the Heads of State and Government of UNASUR included a new element absent in previous interventions: the risk of secession. The La Moneda Declaration explicitly states that the South American countries will not accept any rupture of the institutional order in Bolivia, or any process compromising its territorial integrity. This set an interesting precedent, as for the first time in the last two decades the region was facing a possible case of territorial secession.

The case of the removal from office of President Lugo is also instructive. The Constitution of Paraguay permits the removal from office of the President of the Republic by a process of impeachment. Therefore, strictly speaking, this event could not fall into the category of a constitutional rupture. The Heads of State and Government of MERCOSUR and UNASUR justify the intervention on the basis of the non-respect of the due process, as apparent in the short time granted to President Lugo to prepare his defence. Without entering into the interpretation as to whether this procedural infringement converts the impeachment into "a breakdown in the institutional order" or not, political actors added a new element to justify the intervention of a regional organisation in the affairs of a member state. The violation of a political right justified their intervention and this would ostensibly broaden the scope of intervention by regional organisations.

3.3.2 Verification and evaluation

It should be noted that neither the Ushuaia Protocol of 1998, nor the CAN Protocol of Commitment to Democracy stipulate the creation of special missions. In the case of MERCOSUR, the Montevideo Protocol (Ushuaia II), approved in December 2011 but still not in force, stipulates in its Article 5 the constitution of committees for support, cooperation and technical assistance in the affected party, and open committees to support the work of round-tables between the political, social and economic actors in the affected member state.

There is only one record of a mission sent by CAN during the removal from office of President Lucio Gutiérrez in April 2005. The mission, however, acted *ex post* when the interim President, Alfredo Palacio invited the Secretary General of CAN to participate in

setting up round-table talks and to act as observer in the process of appointing a new Supreme Court of Justice. This mission was authorised by the CAN Council of Ministers on the following day during a meeting held in Luxemburg.[27]

MERCOSUR has not made use of missions. In the case of the threat of a coup d'état in Paraguay in 1996, it was the Brazilian Embassy which acted, informing the Brazilian president and warning the *de facto* government of the possible sanctions MERCOSUR might consider. The ministers of Argentina, Brazil and Uruguay travelled to Asunción on a mission organised by the Secretary General of the OAS, so it is not quite accurate to attribute this action to MERCOSUR.

UNASUR, on the other hand, has carried out several special missions in its brief history. The Democratic Protocol envisages the forming of missions in a rather loose manner. Its Article 5 stipulates that as well as adopting sanctions (defined in Article 4), the Council of Heads of State and Government or, in its absence, the Council of Ministers of Foreign Affairs shall use its good offices and take diplomatic steps to promote the restoration of democracy in the affected country. It is striking that the missions are formally identified as "simultaneous" to the adoption of sanctions; there does not therefore exist such a thing as an investigative or fact finding mission, whose purpose would be to inform the executive bodies *before* the adoption of any later measure such as sanctions.

In the case of Bolivia and the Pando massacre, UNASUR created two missions. Through the La Moneda Declaration, the Council of Heads of State and Government ordered the creation of a mission with the objective of opening up a process of dialogue between the government and the opposition. The Pro Tempore President of UNASUR, Michelle Bachelet, appointed a special envoy – the former Chilean Foreign Minister Gabriel Valdés – to lead this mission, which worked in coordination with the good offices of the Secretary General of the OAS, former Chilean Minister of the Interior, José Miguel Insulza. Nine days later, during a meeting of the UN General Assembly, the Bolivian President Evo Morales asked the South American Presidents to form a second mission to investigate the events which had occurred on 15 September, led by the Argentinian human rights lawyer Rodolfo Mattarollo, and which thus took on the work of the previous mission. In the case of the removal from office of President Lugo, UNASUR sent a mission to Asunción the day it knew the result of the Senate vote to remove the president. The mission was made up of ministers and representatives from the member states, together with the Secretary General who had recently taken office, Alí Rodríguez, and had the aim of examining the events *in situ.*[28]

27 http://www.comunidadandina.org/webcan/Prensa.aspx?id=1680&accion=detalle&cat=NP&title=acordaran-condiciones-para-veeduria-andina-eneleccion-de-nueva-corte-suprema-de-ecuador (accessed 1 July 2015).

28 Communiqué from UNASUR on the political situation in Paraguay. COMMUNIQUE Asunción. 22 June 2012.

After the violence intensified and the government arrested the opposition leader Leopoldo López in February 2014, the Council of Ministers of External Relations of UNASUR approved Resolution 02/2014 that created a "committee of ministers" made up of the ministers of external relations of Brazil, Colombia and Ecuador with the objective of supporting, advising and enabling dialogue in Venezuela. The Committee visited Caracas three times, and the Secretary General of UNASUR accompanied the Committee on the last visit. He, in fact, played a leading role in the mediation effected by UNASUR.

Some comments on the interaction between the UNASUR missions and the parties involved are in order. In the case of Bolivia, both parties received well the mission to facilitate dialogue. During an extraordinary meeting within the framework of the UN General Assembly, President Evo Morales publicly thanked the UNASUR mission for their actions that made it possible to re-establish dialogue with the opposition and change the tone of the debate:

> "Now that we sit down to talk with the opposition they tell me that they do not want to destabilise democracy or attack my presidential office, something which it was unthinkable they would say before the UNASUR meeting".[29]

The Final Report of the investigative mission led by Mattarollo was delivered to the Pro Tempore President, Michelle Bachelet, on 25 November 2008; it was, however, criticised by large sectors of the opposition and other countries for being incomplete and not sufficiently substantial[30] (see also Comini 2014).

The missions sent by UNASUR to Paraguay and Venezuela were received less positively by the oppositions to the governments. In the case of Paraguay, the UNASUR mission managed to have conversations with opposition leaders and with the Vice President Federico Franco, who eventually assumed as the interim President. However, the mission did not succeed in establishing a dialogue between the parties. Following the decision to suspend Paraguay from its rights of participation, the opposition became hostile to the organisation. The presidential adviser to President Lula, Marco Aurélio García referred to the UNASUR mission in these terms:

> "After many consultations and attempts at mediation, it was not difficult to see that the Paraguayan Senate had in effect become a truly emergency court, insensitive to any deliberations. By means of a summary judgment and on the basis of a

29 http://www.pagina12.com.ar/diario/elpais/1-112209-2008-09-25.html (accessed 1 July 2015).

30 http://www.emol.com/noticias/nacional/2008/11/25/332402/bachelet-recibe-informe-sobre-matanza-en-bolivia.html y http://www.emol.com/noticias/internacional/2009/03/13/348757/senado-boliviano-pide-a-michelle-bachelet-revisar-el-informe-de-unasur-sobre-pando.html (accessed 1 July 2015).

> document of extraordinary factual and legal inconsistency, it was decided to remove a president elected by popular vote, without giving him the time necessary to make a coherent defense of his mandate" (García 2012; authors' translation).

Something similar occurred in the case of Venezuela. On their first two visits to Caracas, the committee of ministers managed to maintain a channel of dialogue with the opposition. However, as a result of the lack of receptivity to the demands of the opposition, regarding the supposedly arbitrary detentions of political leaders, the mission, and for these purposes UNASUR as such, lost its legitimacy among sectors of the opposition. The actions of the Secretary General in direct support of the elected government thus contributed to the breakup in communications between UNASUR and the opposition to President Maduro.

3.3.3 Sanctions

As was analysed in Chapter 2 the democratic clauses of CAN (Article 4) and UNASUR (Article 4) contain sanctions. In the case of MERCOSUR, the Ushuaia Protocol did not define sanctions, but the Montevideo Protocol (Ushuaia II) does so in its Article 6.

In the cases of democratic crises analysed, only the removal from office of President Lugo led MERCOSUR and UNASUR to apply sanctions, specifically suspension of the rights of participation. The Heads of State and Government of MERCOSUR (including the associated countries, Bolivia and Chile) decided to suspend Paraguay on 24 June 2012, three days after the removal from office of President Lugo became official. This decision was formalised at the MERCOSUR Summit in Mendoza on 29 June 2012, on the basis of the Ushuaia Protocol and the Montevideo Protocol. According to Marco Aurélio Garcia, the Brazilian government argued that economic sanctions should not be applied to Paraguay as it was understood that economic sanctions hurt the civilian population more than they hurt governments (Garcia 2012). In fact, along with the "Decision of Suspension", the states parties of MERCOSUR guaranteed the continuity of projects concerning Paraguay in the Structural Convergence Fund (FOCEM) (Mendoza Decision).

It is curious that this document was entitled "Decision", as the only body competent to make decisions under the Ouro Preto Protocol is the Council of the Common Market, which includes the ministers of external relations and the finance ministers. The Montevideo Protocol itself explicitly states in its Article 6 that the decision to suspend a state party must be made in an extended session of the Council of the Common Market. The Extraordinary Summit in Mendoza, which involved the three presidents of

Argentina, Brazil and Uruguay, was not the appropriate body to decide on a suspension. The decision to suspend must, on the contrary, be taken after consultations (Ushuaia Protocol, Art. 4 and Montevideo Protocol, Art. 3), which did not happen in this case, since as was said in the previous section MERCOSUR did not appoint any mission, nor did authorise the Paraguayan delegation to attend the Mendoza meeting to inform the parties.

At the same meeting in Mendoza, the newly appointed Secretary General of UNASUR, Alí Rodríguez, stated that Paraguay was likewise suspended from UNASUR "until the exercise of democracy is re-established", without necessarily envisaging the return of this country to the South American block once the presidential elections of 2013 had been settled. It was proposed that the monitoring of the future electoral process would be responsibility of the Electoral Council of UNASUR, a body approved by the Council of Ministers of External Relations for the external observation of the electoral processes of member countries in order to guarantee democratic transparency (Kersfield 2013).

One month after the suspension was imposed, UNASUR established a high-level group which concluded that the suspension measure would remain in force until "fair" elections took place and "until respect for political freedoms and human rights existed". Salomón Lerner (former Prime Minister of Peru in the government of Ollanta Humala), argued that "it was not the intention of the South American block to return the government of Fernando Lugo that was considered as an internal matter of Paraguay, but to carry forward "political monitoring of all the events given that just eight months before the electoral process there was a breakdown of democracy" (Kersfield 2013: 204, translated by the authors). OAS was, therefore, the only regional organisation that did not suspend Paraguay.

3.4. SICA and CARICOM

We will now examine the actions of the organisations of Central America (SICA) and the Caribbean (CARICOM). It makes sense to group these two organisations together not only because they share a geographical and security area, but also because they both maintain a dialogue of institutional cooperation (Ugell 2000; Berry 2005). In the case of SICA, the Framework Treaty on Democratic Security (FTDS) established a commitment to democracy. The six Central American governments designed this Treaty as a supplementary instrument to the Tegucigalpa Protocol. They signed it on 15 December 1995 in Honduras. The FTDS may be understood as a formalised result of the agreements and process of Esquipulas, which facilitated peace agreements in El Salvador (1992) and Guatemala (1996), as well as in Nicaragua (1989). In the latter case, elections allowed

political alternation in Nicaragua (1990). These cases together led to the integration and pacification of the region. In this way, the FTDS seeks to replace the old doctrine of national security represented by the Central American Defense Council (CONDECA). The objectives of the FTDS are to strengthen Central America as a region of peace, freedom, democracy and development, as well as to design a new model of regional security (see Chapter 2; see also Urgell 2000).

In the case of CARICOM the commitment to democracy is enshrined in the Charter of Civil Society adopted at the Eighth Meeting of the Conference of Heads of Government in February 1997. As was said in Chapter 2, the Charter of Civil Society is not binding in nature, being an example of *soft law*. Its reach goes far beyond the protection of democracy as it includes the protection of civil and political, economic, social and cultural rights (see Charter of Civil Society, Art. 6 and Art. 17).

3.4.1 Activation

As was described in Chapter 2, the legal instruments on which the MDPs of SICA and CARICOM are based suffer from ambiguity and a low level of precision in their procedures. Both the FTDS, in the case of SICA, and the Charter of Civil Society, in the case of CARICOM are rather general normative frameworks whose specific instruments for the protection of democracy are not very operational. This characteristic is evident when we analyse the cases where the two organisations have intervened. In general terms one could say that the interventions of SICA and CARICOM are characterised by a low level of legal bases, thus being defined *ad hoc* depending on each case.

CARICOM's Charter of Civil Society does not provide for a specific activation procedure in the case of a disruption of democracy. However, Article 25 lays down a permanent scrutiny procedure according to which the states must submit periodic reports to the General Secretary with respect to the fulfilment and implementation of the clauses of the Charter. A National Committee receives accusations of violation or non-fulfilment of the clauses of the Charter.

Despite the ambiguity in the procedures to which we have referred, CARICOM played a primary role during the crisis in Haiti which began with the questioning of the parliamentary elections of May 2000 and which continued until the removal of President Jean Bertrand Aristide on 29 February 2004. It should be noted that Haiti was accepted as a member of CARICOM on 2 July 2000, a month after the questioned elections had taken place. As early as August CARICOM issued a declaration urging the OAS to send a mission to look for ways out of the political crisis. From this moment onwards, CARICOM took a clear

position in defence of the elected government of Haiti that contrasted with the reluctant position taken by the OAS and the negative stance taken by both the United States government and the multilateral financial institutions towards the government of Aristide. Indeed, in its declarations, CARICOM urged support for the government of Aristide in running the forthcoming elections and bringing calm to the population, at the same time as it urged the World Bank and the IDB to reactivate financial cooperation with Haiti.[31]

Three days after the forced removal of President Aristide, the Conference of Heads of Government met in an extraordinary session and invoked the Charter of Civil Society. The declaration issued did not recognise the legitimacy of rebelling Haitian forces and expressed a clear concern about the move away from democracy[32], offering asylum to President Aristide in Jamaica and triggering the reaction of the *de facto* Haitian government that froze relations with CARICOM. Similarly, CARICOM increased its pressure on the UN and the OAS to invoke Article 20 of the Inter-American Democratic Charter.

The justification of the position taken by CARICOM may be reconstructed from the official declarations and speeches. In a speech given to the UN Security Council, the President of the Council of External and Community Relations (Hon. Billie Miller, from Barbados), stated that CARICOM had been involved in Haiti prior to the removal from office of Aristide. Involvement had three objectives: to stabilise the political situation through power sharing, to prevent the traditional practise in Haiti of removing elected presidents with the aim of resolving political conflicts, and to help the Haitians to find a peaceful political solution which would preserve the rule of law and ensure constitutional continuity. In the same declaration, the Honourable Lady stressed that for small countries such as those in the Caribbean, respect for democratic principles was essential for their own security.[33] The identity of small states may explain the very proactive and cohesive action undertaken by CARICOM in order to support Aristide and this readiness stands in sharp contrast with the reluctant position of the OAS.

SICA played a relevant role in the case of the "institutional" coup in Nicaragua despite the fact that, as we saw in Chapter 2, the FTDS is rather brief in its reference to MDPs. It is worth remembering that the protection of democracy – as a legal principle – it is scattered across the broad normative framework of "democratic security" which informs the spirit and content of the treaty, whose wide scope is a response to the large number of security challenges facing the Central American region. Thus, for example, Article 8, dealing with the strengthening of democracy, does not establish any "active" mechanism to use in the case of a disruption of a democratic order. It rather enshrines the "passive" obligation

31 http://www.caricom.org/jsp/pressreleases/pres151_02.jsp (accessed 1 August 2015).
32 http://www.caricom.org/jsp/pressreleases/pres22_04.jsp (accessed 1 August 2015).
33 http://www.caricom.org/jsp/pressreleases/pres19_05.jsp (accessed 1 August 2015).

to refrain from lending any support of a political, military, financial or any other nature to individuals, groups, irregular forces or armed gangs which attack the unity and order of the state or advocate the overthrow or destabilisation of the democratically elected government of another party (FTDS, Article 8).

In the case of Nicaragua, President Enrique Bolaños himself contacted the Heads of State and Government of SICA nine days after the General Accountability Office laid charges against him. In an extraordinary meeting, Bolaños explained to the Heads of State and Government his view of the events, blaming the leaders of the opposition – Arnoldo Alemán and Daniel Ortega – for attempting destabilisation. Subsequently, SICA asked the OAS to invoke the Democratic Charter using the argument, expressed by the Pro Tempore President of SICA: "[SICA] has a responsibility to maintain democratic order in the region. […] We believe that Bolaños is an honest and a very responsible person". The President of Guatemala, Oscar Berger added: "because we know that in the political arena there are institutions which find a breeding ground to weaken institutionality". [34] As was seen earlier in the section on the OAS, the hemispheric organisation responded positively to the request from SICA. We should note the allegation by the Sandinista leader and former President Daniel Ortega against SICA: "every president in Central America has to look to their own affairs, because corruption is an issue in Costa Rica, Guatemala, Honduras, El Salvador, everywhere, so with what authority do these presidents give their support to Bolaños?".[35]

The support of SICA for President Bolaños continued after the Central American Court of Justice issued a ruling that stated that the constitutional reforms and other laws approved by the National Assembly of Nicaragua violated public law and the rule of law.[36] The Heads of State and Government of SICA agreed to renew their support for President Bolaños. They accepted the principal legal argument of the Central American Court of Justice and reiterated that it was not possible to alter, even by legislative reform, the principle of the separation, balance and independence of state powers, an essential element in representative democracies and the values underpinning SICA and the Inter-American System. We should note that, unlike the contemporary case of Haiti where the support of CARICOM for President Aristide contrasted with the reluctance of the OAS, in the case of Nicaragua, the OAS and SICA took an identical stance of support for President Bolaños that ended positively with a "national agreement" in October 2005 between the executive and the National Assembly.[37]

34 http://www.laprensa.com.ni/2004/10/17/nacionales/948599-respaldo-regional-a-bolaos, authors' translation; (accessed 1 August 2015).
35 http://www.eluniverso.com/2004/10/19/0001/14/74904F7A7BF446B38CAD8E5D0249AD83.html authors' translation (accessed 1 August 2015).
36 http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-004/05 (accessed 1 August 2015).
37 http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-249/05 (accessed 1 August 2015).

SICA also acted in coordination with the OAS in the case of the coup d'état in Honduras. On 25 June, the same day that Honduras' judiciary initiated a prosecution that included a search warrant and arrest against Manuel Zelaya, official representatives of SICA, the OAS and the Bolivarian Alliance (ALBA) consulted with the authorities in Honduras to prevent an insurrection by the Armed Forces[38] (Vicente 2009). Three days after the removal of Zelaya from office and forced to move to Costa Rica, SICA suspended Honduras from its right of participation.

It is not possible to analyse the justifications given by the actors in SICA for their actions in both Nicaragua and Honduras, against the background of the legal instruments of the organisation because, as we have said, the FTDS does not provide explicit procedures in cases of democratic breakdown. Nevertheless, the absence of these procedures did not prevent SICA from employing sanctions against Honduras, including suspension and economic sanctions. The reasoning of the political actors in SICA was, however, devoid of legal foundation. During the meeting deciding on the imposition of economic sanctions on Honduras, the President of Guatemala, Álvaro Colom, stated that "there should be a reordering of the powers of the state in Honduras", while the President of El Salvador, Mauricio Funes, maintained that "countries shall use diplomatic measures such as withdrawing their Ambassadors from Honduras" and expelling this country from all national and international bodies as well as isolating it from the integration organisations.[39] Even if these opinions may seem appropriate in the face of what was proving to be a flagrant breach of a constitutional mandate, in the absence of a democratic clause and formal procedures, it is difficult to see that they constituted a sufficient legal basis for the imposition of sanctions.

3.4.2 Verification and evaluation

After the forced removal of President Aristide, CARICOM took an active position by forming the Core Group of Prime Ministers, appointing a special envoy and establishing the Task Force to coordinate assistance to the country. By the same token, CARICOM decided not to participate in the Temporary Multinational Force authorised by the UN Security Council.[40]

It is interesting to note that in the Haiti crisis, the OAS paid great attention to CARICOM's claims. All the many declarations and resolutions issued by the OAS mentioned CARICOM; similarly, all the actions of the OAS were taken after consultation with CARICOM. One could argue that CARICOM provided legitimacy to the OAS actions, besides being a more

38 http://elpais.com/diario/2009/06/28/internacional/1246140003_850215.html (accessed 1 August 2015).
39 http://www.elnuevodiario.com.ni/nacionales/51203-sica-congela-cooperacion-bcie-honduras/, authors' translation, (accessed 1 August 2015).
40 http://www.caricom.org/jsp/pressreleases/pres22_04.jsp (accessed 1 August 2015).

flexible organisation to take decision compared with the hemispheric organisation. The later had to harmonise the interests and interpretations of the various American states, including a sceptical United States (see among other documents: Resolution AG/RES. 1831 (XXXI-O/01); Resolution CP/RES. 806 (1303/02); Resolution 861).

As was mentioned before, SICA intervened actively in the cases of Nicaragua and Honduras. However, it is striking that SICA made no use of special missions in neither of these cases. In both cases, SICA implicitly delegated the conformation of missions to the OAS, which might be due to the lack of formal procedure regarding missions in the FTDS. The President of Costa Rica, Óscar Arias, offered to mediate in the conflict in Honduras in what could be called a diplomatic mission with the objective of bridging the gap between the position of President Zelaya and that of the *de facto* government. This mission, which gave rise to the so-called the San José Agreement[41], was a unique initiative by a president, and thus cannot be considered an official SICA mission. The same could be said of the participation of Costa Rica's Minister Bruno Stagno in a special mission of the OAS that gave rise to the Guaymuras Agreement that put an end to the political crisis in Honduras.[42]

3.4.3 Sanctions

Ambiguity in the formal instruments and improvisation are also features of the implementation of sanctions by CARICOM and SICA. While CARICOM did not formally suspend Haiti when Aristide was unconstitutionally removed, the Caribbean organisation did impose a *de facto* suspension by not inviting the interim government to any of the official meetings of the organisation. In the speech to the Security Council mentioned earlier, the Honorable Dame Billie Miller (Barbados) justified the *de facto* suspension by arguing that the sustained violation of the principles contained in the Charter of Civil Society made it impossible for the Community to allow representatives from Haiti to attend meetings of its Council:

> "The interim administration must be held to internationally recognized standards with regard to respect for fundamental civil and political rights, due process, and the rule of law".[43]

David Berry (2005) has criticised the actions by CARICOM arguing that all the formal decisions concerning the participation of Haiti were taken during meetings when the Haitian representatives were absent, which would be against voting procedures laid

41 http://www.nacion.com/nacional/Arias-iniciara-mediacion-Honduras-propia_0_1060094076.html (accessed 1 August 2015).
42 http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-326/09 (accessed 1 August 2015).
43 http://www.caricom.org/jsp/pressreleases/pres19_05.jsp (accessed 1 August 2015).

down in the Revised Treaty of Chaguaramas. This treaty does not indeed stipulate that a member state must be excluded for democratic regression (see Chapter 2). According to the CARICOM authorities, with the removal of Aristide, Haiti violated the principles of the Charter of Civil Society, an additional instrument to the Chaguaramas Treaty; however Berry argues that the Charter was not binding and, therefore, did not constitute a legitimate basis for the exclusion.

CARICOM readmitted Haiti on 13 June 2006, and the organisation immediately drew up an Action Plan to cooperate with the country including, among other areas, the strengthening democracy and institutional construction, special access to markets, promotion of investment, and cooperation in energy and educational exchange programmes.[44]

As far as SICA is concerned, it suspended Honduras from its rights of participation on 29 June, five days after President Manuel Zelaya's removal from office. One month later in a joint meeting of SICA, the Rio Group, and ALBA, the leaders of SICA agreed to impose economic sanctions on Honduras by means of the suspension of loans and payments from the Central American Bank for Economic Integration (CABEI). SICA also declared that it would only accept the presence of Honduran representatives accredited by President Zelaya and asked the Security Council to issue an order of condemnation and apply the "appropriate enforcement measures".[45] It is possible to argue that the SICA sanctions echo the sanctions that the OAS, the EU and the multilateral financial institutions were imposing at the same time. However, the political and economic sanctions imposed by SICA lacked any legal basis, as neither the Treaty of Tegucigalpa, nor the FTDS envisaged the suspension of a state party or the application of economic sanctions.

SICA readmitted Honduras as a member of on 20 July 2010, when all the Central American Presidents, with the exception of Daniel Ortega of Nicaragua, recognised President Porfirio Lobo as the legitimate president of Honduras.[46]

3.5 The European Union, the Council of Europe and the OSCE

In this section, we will turn to the analysis of the cases of implementation of MDPs by the European organisations. As described in Chapter 1, the end of the Cold War and the subsequent process of transition to democracy by the post-Socialist countries led to the formalisation of the democratic principles and norms, the respect for human rights and

44 Haiti Support Group. http://reliefweb.int/report/haiti/haitis-membership-caricom (accessed 1 August 2015).
45 http://www.sica.int/busqueda/Reuniones.aspx?IDItem=37551&IDCat=21&IdEnt=1&Idm=1&IdmStyle=1 and http://www.elnuevodiario.com.ni/nacionales/51203-sica-congela-cooperacion-bcie-honduras/ (accessed 1 August 2015).
46 http://www.infolatam.com/2010/06/29/sica-lobo-afirma-que-la-reinsercion-de-honduras-es-un-anhelo-del-pueblo/ (accessed 1 August 2015).

fundamental liberties within the framework of the "The New Europe". In the case of the EU, the democratic principle became one of the criteria that the Commission applied when evaluating candidates for the accession process. The only post-Cold War case, and therefore a landmark case, of a candidate country being rejected on the basis of non-respect for human rights, democracy and freedom of the press, was Slovakia under the government of Vladimir Meciar. This was despite the fact that the country fulfilled, according to the European Commission, the economic criteria of a "functioning market economy".[47] That being said, the EU has not implemented Article 7 of the TEU to suspend an already member state from its rights of participation.

The Council of Europe, founded in 1949 and made up of 47 member states, including the 28 current members of the EU, has the fundamental purpose to promote common European principles and facilitate the economic and social progress of its member states. As we saw in Chapter 2, among the common principles that the CoE seeks to promote are democratic pluralism, the rule of law, and the protection of human rights, all of which are, moreover, considered conditions of membership. In its institutional evolution, the CoE may be conceptualised as an international system to protect human rights, including institutions such as the European Convention on Human Rights and the European Court of Human Rights. In this sense, its role in the protection of democracy must be understood within the broader framework of the protection of fundamental rights and freedoms. Today, the CoE includes a wide range of programmes related to the promotion of democracy in a broad sense going beyond what this study defines as MDPs.[48]

The third organisation we analyse in this section is the Organisation for Security and Co-operation in Europe (OSCE) that brings together 57 member states, including - in addition to the members of the CoE - countries of Central Asia and Eurasia. In contrast to the CoE, the United States and Canada are also member states of this organisation. The process of transforming the Conference on Security and Co-operation in Europe (CSCE) into the OSCE since 1993 happened in the context of the end of the Cold War. This transformation implied an institutional change from a political forum into a regional organisation in its own right, as established by the Helsinki Declaration of July 1992 and the Prague Document of January 1992. This change entailed also a qualification of the principle of non-intervention and of the procedure for decision-making based on consensus. At the meeting in Copenhagen in June 1990, the member states had already declared that "pluralist democracies and the rule of law are essential to ensure respect for human rights and fundamental freedoms […] the development of societies based on

47 Commission of the European Communities (1997) Agenda 2000 – Summary and conclusions of the opinions of Commission concerning the Applications for Membership to the European Union presented by the candidate Countries, Brussels, DOC/97/8.

48 See Council of Europe site: http://www.coe.int/en/ (accessed 1 August 2015).

pluralist democracies and the rule of law are prerequisites for progress in creating lasting levels of peace, security, justice and cooperation which they are seeking to establish in Europe" (Kritz 1993: 19; Sneek 1994).

During the meetings of the Council of Ministers in Berlin and then in Moscow in June and October 1991, the CSCE adopted exceptions to the rule of consensus in the case of emergency situations relating to human rights, democracy and the rule of law.[49] The growing number of member states (51 at that date) and the attempted coup against Prime Minister Mikhail Gorbachov, as well as the increasing deterioration in the situation in Yugoslavia triggered the debates on the revision of the rule of consensus and the incorporation of measures when states did not meet these basic principles. Yugoslavia, in fact, constituted the principal case of intervention by the CSCE-OSCE (see below).

3.5.1 Activation

Until 2015, the EU has intervened in three events.[50] The first occurred in Austria when the Austrian Freedom Party (*Freiheitliche Partei Österreichs*, FPÖ) became part of a coalition government based on an extreme right political platform in 1999. The two other events occurred later as reactions against the violation of constitutional norms in Romania on the part of the government of Prime Minister Victor Ponta and against the constitutional reforms carried out by the President of Hungary, Viktor Orban, that were considered as unconstitutional. An analysis of these three incidents reveals some common tendencies. In the first place, in none of the three cases the EU activated its formal MDPs, which nevertheless did not prevent the political actors from adopting measures of conditionality, in the case of Romania, and even punitive measures in the case of Austria. In all three events, the EU faced difficulties in implementing coordinated and consensual action in respect of the cases in question. In the case of Austria, governments favoured sanctions whilst the Commission stood up against them. In the case of Hungary and to a lesser extent in that of Romania, tension was generated within the European Parliament as well as in the domestic political arena, where EU's criticism was used by the Hungarian government to boost its own internal legitimacy vis-á-vis its electorate.

Regarding the sanctions imposed on Austria, it is important to observe their nature *sui generis* since, strictly speaking, the EU – as a Union did not impose the sanctions - its 14 member states implemented them through bilateral measures. The adoption of these

49 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE.

50 On 3 January 2016, the EU Commission expressed its doubts with respect to the compliance with the principle of rule of law in the constitutional reforms adopted by the Polish government. This case was included into the analysis given its recent occurrence, but even so, this case follows the tendencies observed in the cases of Hungary and Romania.

measures was, however, announced by the President of the EU Council and coordinated by the fourteen governments, a coalition which came to be known as EU-14, on 31 January 2000. As a consequence, the EU appeared to be the agent of the sanctions in the eyes of public opinion.[51]

The sanctions were not, however, implemented under the umbrella of a European supranational norm (such as Article 7 of the TEU), as they did not follow a decision of the Council, and the Commission was not consulted but only "informed" after the governments, under the coordination of France and Belgium, had already agreed on the measures. The principal argument provided by European governments for the sanctions appealed to the shared values of the Union. Thus, for example, the Portuguese Prime Minister, António Guterres, in his role as President of the Council, justified the measures using the argument that the EU was "a Union based on a set of values and rules and on a common civilisation", describing the FPÖ as "a party which does not abide by the essential values of the European family".[52] Other political actors, such as the British Foreign Secretary, the German Chancellor and the Italian Prime Minister backed this appeal to values. They argued that the political platform of Jörg Haider and the FPÖ violated the values of the European Union (Merlingen et al. 2001: 65).

> "[O]ur joint interpretation is that we must continue to defend the essential values that underpin European construction and which are also the reference framework for the way the European Union behaves in its external relations […]. Respect of human rights and the main democratic principles, the fight against racism and xenophobia do not only concern one country, if this country belongs to a community whose members share a project of civilisation and hope to create a common area of freedom, justice and security." (Francisco Seixas de Costa, President of the Council).

The political sanctions adopted against Austria were therefore based on a normative consensus around the violation of the principles and norms on which the union is based. However, in procedural terms these were adopted five days before the coalition formed by Austrian People's Party (*Österreichische Volkspartei*, ÖVP) and FPÖ took over the government, which occurred on 4 February 2000. In other words, the sanctions were announced before the supposed violation came into effect. This may be the reason why the 14 governments adopted the sanctions without a formal invocation of the MDPs of the EU. By acting in this way, the sanctions were imposed without any legal basis and without the Council having previously determined "the existence of a serious and persistent breach", as stipulated in Article 7 of TEU (Calingaert 2000; Merlingen et al. 2002: 66).

51 Statement by the Portuguese President of the EU on behalf of XIV member States.
52 Merlingen et al. 2002: 36.

The absence of any legal basis explains the position adopted by the President of the Commission, Romano Prodi, who maintained that, while sharing the concerns underlying the decision of the EU-14 and carefully monitoring the situation, the Commission would maintain normal relations with Austria.[53] Prodi went on to say in his declaration that the duty of a strong supranational institution is not to isolate one of its members, but to keep it firmly integrated. The Commission was later to reiterate the criticism of what it perceived as a new tendency in the member states to act outside of the framework of the institutions of the Union in an obvious allusion to the intergovernmental and discretionary nature of the measures adopted by the EU-14.

In an attempt to explain the behaviour of the EU-14 countries, Merlingen, Mudde and Sedelmeier (2001) argued that the coalition was coordinated by governments such as France and Belgium, who were facing the threat of the rise of extreme right parties similar to the FPÖ of Haider in their own domestic arena. Indeed, Jacques Chirac and Guy Verhofstadt acted as the agenda setters of the EU-14 appealing, as we have seen, to normative arguments concerning the common values of the Union.[54] As we will see later, when expressing an opinion on the sanctions, governments who were not facing the same pressure in their domestic political arenas, such as Denmark and even Germany, soon began to act to deactivate the measures against Austria.

The community institutions of the EU and the CoE also acted in the case of Hungary and the supposed illiberal turn taken by the Fidesz government in successive constitutional reforms facilitated by a parliamentary majority. During the first year of its second mandate - 2010 - Viktor Orbán carried out twelve constitutional reforms and then adopted a new constitution in 2011 which reformed the civil and criminal codes, the constitutional court, the institutions of national security, the media, the electoral code, and the laws protecting personal data, among other principal regulations (Scheppele 2013). European political actors perceived these reforms as at odds with the principle of respect of the rule of law as they broke with the balance and independence of the powers of the state and internal controls; however, neither in this case EU actors invoked the activation of Article 7 of the TEU.

In 2011, after Hungary – at that time holding the presidency of the Council – had approved a new media law, the European Parliament adopted a resolution calling for the Hungarian government to revise the law. Months later, the European Parliament issued a second resolution, passed by a low margin of votes, this time criticising the new Constitution of Hungary and calling upon the Commission to monitor the situation. This resolution evoked a strong reaction of the Hungarian government, which alleged that the democratic shortcomings of the institutions of the Union should prevent them from interfering in the domestic affairs of a nation state whose authorities has been democratically elected.

53 http://www.repubblica.it/online/mondo/haider/governo/governo.html (accessed 1 July 2015).
54 http://elpais.com/diario/2000/03/24/internacional/953852403_850215.html and https://www.wsws.org/en/articles/2000/02/haid-f22.html (accessed 1 August 2015).

The EU adopted a similar position on a series of extraordinary regulations adopted by the Romanian parliament with the support of Prime Minister Victor Ponta aimed at challenging and removing from office President Traian Băsescu in July 2012. As in the Hungarian case, both the Commission and the Parliament reacted immediately. The President of the European Parliament, Martin Schulz, warned the Romanian government of the dangers of using emergency measures to sidestep constitutional norms. As in the cases of Hungary and Austria, the EU did not invoke Article 7 as a legal basis for the actions taken against the government of Ponta (Sedelmeier 2014).

Despite a shared assessment of the illiberal nature of the measures adopted by the governments of Hungary and Romania, the EU institutions faced difficulties when it came to implementing coordinated action. In the case of Hungary in particular, the centre-right block of the European Parliament (European People's Party) backed the government of Fidesz by hindering subsequent actions. The European Commission sent letters on behalf of its President that the Hungarian government used in its domestic politics, and "framed" by Orbán as a conflict between his legitimate government and the illegitimate bureaucracies of Brussels. In 2012, the European Commission initiated three infringement proceedings against Hungary in the areas of the independence of the judiciary, the independence of the Central Bank and the independence of the Data Protection Authority that did not however prevent the Hungarian government from adopting further constitutional modifications later.[55] The inability of the European institutions to act in a coherent manner can be attributed not only to coordination problems both at intergovernmental level and at the level of the institutions of the union. The character of the actions themselves raised difficulties for action. Strictly speaking, the reforms adopted by the government of Viktor Orbán, considered individually, were not anti-constitutional: it was as a whole and in their mutual interaction that these reforms gave the government of Orban the appearance of a regime that called into question the democratic principles and values of the EU (for this argument see Scheppele 2013).

The Polish government of Peace and Justice (PiS) elected in October 2015 has passed several laws that have been perceived as a violation of the rule of law. On the one hand, parliament annulled the appointment of judges of the Constitutional Court by the previous parliament and proceeded to name five alternative judges. The Constitutional Court found unconstitutional part of the measure but the government refused to publish the judgment, thus depriving the ruling of validity. The new parliament also approved an express reform of the Constitutional Court that forces it to resolve the issues in order of arrival and not following the classification assigned to them by the TC itself. The same law granted the President of the Republic the ability to appoint the President and Vice President of the Constitutional Court. The Venice Commission has opined that this reform

55 European Commission 'Court of Justice rules Hungarian forced early retirement of judges incompatible with EU law', MEMO/12/832, Brussels, 6 November 2012.

is unconstitutional. In addition, the government has also passed legislation on the media of public ownership, on the reform of the National Judicial Council (KRS) and the Civil Service that could affect the rule of law.

Facing those events, the European Commission launched a dialogue with the Polish authorities on two issues: reform of the constitutional court and the public broadcasting service, indicating in one case the need to adapt to the guidelines of the Venice Commission and in the other case to Community law. However, the dialogue did not yield the expected results and found a defiant stance from the Polish authorities who questioned the legal basis of the Commission to act. On June 1 the Commission announced the development of an Opinion within the framework of the rule of law (which has not been made public).

The intervention of the CSCE-OSCE in Yugoslavia is also of relevance, because in this case the regional organisation did formally activate its MDPs. The Prague Document[56] specified the activation of the measures in the case of democratic disruption. This Document establishes that the Council of Ministers of External Relations or the Committee of Senior Officials (both executive bodies at the highest level of the organisation) may take action to protect the ability of the CSCE-OSCE to safeguard human rights, democracy and the rule of law in cases of clear, gross and uncorrected violations of the relevant principles of the CSCE (paragraph 16).

The CSCE invoked this paragraph to proceed with the suspension of Yugoslavia. During the Second Emergency Meeting of the Council in Helsinki in May 1992, the CSCE declared:

> "The pattern of clear, gross and uncorrected violations of CSCE commitments by the authorities in Belgrade and by the JNA [National Yugoslav Army] is now unmistakably established. Those leaders have driven themselves into isolation. They bear the prime responsibility for the escalation of bloodshed and destruction" (Declaration on Bosnia and Herzegovina, see Bloed 1993: 938).

The Council stated in the same declaration that it would examine the report issued by the Peace Conference of the European Community to decide whether or not to extend the exclusion decision. We should stress that for the purposes of this study, the actions of the CSCE-OSCE fall less within the framework of protection of the democratic order and more within that of protecting human rights. Indeed, an appendix to the declaration expressed the justification of the decision taken. In it, the organisation stressed the continuing destruction and human suffering resulting from the conflict and aggravated by the continuous obstruction of the delivery of humanitarian assistance and the violation

56 Prague Document on Further Development of CSCE Institutions and Structures. See Duxbury (2011: 212).

of the fundamental human rights of the ethnic minorities, including Albanians in Kosovo (Declaration on Bosnia and Herzegovina, see Bloed 1993: 942). Moreover, the declaration was issued after the death of a member of the mission sent by the then European Community.

3.5.2 Verification and evaluation

In the Declaration on Bosnia and Herzegovina, the CSCE did not establish a special mission, but urged all parties to cooperate with the mission organised by the UN Secretary General, as well as with the Peace Conference organised by the European Community (EC) (Bloed 1993). Subsequently, the CSCE organized an "exploratory" mission to prepare recommendations on the role that the future CSCE could play in promoting peace, avoiding violence, and restoring respect for human rights and fundamental freedoms in Kosovo, Vojvodina, and Sandzak. This exploratory mission concluded with the delivery of a report with proposals to implement a war crimes tribunal that the UN accepted. In February 1993, the Committee of Senior Officials named a coordinator, based in Brussels, to monitor the joint missions of the EC and the CSCE.

In 1995, the OSCE was mandated to lead a mission to Bosnia headed by the U.S. Ambassador Robert Frowick with the purpose of implementing a peace agreement. The number of participants (one hundred members) and the budget of 25 million dollars gives an idea importance of the mission. This budget is only slightly inferior than the total budget of the organisation. The mission objectives included the development of an electoral mission charged with implementing electoral rules, regulations concerning voters, candidates and political parties, monitoring the vote counting, and publishing and certifying the results. At the same time, the OSCE created the High Commissioner on National Minorities as an instrument to prevent conflicts between minorities after the dissolution of the Socialist Republic of Yugoslavia (Sica 1996; Packer 1999).

In the case of the political sanctions imposed on Austria, the EU-14 group, through the European Court of Human Rights, appointed a committee of three political and academic experts in June 2000. The objective of this committee of three "wise persons" was to prepare a report on the evolution of the commitments by the Austrian government to the "common values" of Europe, including the rights of minorities, refugees and immigrants. Over two months the three experts entered into dialogue with political groups and civil society and issued a report that constituted the basis for the withdrawal of sanctions. Amongst its conclusions, the report pointed out that, ironically, Austria was the only European country that granted constitutional status to the European Convention on Human Rights. Likewise, the report stated that Austria was one of the countries that did

most to protect the rights of minorities, rights that are constitutional obligations in the Austrian national legal system. Finally, despite recognising that the FPÖ was described as a "right wing party with extremist expressions" [57], the committee of experts suggested that sanctions should be lifted (see also Duxbury 2000).

The case of Romania deserves special mention in this section on verification and evaluation. In fact, the EU – through the Commission – implemented in Romania as well as in Bulgaria a "cooperation and verification mechanism" (CVM) to monitor progress in the areas of judicial reform, corruption and organized crime. The EU adopted the CVMs in 2007 as part of the accession process of both countries. As part of the CVM, the Romanian government committed to submitting annual reports on the state of progress in meeting a series of goals, as well as to authorising and supporting the work on the ground of missions of experts from the Commission itself (Commission 2006). The CVM report served as a support for the eleven measures the Commission requested from the government of Victor Ponta after the adoption of the emergency measures considered by the EU institutions to be at odds with the constitutional order. As we will see in the following section, the action of the CVM, along with the pressure from the EU, largely explain the cancelling of the exceptional measures and, ultimately, the failure of the recall referendum against President Băsescu.

3.5.3 Sanctions

The European organisations imposed sanctions in the cases of Yugoslavia and Austria. Although these crises are completely different, a common feature to both cases is the doubt casted over the effectiveness of the sanctions which ultimately brings the debate back to the question of the real benefits of suspending or excluding a member state (see Magliveras 1999; Duxbury 2011). In the case of Yugoslavia, the suspension seemed inevitable in the light of the accusations against the government; at the same time, it posed difficulties in maintaining a communication channel between the CSCE-OSCE and that country. In the case of Austria, the isolation of the government resulting from the diplomatic measures caused resentment in Austrian public opinion that unexpectedly favoured the position of the FPÖ.

As was said earlier, the CSCE decided in the Declaration on Bosnia and Herzegovina (12 May 1992) to exclude the Yugoslav delegation from meetings of the organisation on the basis of Paragraph 16 of the Prague Document. The Declaration included a statement of Yugoslavia according to which "the Yugoslav delegation cannot give its consent to

57 Report by Martti Ahtisaari, Jochen Frowein, and Marcelino Oreja (2000): para 106. The Report was prepared by Martti Ahtisaari, former President of Finland; Jochen Frowein, Director of the Max Planck Institute for Comparative and International Private Law; and Marcelino Oreja, former Foreign Minister of Spain.

the text of the Declaration on Bosnia-Herzegovina, but cannot prevent its adoption due to the application of paragraph 16 of the Prague Document on Further Development of CSCE Institutions and Structures" (see Declaration on Bosnia and Herzegovina, in Bloed 1993: 940). It is interesting to observe that the CSCE Council declared that the decision to exclude Yugoslavia was not directed at the peoples of Serbia and Montenegro, but at their government (see Bloed 1993: 951). The suspension of Yugoslavia was lifted in November 2000, when the OSCE admitted the Federal Republic of Yugoslavia as a new member. The admission – or readmission – was carried out after the signing of the Kumanovo Peace Treaty that officially ended the conflict in Kosovo, and after the presidential elections that ended in the resignation of Slobodan Milosevic and the coming to power of Vojislav Kostunica, the last president of the now extinct Yugoslavia. The bases for the suspension and then readmission of Yugoslavia by the CSCE-OSCE are, in fact, different: while the suspension was carried out on the basis of the existence of an armed conflict and violations of human rights, the readmission was done on the basis of a demonstration of the commitment to democracy in the country (Duxbury 2011).

The sanctions established by the EU-14 group and communicated by the President of the European Council in January 2000 against Austria included various political and diplomatic measures. In the first place, the 14 countries suspended bilateral relations with any Austrian body that was a member of the FPÖ. Secondly, the countries did not support the candidacy of Austrians applying for posts in international organisations. Thirdly, EU capitals received Austrian ambassadors only at a technical level. As was said earlier, it is inaccurate to say that the political sanctions imposed on the Austrian government were sanctions implemented *by the* EU. They were imposed by a coalition of European countries that, however, used the values of the union as a normative justification of the sanctions, and used the Council as a platform to announce and suspend sanctions. Once the sanctions had been communicated, the Austrian government officially declared that the EU actions violated fundamental legal principles and the spirit of the European treaties, including recognition of a democratic government governed by the rule of law. The sanctions were announced four days before the ÖVP-FPÖ coalition came to power, which, as has been pointed out, means that the sanctions were imposed *a priori*. However, the TEU framework did not envisage a "preventive suspension" and the sanctions were lifted unconditionally on 12 September 2000 after the issuing of a report of the "committee of wise persons" verifying that Austria did not have any record of human rights violations. It is worth briefly reviewing the role of the committee. The European Court of Human Rights appointed the committee at the request of the EU-14. This happened within the context of the growing perception, on the part of some European governments, that the punitive measures were turning out to be counter-productive, as they fuelled anti-European feeling in the affected country. The Nordic countries in particular argued that, with the use of sanctions, the regional powers were interfering in the domestic affairs of

small countries. In this sense, the consensual decision of the EU-14 group to support the formation of a committee of experts may be directly linked to the political actions led by the Danish Prime Minister Nyrup Rasmussen (Merlinger et al. 2001).

The Communiqué on the lifting of sanctions reiterated the concerns of the EU regarding the ideological nature of the FPÖ, and expressed the desire of the EU to continue reflecting on how to monitor, evaluate and act in similar situations. The sanctions were thus framed as "constructive measures" rather than as "punitive measures". We should point out that the report of the "committee of wise persons" offered suggestions for improving the EU mechanisms when faced with democratic ruptures or violations of human rights by incorporating prevention and monitoring procedures mentioned in Article 7 of the TEU. At the Nice Summit in December 2000, three months after the sanctions were lifted, the Council decided that in future the EU could intervene if there was a *danger* of a serious violation of the principles of the Treaty (Falkner 2001).

Although it is not possible to talk about the imposition of sanctions in Rumania, there was strong pressure from the EU on the Ponta government to annul the exceptional measures designed to revoke the mandate of President Băsescu. The pressure from the EU institutions was not the only form of pressure, as the United States government also made public its criticism of the Ponta government's actions. However, explicit conditionality accompanied EU pressure: if Romania did not backtrack on the exceptional measures and, in particular, on the modification of the quorum required to hold a recall referendum, the country would see its membership of the Schengen area subject to an indefinite delay. It is interesting to note that in an official Communiqué, the Commission criticised the use by member states of the reports of the CVM as a criterion to decide on the admission of Romania to the Schengen Area, arguing that such membership was subject to its own mechanisms and criteria.[58] Nevertheless, according to analysts it was precisely this link between the CVM and conditionality together with the domestic support for the government of Victor Ponta, which explained the decision of this government to annul the exceptional measures and reinstate the mandate of the Constitutional Court. The lack of such "conditionality" on the one hand, and the popularity of Viktor Orbán, on the other, explains why the measures adopted by the Commission were strikingly less effective in the case of Hungary (Iusmen 2014).

58 Communiqué of the Commission on the Cooperation and Verification Mechanism. Plenary session of the European Parliament, 13 March 2013.

3.6. Conclusions

This chapter concludes by highlighting the patterns and general tendencies identified in the previous sections. The cases analysed constitute political events of highly varied nature (political violence, coups d'état, removals from office, etc.), each one of which has its own specific qualities, which limits any attempt to generalise. Even considering this, it is possible to identify a series of common elements of interest in order to consider the challenges faced by the regional organisations when they implement mechanisms for democratic protection. We will group these general elements according to the dimensions used in the analysis.

Activation

The analysis of the activation of MDPs shows that organisations tend either to neglect the decision-making procedures enshrined in their normative instruments or to act *without* invoking such instruments where they exist. In fact, in only 8 of the 21 cases analysed in Latin America, and 1 of the 4 cases analysed in Europe, did the regional organisations invoke the clauses.

In both regions, discretion seems to take precedence over any obligation to observe the formal procedures, with the justification that the severity of a given crisis calls for swift and assertive action on the part of the regional organisations. The invocation of "common values" is often used as a justification for establishing missions and even drawing up sanctions while sidestepping or disregarding the procedures formalised in clauses and protocols.

The affected state usually activates the actions by the regional organisation and goes on to play an important role during the decision-making process in most Latin American cases. As demonstrated in Chapter 2, this is not necessarily contrary to what is stipulated in the various democratic clauses of the organisations of the region and may be justified on the basis of the principle of non-interference that requires that the affected state "authorises" the measures taken by the organisation. Nevertheless, the analysis carried out provides reasons to think that the governments of the affected states may make use of the regional organisations to reinforce their own position in the internal conflict. This of course does not apply to cases of a flagrant disruption of a constitutional order (coups d'état), but it does so in those cases where conflicts between the different branches of the state or between the government and the opposition exist.

In the four cases analysed in Europe the tendency is precisely the opposite: the other member states have activated measures against the affected state. The risk is also the opposite of that in Latin America, namely the possibility of an imbalance against the affected

state, as was alleged in the case of Austria. Nevertheless, the balances and controls within the EU and the CoE seem to have worked effectively, since the pressure of small states, as well as the positions adopted by the European Commission and the European Court of Human Rights, facilitated the constructive search of solutions to the impasse.

To sum up, both the Latin American and the European organisations show a common tendency towards discretion over adherence to the legal bases and procedures; however, whereas in Latin America discretion tends to lean towards favouring the affected government, in Europe discretion goes in the opposite direction. This divergence may be explained by an underlying difference in the types of political crisis that informed MDP design in either regional context. In Latin America, MDPs were drawn up mainly with possible military coups d'état in mind - a very real threat to the region, particularly during the Cold War period. In Europe, on the other hand, the main point of reference for the architects of MDPs seems to have been "breaches to the rule of law" committed by incumbents.

In no Latin American case, a member state has activated MDPs to take action against another member state, even if the OAS Democratic Charter does provide for such a procedure. Once again, the principle of non-interference appears to inhibit this procedure that, on the contrary, seems to be the norm in the European context, where it is in fact the Commission which adopts a more moderate stance towards member states, as the cases of Austria and Romania indicate.

The activation of MDPs by civil society organisations is even more unusual in the Latin American context. No legal instrument – with the partial exception of CARICOM's Charter of Civil Society – allows for this procedure, and in none of the cases analysed have regional organisations responded to a request stemming from the citizens. And while CARICOM Charter allows for requests from civil society, its soft-law nature limits its implementation (see Chapter 2). Nevertheless, it is a current subject of debate in the regional organisations with particular relevance in the discussion about the scope of MDPs. Insofar as regional organisations are expanding beyond their traditional core concerns with coups (as the evidence seems to suggest), considerations regarding citizens and their political rights are coming to the fore. Neglecting the role of citizens and civil society in MDPs and their activation would imply that only governments could be the "victims" of democratic disruptions, - which in turn is suggestive of a very shallow definition of formal democracy, and one which several Latin American governments have strongly criticised (see Chapter 1).

The General Assembly of the OAS debated the option of including citizens in the activation of MDPs following an US government initiative. The US government proposed to create a permanent monitoring body that could hear accusations from trades unions, business organisations and other civil society groups, possibly leading to the invocation of the

Democratic Charter. The proposal was widely rejected (Schnably 2005). It is a sensitive subject but one which it is necessary to raise. Civil society groups and organisations may be behind a threatened democratic breach against an elected government, as happened in the failed coup against President Chávez in 2002. On the other hand, civil society can also be the victim of unconstitutional actions on the part of elected governments. To neglect either of these two extremes is implicitly to circumscribe the purpose and scope of MDPs.

Verification and evaluation

Discretion also predominates in the conformation of the missions and their purposes. Both in Latin America and in Europe missions tend to be determined – in their composition, purpose and scope – *ad hoc,* depending on the situation at hand. The OAS is, to a certain extent, an exception, abiding more strictly by its formal rules and delegating in all cases a salient role to the General Secretariat. The South American regional organisations – particularly MERCOSUR and UNASUR – tend to favour an intergovernmental design for their missions, prioritising the role of ambassadors and foreign ministers. Nevertheless, in the most recent case of political crisis in Venezuela, a more prominent role was awarded to the Secretary General of UNASUR, while the Council of Foreign Ministers was ascribed a secondary role.

The cases analysed show that cooperation through inter-organisational missions is a common practice. CARICOM and SICA have a record of cooperation with OAS missions. Cooperation between MERCOSUR, UNASUR and the OAS seems interrupted ever since the suspension of Paraguay in 2012. The attempt by the Secretary General of the hemispheric organisation to form an inter-organisational mission was eventually dismissed and the South American organisations took the lead in this case. In Europe, in turn, the then European Community worked very closely with the OSCE during the intervention in Yugoslavia.

The only mission that incorporated actors from civil society was the so-called “committee of wise persons” which acted in the conflict with Austria. This was once again an *ad hoc* mission constituted at the request of the Danish government and accepted by the EU-14 group and by the Commission. Its purpose was to supply impartial arguments to justify the decision to suspend sanctions against this Central European country.

This brings us to a final point of interest: in both regional contexts, missions are highly ambiguous when it comes to drawing the line between objectives of scrutiny and diplomatic mediation. In practise, it is difficult to distinguish between fact-finding missions and mediation missions. In most cases, missions are hybrid in nature, considerably muddying the waters between the two objectives: they provide ground-level information to the respective regional organisation and, at the same time, they mediate in the internal conflicts of the affected state. In some cases, the fact-finding

missions act *a posteriori* to the adoption of measures and sanctions, and therefore do not fully accomplish their primary objective of scrutinizing the facts. This is, rather than uncovering information *ex ante* - as established in the clauses and protocols - the fact-finding missions often investigate the facts *ex post*. Examples of this can be found in the case of the UNASUR intervention in Bolivia in 2008, and the "committee of wise persons" in the case of Austria in 2000.

More careful scrutiny would contribute to more thoughtful and informed actions and measures on the part of the organisations. However, the opposing argument is, of course, that thorough scrutiny delays such actions, and contributes to the organisations' irrelevance - a criticism often levelled at organisations such as the OAS. The solution to this dilemma might lie in converting this scrutiny function into a preventive and permanent action; regional organisations would thereby have at their disposal the necessary information before the outbreak of a political crisis. The CVM implemented by the European Commission in Romania could be a model for such a permanent scrutiny instrument. However, the *ad hoc* character of the CVM, as well as its restrictive and selective implementation (limited to Bulgaria and Romania), raises the issue of equality among states. Why has the EU applied an evaluation mechanism in the case of Bulgaria, but not so in the case of Hungary, or in the case of Romania, but not so in the case of Italy? Answers are far from evident and may stir up political controversy (see Chapter 4).

Sanctions

Sanctions are the most extreme measures organisations can take in the case of persistent breaches to the democratic order. This explains why not all the cases analysed in this chapter applied sanctions. However, we again find a low level of adherence to the formal procedures in the cases in which organisations adopted them. The OAS activated political and economic sanctions against Haiti in 1991, although its judicial instruments did not allow for sanctions. SICA suspended Honduras and adopted economic sanctions against that country without any legal basis; CARICOM suspended Haiti in 2004, also without any legal basis; UNASUR suspended Paraguay, although its democratic clause was awaiting ratification; and the EU Council announced the diplomatic isolation of Austria without invoking Article 7 of the TEU. Sanctions, similarly to missions, are determined *ad hoc*, hinging on the contingent interpretation of the political actors. The ending of sanctions is therefore determined on a case by case basis, according to what the political actors interpret as a "return to normality".

The end of sanctions against the Federal Republic of Yugoslavia is a case in point. While the OSCE decided about the suspension of its membership on the basis of violations of the human rights of minorities, it terminated the sanctions in light of what was judged to be an improvement in the conditions of democracy, following the exit of Slobodan

Milosevic. Thus, the application and the suspension of the sanctions followed two different logics. Certainly, it could be argued, as in the case of the missions, that actors decide about the adoption and suspension of sanctions based on the severity of the case and, therefore, a margin of discretion is to some degree necessary. However, when political actors (governments and civil society) perceive that organisations adopt extreme actions such as sanctions on a case-by-case basis and without adherence to formal rules and procedures, an erosion in the regional organisation's legitimacy is to be expected.

Furthermore, the effectiveness of sanctions, and their termination in particular, is in itself a matter of some disagreement. For instance, it is debatable whether the suspension of Honduras by the OAS contributed to the resolution of the country's political crisis, or whether this procedure rather distorted the communication between the *de facto* government and the OAS. In any case, the OAS did not fulfil its objective of restoring Manuel Zelaya in office. Even harder to assess is the effectiveness of the suspension of Paraguay by MERCOSUR and UNASUR. Two other factors affected sanctions and questioned their legitimacy. First, the international community had different interpretations regarding the (un)constitutionality of Lugo's impeachment. MERCOSUR and UNASUR interpreted the event as a coup d'état, while the OAS deemed it a serious, yet constitutional action. Second, the accession of Venezuela to MERCOSUR during the suspension of Paraguay – the only member state that had opposed that accession – deeply damaged the legitimacy of the sanctions in the eyes of the Paraguayan public and the international community. Similarly, the diplomatic isolation of Austria adopted by the EU-14 group yielded the opposite and undesired effect by generating anti-EU sentiments on the part of the Austrian people, thereby pressing the European institutions to find an *ad-hoc* solution to the impasse and finishing the sanctions.

4 CONCLUSIONS AND RECOMMENDATIONS

The study began with acknowledging the progress and consolidation of democracy achieved in both Latin America and Europe. This progress was linked, among other things, to the states' membership in regional organisations in both continents as well as to the adoption of mechanisms of democracy protection (MDPs) by these organisations. But the study also showed that the rule of law and the democratic order have been threatened in various circumstances. In this context, the MDPs proved pivotal to guaranteeing the reestablishment of the respect of the rule of law and democracy in the states facing those threats. The numerous cases of intervention both in Latin America and the Caribbean and in Europe show a mixed and not always satisfactory record. In Latin America, organisations such as UNASUR and the OAS have successfully intervened to contain possible crises, but it is also true that in some instances the mechanisms did not yield the desired effects, generated unintended consequences, or called into question the very legitimacy of the intervention and, ultimately, of the regional organisation.

We finish the study with three general observations. First, the challenges and deficiencies observed in the cases of intervention by regional organisations may be understood, in part, as consequence of the success of the processes of democratisation. The more democratic regimes consolidate and, in the case of Latin America, the military threat becomes less likely, the more the challenges faced by regional organisations become subtler, more complex and difficult to address. Troubles that in the past would have been considered as belonging exclusively to the domestic realm, are now regarded as political crises requiring action by a regional organisation. According to Schnably (2005), the regional organisations have two options: to act in accordance with shared normative principles (constitutional transnationalism or "regionalism"), or to act in accordance with a faithful respect for the normative principles adopted by each member state (in the traditions of international law). Instead, Chapter 3 has shown that regional organisations tend to use their discretion and to adopt actions *appropriate for* the case, thereby shifting the formal instruments towards the background of weak legitimacy.

Second, the interventions analysed show that to the degree that organisations take action in new types of political conflicts that go beyond "classic" cases of "coups d'état", they have to pay more attention to the domestic impact of the measures adopted. Indeed, the actions of the regional organisations are a two-level game. On the one hand, there is a regional and inter-governmental dynamic, and, on the other, there is an internal dynamic within the countries, and especially within the affected country. As we have seen, the domestic actors – in this case, the actors of civil society – can be the drivers of a democratic disruption, they can be the victims of non-democratic actions by their governments, and they can also be affected by the sanctions adopted by the organisations. Ultimately, the citizens of the member states constitute the very source of legitimacy for the operations of regional organisations and these organisations should therefore consider them adequately and systematically.

Third and finally, the study has provided evidence for the importance of interpretation in the process of implementing the MDPs. Chapter 3 commenced with the assumption that there is no immediate relationship between the design of the formal mechanisms and their implementation, but that an intermediate space articulated by interests and interpretation exists in-between them. The regional organisations and the political agents who act on their behalf do not only have to interpret the situation that they face. In as much as the organisations widen their scope of intervention, they also have to interpret the political context and the legal order (the national constitution) of the affected state. This, in turn, implies a cognitive asymmetry between the regional organisation and the domestic political bodies of the affected state. This asymmetry must be acknowledged and managed if the organisation aims to remain within the realm of legitimate action. When the interpretation rests primarily or exclusively on the executives of the member states, as usually happens in intergovernmental organisations, the cognitive asymmetry is greater. The organisations therefore need to be able to count on specialised bodies which are independent from the government and which have the necessary ability to analyse and to judge in order to interpret the political circumstances and the constitutional texts when acting in a concrete democratic crisis.

Based on this evidence, we formulate a series of suggestions for action with the objective of maximising the effectiveness of the MDPs.

1. Formalisation, that is, the codification into explicit legislative measures of the MDPs would enhance the legal certainty that member states need when resorting to a regional organisation. These mechanisms should therefore be subject to explicit regulations laid down in formal clauses, rather than being deduced, for example, from the preambles of the treaties or from other more generic provisions.

2. The regional organisations in Latin America and the Caribbean and Europe all share the common characteristic of relative vagueness in the definition of the concept of democracy. Often, it is subsumed in alternative concepts such as "constitutional order". Consequently, a relatively high level of detail in respect of which violations are conceived a threat to democracy, including a list of minimum elements, should reduce the margin of interpretative discretion in any specific type of situation. However, regulation should avoid the tendency of over-regulation too, given that sometimes a violation of the democratic order and the rule of law can occur in a subtle manner, through procedures apparently in accordance with these values.
3. The evolution towards mechanisms of preventive control has been common and various organisations allow for action in the face of a "threat of a disruption" (that is, before a disruption occurs). This development must be welcomed, but the margin of discretion it implies must be managed with caution to prevent abuses.
4. In practically all MDPs, activation is the responsibility of authorities and/or bodies, whether of the organisation itself or of the member states. In no case, civil society or the people are legitimised as petitioner. Without arriving at radical solutions (for example, enabling groups from civil society to participate), formalising activation mechanisms that would allow these actors to access the bodies of the respective organisation would improve its own effectiveness as well as its legitimacy.
5. One outstanding feature of the MDPs is their incidental nature; that is, they are activated when there is an instance of disruption or threat of disruption of the democratic order. This, together with the discretion in interpretation, creates a problem of possible inequality in the way different states are treated, that is, the selective use of clauses which are not applied in a systematically equal way in all cases. One mechanism that would ease this potential problem is to take recourse, simultaneously, to permanent systems of monitoring of the fulfilment of and respect for the values defended by the MDPs.
6. With respect to procedures, there is a tendency to combine mechanisms for verification on the ground with mechanisms for diplomatic mediation. Although political mediation may be beneficial, the organisations should rely on established fact-finding procedures, without having to depend on secondary sources. Verification and evaluation can be more objective and legitimate if they are entrusted to independent subjects or autonomous bodies of the organisation with a recognised degree of expertise.
7. Mechanisms for hearings: The procedural aspects have not developed mechanisms for hearings for affected parties. In some cases (e.g. Austria 1999) this has provoked allegations of defencelessness and unilateralism. Regional

organisations should therefore provide for mechanisms to hear the affected parties. For example, the High Level Review Group of the Commonwealth of Nations recommended in the year 2001 that sanction measures could only be activated after the state party concerned had had the opportunity to respond to the allegations made.

8. The application of MDPs via sanctions and/or suspension from membership is, in all the cases considered, a political process and not a legal one. The existing mechanisms for recourse to the law are relatively weak. Therefore, reinforcing the role of the regional courts (where these exist) as a means of verifying the compliance of the norms and of the procedure would provide MDPs with greater legitimacy.
9. Sanctions: The panoply of possible sanctions is considerable; without assessing their effectiveness, their application should follow a strict criterion of proportionality and should in no way threaten the wellbeing of citizens or human rights. As sanctions are measures of last resort, their type, the legal instruments of the organisation should define and formalise their application and duration.
10. Termination of sanctions: In general, organisations do not refer explicitly to procedures for terminating the sanctions. The model of periodical evaluations of the situation allows for the termination of sanctions in the moment in which the circumstances that had caused the adoption of sanctions have completely disappeared, and the organisations should abide by this model.

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List of Interviews

Name	Last Name	Charge	Country	Day of interview	Place of interview
Sergio	Abreu	Former Minister of Foreign Affairs (1993-1995); Senator (2005-2015)	Uruguay	24 March 2015	Montevideo
Celso	Amorim	Former Chancellor (1993-1995; 2003-2011)	Brazil	24 July 2015	Rio de Janeiro
Heber	Arbuert Vignali	Professor in Public International Law, Udelar	Uruguay	25 March 2015	Montevideo
Welber	Barral	Arbiter of the Permanent Review Court of Review for MERCOSUR Rapporteur/Speaker on the case of Paraguay	Brazil	20 November 2015	Florence
Óscar	Cabello Sarubbi	Vice-Minister of Foreign Affairs (2015)	Paraguay	22 July 2015	Asuncion
Gerardo	Caetano	Director of CEFIR, Uruguay Member of the Council of FLACSO	Uruguay	23 March 2015	Montevideo
Agustín	Colombo Sierra	Subsecretary for Latin American (2003-2008), Former Director of MERCOSUR's General Secretary (2010-2011)	Argentina	26 March 2015	Buenos Aires
Roberto	Conde	Undersecretary of Foreign Affairs (2010-2014)	Uruguay	23 March 2015	Montevideo
Alberto	Couriel	Senator (1995-), President of the Commission of International Affairs	Uruguay	23 March 2015	Montevideo
Antonio José	Ferreira Simões	Sub-Secretary of South America Itamaraty (2010-2015)	Brazil	15 January 2016	Madrid
Miriam	Gomes Saraiva	Professor at Rio do Janeiro State University / Universidade do Estado do Rio de Janeiro (UERJ)	Brazil	27 July 2015	Rio de Janeiro
Juan Miguel	González Bibolini	General Director of the General Section on of Human Rights, Paraguay.	Paraguay	22 July 2015	Asuncion
Fernando	Iglesias	Journalist Deputy, President of the World Federalist Movement	Argentina	27 March 2015	Buenos Aires
José Miguel	Insulza	Former Minister of Foreign Affairs (1994-1999), Secretary General OAS (2005-2015)	Chile	9 October 2015	Florence
Luis Alberto	Lacalle Herrera	Former President of Uruguay (1990–1995)	Uruguay	23 March 15	Montevideo
Héctor	Lacognata	Former Minister of Foreign Affairs (2009-2011)	Paraguay	20 July 2015	Asuncion
Celso	Lafer	Former Minister of Foreign Affairs during Fernando Collor presidency (1992) and Fernando Henrique Cardoso (2001-2002)	Brazil	28 July 2015	Sao Paulo
Luiz Felipe	Lampreia	General Secretary of Itamaraty (1992-1993) and Chancellor (1995 and 2001)	Brazil	27 July 2015	Rio de Janeiro
Jorge	Lara Castro	Former Chancellor (2011-2012), Professor at Catholic University of Paraguay	Paraguay	21 July 2015	Asuncion

List of Interviews

Name	Last Name	Charge	Country	Day of interview	Place of interview
Carlos	Luján	Coordinator of the Strategic Analysis Unity – Ministry of Foreign Affairs	Uruguay	24 March 2015	Montevideo
Rubén Darío	Melgarejo	Former Minister of Foreign Affairs (1996-1998)	Paraguay	21 July 2015	Asunción
Jeferson	Miola	Former Director Secretary of MERCOSUR (2012-2013), Adviser to the office of the President	Brazil	30 July 2015	Brasilia
Alvaro	Ons	Former General Director of the Integration and MERCOSUR of the Ministry of Foreign Affairs	Uruguay	25 March 2015	Montevideo
Álvaro	Padrón	Syndicalist, Project Director at Friedrich Ebert Foundation (FES)	Uruguay	25 March 2015	Montevideo
Félix	Peña	Former Undersecretary of International Commerce, Ministry of Economy of Argentina, member of the MERCOSUR Common Market Group (1998-1999)	Argentina	26 March 2015	Buenos Aires
Samuel	Pinheiro Guimarães	Former General Secretary Itamaraty, former Permanent Representative at MERCOSUR, Former Vice-Minister of Foreign Affairs (2003-2009), Minister of Planning, First High Representative of MERCOSUR,	Brazil	31 July 2015	Brasilia
Guillermo Daniel	Raimondi	Director MERCOSUR, Ministry of Foreign Affairs of Argentina	Argentina	26 March 2015	Buenos Aires
Leila	Rachid	Former Chancellor (2003-2006), Director of DOTAI, Vice-Minister of Foreign Affairs and Ambassador in Argentina and Washington, former Representative to MERCOSUR (2004-2008)	Paraguay	21 July 2015	Asuncion
Rubén	Ramírez Lezcano	Minister of Foreign Affairs (2006-2008), Vice-minister of Economic Relations and Integration, Alternate Permanent Ambassador to the United Nations, Alternate Permanent Representative to the Latin American Integration Association (ALADI)	Paraguay	27 March 2015	Buenos Aires
Hugo	Ruiz Diaz Balbuena	Minister Counselor International Affairs Lugo (2012)	Paraguay	22 July 2015	Asuncion
Félix	Ruiz Sánchez	Adviser Presidency (2008-2012), Lecturer at the Pontifical Catholic University of Sao Paulo	Paraguay	29 July 2015	Sao Paulo
Patricia	Salomone	General Director for Latin American, Undersecretary of Latin American Policy in the Ministry of Foreign Affairs of Argentina	Argentina	26 March 2015	Buenos Aires
Julio María	Sanguinetti	Former President Uruguay (1985-1990 and 1995-2000)	Uruguay	24 March 2015	Montevideo
José Manuel	Silvero	Researcher at the National University Asunción, Parliament adviser, IMEF graduate, High MERCOSUR Officer	Paraguay	22 July 2015	Asunción

List of Interviews

Name	Last Name	Charge	Country	Day of interview	Place of interview
Diana	**Tussie**	**Professor FLACSO**	**Argentina**	**26 March 2015**	**Buenos Aires**
Juan Gabriel	**Valdés**	**Former Minister of Foreign Affairs of Chile (1999-2000), Ambassador of Chile in Washington**	**Chile**	**13 October 2015**	**Florence**
Alberto	**Volonté**	**Leader of "Partido Nacional" (1995-1999), Ambassador of Uruguay in Argentina (2000–2005)**	**Uruguay**	**23 March 2015**	**Montevideo**
Juan Carlos	**Wasmosy**	**Former President of Paraguay (1993-1998)**	**Paraguay**	**22 July 2015**	**Asuncion**

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