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Latin American and Caribbean International Institutional Law

Marco Odello
Francesco Seatzu *Editors*



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Abbreviations

| | |
|---------|--|
| ACHR | American Convention on Human Rights |
| ACS | Association of Caribbean States |
| ACTO | Amazon Cooperation Treaty Organization |
| ADB | African Development Bank |
| AFTA | Asian Free Trade Association |
| AIS | Andean Integration System |
| ALADI | Latin American Integration Association |
| ALBA | Bolivarian Alliance for the Peoples of Our America |
| ALCUE | Latin America and Caribbean and European Union Summits |
| ANCOM | Andean Common Market |
| APC | Andean Presidential Council |
| ASA | South American-African cooperation |
| ATJ | Andean Tribunal of Justice |
| CA | Cartagena Agreement |
| CABEI | Central American Bank for Economic Integration |
| CACM | Central American Common Market |
| CAF | Andean Development Corporation |
| CAFTA | Central American Free Trade Agreement |
| CAN | Comunidad Andina de Naciones/Andean Community |
| CARICOM | Caribbean Community |
| CARIFTA | Caribbean Free Trade Association |
| CCJ | Caribbean Court of Justice |
| CDB | Caribbean Development Bank |
| CELAC | Community of Latin American and Caribbean States |
| CEPAL | Commission for America and Caribbean |
| CET | Common External Tariff |
| CFP | Common Foreign Policy |
| CJAC | Court of Justice of the Andean Community |
| CMC | Consejo del Mercado Común |
| CPC | Comisión Parlamentaria Conjunta |
| CSME | Caribbean Single Market and Economy |

| | |
|---------------|--|
| CSN | Comunidad Sudamericana de Naciones/South American Community of Nations |
| CU | Customs Union |
| EC Dollar/XCD | Eastern Caribbean Dollar |
| ECCB | Eastern Caribbean Central Bank |
| ECCBA | Eastern Caribbean Central Bank Agreement |
| ECCM | East Caribbean Common Market |
| ECCU | Eastern Caribbean Currency Union |
| ECLA | United Nations Economic Commission for Latin America |
| EU | European Union |
| FCES | Foro Consultivo Económico Social |
| FONPLATA | Fondo Financiero para el Desarrollo de los Países de la Cuenca del Plata |
| FTAA | Free Trade Area of the Americas |
| FTAs | Free Trade Agreements |
| GMC | Grupo del Mercado Común |
| GNI | Gross National Income |
| GOAC | Gaceta Oficial del Acuerdo de Cartagena |
| HDI | Human Development Index |
| IADB | Inter-American Development Bank |
| IBERPYME | Iberoamerican Program for Inter-institutional Cooperation for the Development of Small and Medium-sized Businesses |
| IDA | International Development Association |
| IIRSA | Initiative for Regional Infrastructure Integration |
| ILC | International Law Commission |
| ILM | International Legal Materials |
| IO | International Organisation |
| JPC | Joint Parliamentary Commission |
| LAC | Latin American and Caribbean |
| LAFTA | Latin American Free Trade Association |
| MCC | Mercosur Commerce Commission |
| Mercosur | Southern Common Market |
| MIPYMES | Micro, Small and Medium-sized Businesses |
| NAFTA | North American Free Trade Association |
| OAS | Organization of American States |
| OECS | Organization of Eastern Caribbean States |
| Parlatino | Latin American Parliament |
| POP | Protocol of Ouro Preto |
| PYMES | Small and Medium-sized Businesses |
| RTA | Regional Trade Agreement |
| SACN | South American Community of Nations |
| SAFTA | South America Free Trade Area |
| SELA | Latin American Economic System/Latin American and Caribbean Economic System |

| | |
|--------|---|
| SICA | Central American Integration System/Sistema de la Integración Centroamericana |
| SRDBs | Sub-Regional Development Banks |
| TCCJ | Treaty Creating the (Andean) Court of Justice |
| TFUE | Treaty on the Functioning of the European Union |
| TPR | Permanent Tribunal of Revision |
| TUE | Treaty of the European Union |
| UN | United Nations |
| UNASUR | Union of South American Nations |
| UNCTAD | United Nations Commission for Trade and Development |
| WISA | West Indies Associated States |
| WTO | World Trade Organization |

Introduction: Mapping the Field of Latin American and Caribbean Institutions

Preliminary Remarks

The American continent represents a very interesting example of different forms of international organisations (IO) for different reasons. Historically, the continent has developed inter-state structures since the early nineteenth century. Over time various organisations have been created and replaced by other institutions both at regional and sub-regional levels.¹

The original historical evolution of Latin American cooperation developed during and after the independence process from Spain. Simon Bolivar, the leader of independence in Spanish Latin America, envisaged the political unity of Latin America as a means to defuse regional conflicts, to establish the predominance of a regional international law, and to reduce the vulnerability of the Latin American countries to the actions of some powers, in particular Spain, Great Britain and the United States of America (USA).² The initial inter-State cooperation took the form of regular congresses usually called Hispanic-American or Latin American Congresses,³ moved then into Pan Americanism, and finally to the present Inter-American System, represented by the Organisation of American States (OAS).⁴

The continent also shows different types of organisations that combine very different countries, often linked by geographical vicinity and cultural similarities, as in the case of the Andean Community or some Central American and Caribbean organisations. The presence of the USA is certainly a relevant factor in the

¹Mace 1988, pp. 404–427.

²See: Belaúnde 1967.

³This term was used from the First Congress of Panama in 1826, when still some American territories were under Spanish colonial domination, until 1889 when Brazil joined the meetings organised by Spanish-speaking American countries.

⁴See: Stoetzer 1993, Chapters 1 and 2; Ball, 1969, pp. 3–21; Inter-American Institute of International Legal Studies 1966.

development or failure of many forms of IOs in the continent.⁵ This element was in part based on the 1823 Monroe's Doctrine, and later reaffirmed by the USA foreign policy towards the continent and individual countries. However, the hegemonic role of the USA, with its economic and military power is not the only reason for some of the shortcomings of the various attempts to create functioning international institutions within the continent.

The approach of many countries in the region, including a strong nationalistic feeling, the protectionist economic policies of some governments, depending on the period of time, the political crisis and instability that affected several countries, particularly in the 1960s and 1970s, the military juntas which governed several countries in Latin America since the end of World War II until the late 1970s, are all relevant factors that have limited the forms of institutional cooperation, and have often undermined their development towards forms of stronger integration.

In this sense, if we compare the experience of several past and existing IOs in the Americas and the European continental experience, it is possible to see how European countries, which have many more cultural, linguistic and historical differences, have moved much faster towards forms of economic, political and legal integration. The main examples of the European Union (EU) and the Council of Europe (CoE), with the variety of institutions, courts and legal integration, including economic integration, are certainly unknown in the context of the American continent. Some examples of recent developments in the case of the Andean Community and the MERCOSUR may show some similarities with the developments of the EU; for instance the introduction of international adjudicatory bodies for dispute resolution and the introduction of the Andean Passport. However, despite the formal adoption of certain legal agreements and institutions, these developments look more as a copy on paper of the EU system rather than as an effective system of profound integration.

The present book addresses, from an international legal perspective, some of the relevant sub-regional institutions and organisations that are presently established in the Latin American part of the Western Hemisphere, following some criteria that are defined below.

Criteria of Inclusion and Exclusion

The original idea for this book was to develop a better understanding of the existing forms of institutional integration at the sub-regional level in the Americas. During the development of the project, some selection criteria have emerged, so that the book could take a more defined shape and offer the reader some understanding of the complex picture that is presently characterizing the various international institutions within the Latin American and Caribbean (LAC) parts of the continent.

⁵Langley 2010.

It has been relevant to identify more clearly the organisations and institutions that operate in the Western Hemisphere. The pan-continental organisation is the OAS which derives from an evolution of nineteenth century alliances and cooperation within the American continent, and includes today the great majority of States in the region, from North to South America.

However, the great experience and developments of the OAS have not been included in this study, as it may deserve a more specialist approach and also adequate space to properly address the various areas that are covered by its constitutive treaty and its various institutions and organs. For this reason, the OAS has been excluded *a priori* from this study.

If we look at the various institutions and organisations that are present in the Latin American part of the continent, we can find a great variety of examples over the past 50 years.⁶ First of all, they are all in the LAC part of the continent. The Latin American and Caribbean choice is based on the fact that the great variety of existing institutions is mainly developed in that sub-region. There are different names used to classify certain regions and sub-regions in the world. Certainly, in the Americas, the geographical locations of North, Centre and South are often used. However, there are also different ways to identify certain regions. We intend for Latin America the portion of the American continent, which for historical and geographical reasons has been identified from Mexico to south Argentina and Chile (*Tierra del fuego*), mainly the Magellan straight.⁷ The sub-region includes also the Caribbean and Central American sub-regions,⁷ which encompasses not only Spanish speaking countries, but also French, Dutch and British overseas territories. This definition is based on the Latin influence on the continent at the time of colonisation (Latin languages such as Spanish, Portuguese and then French), where the results of imposition of cultural and ideological models were certainly not autonomously developed, but reflected the influence of colonial powers in the region.⁸

In determining which institutions were to be included in this study, two main criteria were relied upon. The institutions included in this volume satisfy the following requirements. In the first place, all the organisations have, as their main purposes, the development of some or all of their member countries. Although some of the constitutive treaties are worded mainly in terms of economic development, others contain measures for social development as well. As will be seen in specific chapters, clear-cut separations between the two are almost impossible

⁶On the peculiar features of the LAC region, see among others: Centro Latinoamericano para la Competitividad y el Desarrollo Sostenible (CLACDS) del INCAE y el Instituto para el Desarrollo Internacional de la Universidad de Harvard (2000); Pennetta 2013; Schelhase 2011, p. 175 ff.

⁷On the peculiarities of the Central American sub-regions, see: Vuskovic 1983, p. 36 ff. For a full discussion of this issue, see: Woodward 1999, p. 20 ff, who also stresses the potential of the Central American states for political union.

⁸Zanatta 2010, p. 233 ff.

to draw and there is often a wide overlapping and interdependence between the two notions of development. Second, they are all established under international law, therefore they are international intergovernmental organisations and they have been created by states by means of international treaties, which are also their legal basis and confer upon them corporate personality. Therefore, other institutions, which are based on governmental departments, national public corporations, private multinational corporations and other forms of cooperation have been excluded from this book.

The main focus of this book is to deal with what is often referred to as International Institutional Law or Law of International Organisations.⁹ The different institutions and organisations are mainly examined from the legal point of view. The scope is therefore to provide the reader with a good panorama of the rules and principles that govern the structures and functioning of international organisations within the Latin American geo-political context. Therefore, this study does not address other issues that are often related to the analysis of international relations within the context of structured institutions, in particular the relationship and possible tensions between the institutions and their member States. Also, this work does not address the political, social and economic contexts where institutions are operating. This is a relevant element that can shed light on the potential success and/or failure of inter-state cooperation. However, it should be the object of a separate study. The aims, purposes and functions of the organisations under consideration are certainly taken into consideration, as they are a fundamental part of the institutional *raison d'être*, the justification, of each individual organisation. They are often part of the foundational charter or treaty which created the organisation and they are essential elements that provide the general guidelines and powers of individual organs of each organisation. However, a detailed analysis of the policies and functions of international organisations requires a different type of research that goes beyond the limits of the present work.

Organisation of the Volume

Not all the existing organisations that are presently active in Latin America have been included in the present work. Also, past organisations or others which are not any more active, but still formally existing, have not been considered in this work. Examples of these are the Rio Group, the Latin American Parliament (Parlatino) and the Bolivarian Alliance for the Peoples of our America (ALBA).¹⁰ The reason for this selection is that this book would like to provide the reader with an updated and useful contemporary study on the forms of international institutional organisations in the sub-region.

⁹See, among others: Schermers and Blokker 2011; White 2005; Amerasinghe 2005.

¹⁰See: Santulli 2012.