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Between democratic protection and self-defense:  
The case of Unasur and Venezuela

Carlos Closa and Stefano Palestini



European University Institute  
**Robert Schuman Centre for Advanced Studies**  
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## **Abstract**

Contrary to the assumption that the adoption and formalization of democratic protection mechanisms by regional organizations contribute per se to democratic consolidation, this article argues that the performance of those mechanism is tied to the interests of governments that are both their rule makers and their enforcers in concrete political crises. Governments design democratic protection mechanisms minimizing the probabilities that they could escape their discretionary control contributing to the paradoxical result that the provisions end up enforcing regime stability rather than democracy. We illustrate this claim with the intervention of the Union of South American Nations (Unasur) in the post-Chávez Venezuela paying specific attention to two mechanisms: the democratic protocol and the electoral council. The structural bias in favor of the incumbent governments is not an exclusive tension of Unasur, and it should be systematically analyzed in the comparative studies and assessments of the link between regional organizations and democracy.

## **Keywords**

Regional organizations – democratic clauses – democratic protection – Venezuela – Unasur



## Introduction

Over the last three decades, an increasing number of regional organizations have adopted democratic protection mechanisms, such as democratic clauses and electoral monitoring capabilities. Regional organizations increasingly scrutinize and sanction member states for matters previously seen as falling exclusively within the domestic jurisdiction of the individual state (Closa 2013), and some scholars see this as proof of a wider and deeper commitment to democracy as a global right (Franck 1992). In line with this interpretation, the academic literature has underlined the positive effects of these mechanisms on democratic transition and consolidation in member states: their adoption locks in the preferences of democratic domestic constituencies, raises the cost of potential illiberal actions, and signals to internal and extra-regional actors alike the commitment to democracy of member states (see Whitehead 1986; Pevehouse 2005; Mansfield and Pevehouse 2006; Ribeiro-Hoffmann and Van Vleuten 2007; Genna and Hiroi 2015; Börzel and Van Hüllen 2015).

However, this optimistic picture omits a crucial tension built into the design of democratic protection mechanisms across regional organizations: governments are both the rule-makers and the enforcers of these provisions. Governments design democratic protection mechanisms in such a way as to minimize the chances of democratic clauses and electoral missions escaping their discretionary control. This may have the paradoxical result that the provisions end up enforcing regime stability rather than democracy per se. Understanding this tension and its implications is crucial to assessing the role that regional organizations play in the field of democracy protection. This exercise requires that we look not only at the adoption and formalization of democratic protection mechanisms, as most of the literature has done, but particularly at their enforcement in those moments when the organizations face concrete episodes of political and democratic unrest in one of their member states. We illustrate this tension through the most recent case of a regional organization intervening in the crisis of a member state, in the name of democratic protection: the Union of South American Nations' (Unasur) intervention in post-Chávez Venezuela.

Unasur emerged as a regionalist project with the strategic aim of creating a space for policy and political coordination in South America, carving out autonomy vis-à-vis the traditional influence of the US in the region, particularly in relation to the management of political conflict. It gathers together all South American states - a grouping currently characterized by a wide variety of political regimes, as well as economic and political orientations. Although it aims at regional coordination in a large number of policy areas, those of defense and democracy protection quickly became core concerns of the Unasur project (on Unasur institutionalization see Sanahuja 2012 and Palestini and Agostinis 2015).

In its short life Unasur has played an important role mediating in political and democratic crises in some of its member states, bringing output-legitimacy to the idea that South American states are able to manage and even solve their problems at home. Following these previous experiences, Unasur has become the most salient international actor in mediating and monitoring the current Venezuelan crisis sparked by the contestation of the electoral results that brought Nicolás Maduro to office in April 2013. In this article, we show that the tension inherent to mechanisms that are designed and enforced by governments to deal with political events in which they are at the same time the main protagonists has deeply shaped Unasur's intervention.

The structure of the argument is as follows. In the first section, we describe the institutional design of Unasur's democratic protection mechanisms, which comprise a democratic clause and an electoral council. We argue that these two mechanisms are characterized by a structural bias towards the incumbent, due, on the one hand, to the ambiguity of the substantive definitions used and, on the other, to the tight control that the incumbent has over the decision-making process. The second section discusses how this structural bias has been reflected in Unasur's interventions in the current

Venezuelan crisis. We conclude with some final remarks regarding Unasur interventions, pointing out the risks that this bias posit for the legitimacy and further institutionalization of this South American regionalist project.

## **The institutional design of democratic protection in Unasur: The Democratic Protocol and the Electoral Council**

Unasur is a paradigmatic intergovernmental organization. Its organizational structure is made up of a Council of Heads of State as its highest decision-making body, and two intermediate organs composed of government representatives (the Council of Ministers of Foreign Affairs and the Council of Delegates), which are hierarchically superior to a rather powerless Secretary General. The day-to-day direction of the organization relies on the President Pro Tempore, a one-year mandate passed from one member state president to another, with the Secretary General adopting a secondary role. Unasur defines itself as a democratic organization in its Constitutive Treaty and two specific democratic protection mechanisms have confirmed this vocation: a democratic clause and an electoral council, which will be described in the following lines.

### ***The Democratic Protocol***

Unasur's democratic clause – officially titled “Additional Protocol on Commitment to Democracy” – was adopted in 2010 and ratified in 2014. The Protocol followed the *de facto* intervention of Unasur in three political crises: the murders committed in the Bolivian department of Pando by forces opposed to President Evo Morales in September 2008; the detention of President Rafael Correa by members of the National Police in Ecuador in September 2010; and the impeachment of President Fernando Lugo in Paraguay in June 2012. These events not only preceded, but also shaped the adoption and contents of the Democratic Protocol.

On all three occasions, the Council of Heads of State reacted swiftly to what were seen as evident threats to democratically elected governments. In the case of the Pando murders, Chile's president Michelle Bachelet acted in her capacity as President Pro Tempore of Unasur to convene an extraordinary meeting of Unasur Heads of State. In a decision that shaped institutional design afterwards, Brazilian President Lula da Silva made his attendance conditional on an explicit petition from President Evo Morales of Bolivia, in order to avoid any suggestion of interference in that country's domestic affairs. This sent a clear signal that Unasur would only act with the consent of the government affected. In the second episode, with Unasur President Pro Tempore Rafael Correa facing a threat to democracy in his own country of Ecuador, President Cristina Kirchner of Argentina and her husband, Néstor Kirchner, then Secretary General of Unasur, jointly convened an extraordinary summit. As a result, several Unasur foreign ministers travelled to Quito in order to give their support to Correa and, again, this set a precedent for the practices adopted in the Paraguayan and Venezuelan cases. The Heads of State issued the Declaration of Buenos Aires, which not only reaffirmed the commitment to democracy expressed in the Constitutive Treaty, but went beyond it by declaring that the member states “*strongly reject and will not tolerate, under any circumstances, any further defiance of institutional authority or attempted coups against the legitimately elected civil power.*” They also warned that any further breakdown in the constitutional order would be met with strong counter-measures - from the closing of borders to the suspension of trade, air traffic, energy provision, and other goods and services<sup>1</sup> (once again anticipating the sanctions model to be developed later, in the Unasur Protocol). Finally, in case of the impeachment to President Lugo, the Council of Heads of State suspended Paraguay from exercising its membership rights - marking the first time in the short

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<sup>1</sup> Declaration of Buenos Aires. Available at <http://www.sela.org/view/index.asp?ms=258&pageMs=77941>, Accessed: 13-05-2015. Translation of the authors.

history of Unasur that it would suspend a member state. While in the former two cases, the objects of responding to democratic breach and defending the incumbent coincided, in the case of Paraguay the defense of the incumbent led to widespread accusations of ignoring Paraguay's legitimate constitutional mechanisms relevant in this instance (Marsteintredet, Llanos and Nolte 2013).

These events happened before the entering into force of the Protocol in March 2014, but after its ratification by nine of the twelve national parliaments of South America (Colombia, Chile, Guyana, Peru, Argentina, Venezuela, Surinam, Ecuador, Bolivia and Uruguay). Surprisingly, one of the main Unasur actors, Brazil, has yet to ratify it. The Protocol contains a preamble and nine articles. In the preamble, the Heads of State base their commitment to democracy on the Constitutive Treaty and the above-mentioned Declaration of Buenos Aires, and reiterate their commitment to the promotion, defense and protection of the democratic order, of the rule of law and its institutions, and of human rights and fundamental freedoms, as essential and indispensable conditions for the development of the member states' integration process, and a vital requirement for their participation in Unasur.

### ***The Electoral Council***

The idea of providing Unasur with electoral monitoring capabilities was discussed for the first time in 2009, when all of South America's national electoral authorities met in Caracas. In 2012 Unasur officially formalized its Electoral Council - one of Unasur's twelve sectorial councils, each of which deals with specific policy areas at the initiative of the member states, subject to the approval of the Council of Heads of State and Government. The statute of the Electoral Council defines its general objective as that of "*creating a space for the integration, exchange of experiences, cooperation, research and promotion of the citizenship participation, civic education and democracy*"<sup>2</sup>.

Both the democratic protocol and the electoral council are mechanisms designed *by* the South American governments to scrutinize and sanction the behaviour *of* South American governments. But they have not escaped a common problem in the design of such provisions: the fact that governments are rule-makers *and* enforcers brings about a structural bias in favour of the incumbent governments that is reflected in two main aspects: the ambiguity of substantive definitions of *what is* democracy and *what is* a democratic breach, and the tight control that governments keep on the relevant decision-making processes.

#### **a. Ambiguity of substantive definitions**

The most crucial part of the design of a democratic clause is the definition of the situations for its activation, which entails a definition of what constitutes a democratic breach. The text of the Protocol keeps this definition ambiguous. Article 1 defines the cases for activation of the provision: the Protocol applies in the event of a *breach* or a *threat of breach* of the democratic order, a violation of the constitutional order, or any situation that jeopardizes the legitimate exercising of power or the application of the values and principles of democracy. What is a "breach" or "threat of breach" is nowhere defined, however, leaving enforcers (i.e. governments) a wide margin of interpretation. The same definitional question applies in relation to the values and principles of democracy, which are also left open to interpretation by the government or member states in question. Finally, the text of the Protocol invokes notions such as democratic *order*, constitutional *order* and democratic *institutionality* interchangeably.

Thus, in the absence of a more clear-cut definition, governments may interpret a democratic breach as a threat *to* governments, which the Protocol formulates as "any situation that jeopardizes the legitimate exercising of power". The long history of coups d'état against democratically elected governments in the region, along with the fact that the events in Bolivia and Ecuador consisted of

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<sup>2</sup> Statutes of the Electoral Council of Unasur, Article 1.

illegitimate actions against elected governments, lends credence to the interpretation of “democratic breach” as actions against “elected governments”. That is, the interpretation of “democratic breach” as actions against “elected governments” seems adequate in light of the region’s history. However, it narrows the scope of the democratic clause, making it inapplicable in situations whereby an elected government violates or jeopardizes the civil or political rights of groups within the society.

b. Governmental control over the decision-making process

In intergovernmental organizations, governments characteristically retain control over the decision-making process, with scarce delegation to supranational agencies. In activating protection mechanisms under the Unasur Democratic Protocol, capacity and initiative lie with the President Pro Tempore and the Council of Heads of State, at the expense of the General Secretariat.

Moreover, the protocol provides that the government directly affected by a situation of democratic breach be part of the decision-making process throughout the democratic intervention. In fact, it is not only the President Pro Tempore that can invoke the Protocol; the government of the country undergoing a democratic crisis can also activate the clause, “*in order to notify (other Members) of the situation and request concrete concerted co-operation and a pronouncement from Unasur to defend and preserve its democratic institutionalality*”<sup>3</sup>. This provision brings about a structural bias in favour of the incumbent government. That is, it would be procedurally impossible for a member state of Unasur, to invoke the Protocol to investigate the potential anti-democratic actions undertaken by the elected government of another member state, since the latter can always veto the consensus-based decision-making process within Unasur. As we will see in the next section, this structural bias tilts the regional organization’s actions in the direction of incumbent interests, and compromises its legitimacy with respect to third parties.

Also the design of the Electoral Council provides evidence of the ability of affected governments to control the application of this democratic control mechanism. Thus, Electoral Council activities are only triggered by a demand from national authorities (i.e. governments), which can tailor the missions to their own interests. In fact, the national authorities of the applicant state and the President Pro Tempore of Unasur have to agree on “*the scope, composition, and coverage of the observation and accompaniment missions*” (article 11). Furthermore, “*the activities of electoral observation and accompaniment will be developed according to the agreement subscribed with the applicant state*” (article 12). The autonomy of the Electoral Council and its missions is further limited by the introduction in the council’s statutes of the concept of “*accompanying missions*”. This is, in itself, an innovation on the part of the Unasur Electoral Council, since no other international electoral monitoring bodies take in this concept. Tellingly, in regulating its own National Electoral Council (CNE), Venezuela had previously defined what an “*accompanying mission*” is. Thus, the 2010 Venezuelan Resolution on the CNE<sup>4</sup> distinguishes between “*observation missions*” and “*accompaniment missions*”. The former are composed of *national representatives* of civil organizations *resident in Venezuela*, while the latter are composed of institutions and authorities of other states, and international organizations accredited by the CNE. The distinction has important practical effects: the international partners cannot issue any declaration on the election until the CNE has proclaimed the results, and their findings and suggestions must then be passed on to the CNE confidentially. It is noteworthy that in 2013, Venezuela’s Regulation implementing the Organic Law on Electoral Processes further restricted the autonomy of international agents, who are effectively forbidden from opining on the country’s internal affairs.

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<sup>3</sup> Additional Protocol on Commitment to Democracy, Article 6.

<sup>4</sup> Reglamento en materia de observación nacional electoral y acompañamiento internacional electoral [http://www.cne.gob.ve/web/normativa\\_electoral/elecciones/2010/parlamentarias/documentos/Reglamento\\_Observacion.pdf](http://www.cne.gob.ve/web/normativa_electoral/elecciones/2010/parlamentarias/documentos/Reglamento_Observacion.pdf) Accessed: 1-06-2015

The initiative to include an Electoral Council within the structure of Unasur was conceived during the Meeting of Electoral National Organisms and Authorities of South American countries in Caracas (October 2009 and July 2011), which might explain the influence of Venezuela's domestic electoral code on the statutes of the Unasur Electoral Council. Nevertheless, the fact that those statutes were approved demonstrates that all South American governments agreed on the design of a regional electoral body with limited monitoring capacities, whose missions are tailored to the applicant's needs.

### **The Unasur intervention: 2013-2015**

Unasur's institutional involvement in the Venezuelan political crisis unfolded along the lines of the organization's two democratic protection mechanisms discussed above. For the purposes of this article, we understand democratic crises to be temporally delimited episodes that directly affect the respect for democratic principles, norms and procedures within a given polity (see Heine and Weiffen 2013). Although Venezuela has long experience of political and social unrest – including an attempted coup d'état against President Chávez in 2002 - we focus on the current crisis that commenced with the presidential election of April 14th 2013, after the death of President Hugo Chávez (see Corrales 2015).

#### **a. The Unasur actions**

Four Unasur bodies have intervened in the crisis: the Electoral Council, the Council of Heads of State and Government, the Commission of Chancellors and the General Secretariat. The Electoral Council participated in the election day of April 14<sup>th</sup> 2013, through an agreement signed with the Bolivarian Republic of Venezuela, setting out the framework for an electoral mission on that day. The Democratic Unity Roundtable (MUD) contested the outcome of the election: the victory of Nicolás Maduro, former foreign minister and interim president, by a slim 1.5% margin over an opposition that accused the government of electoral fraud. The National Electoral Council (CNE) proposed to recount the suffrages. Nicolás Maduro initially accepted, but he later refused the recount and this triggered the opposition's call for street demonstrations to demand the recount.

The violent aftermath of the election saw the deaths of seven people, amid mutual recriminations on the part of the government and MUD. It also triggered the reaction of the Council of Heads of State, which issued a declaration and announced the creation of a Unasur Commission to accompany the investigations into the post-election violence. From this point onwards, the Council of Heads of State and Government have had almost no further direct involvement.

The third institutional channel, the Commission of Chancellors, came on the scene after the February 2014 demonstrations, when some 41 people lost their lives. On this occasion, the opposition leader Leopoldo López was arrested on charges of public incitement of social insurrection, damage to property, arson and criminal behaviour. These charges were only pressed a month and a half after his detention (on April 4<sup>th</sup>). Triggered by this escalation in the conflict, Unasur's Council of Ministers of Foreign Affairs approved in March 2014 Resolution 02/2014, creating the Commission of Chancellors; this was to be composed of the Foreign Ministers of Brazil, Colombia and Ecuador, and was aimed at “accompanying, advising and supporting dialogue”, with the support of the Secretary General. This marked a stepping up of Unasur's institutional involvement in the crisis.

Finally, the fourth of Unasur's institutional actors in this crisis has been the Secretary General. This position became a very active one when, in September 2014, former Colombian President Ernesto Samper took over from Venezuela's Alí Rodríguez, a former top political figure in the Chávez governments. With Samper's election, the office of Secretary General became a frontline role, somewhat sidelining the Commission of Chancellors. He has twice visited Caracas at the invitation of President Maduro, and has issued several official declarations concerning the situation in Venezuela, and the role of Unasur - becoming, in effect, Unasur spokesman, in spite of the relative paucity of

formal competences delegated to the office of the General Secretariat either by the Constitutive Treaty or the Democratic Protocol.

b. Structural bias in Unasur actions

The structural bias in favor of the incumbent's position in the conflict is apparent in the actions of the four institutional channels through which Unasur has intervened. To begin with, the Electoral Council set up the monitoring mission for the April 2013 elections as an “accompanying mission”. Thus, Venezuela’s own definition of this peculiar type of mission passed on to Unasur’s Electoral Council who echoed it in its own regulations (as detailed above). According to President Pro Tempore of the Electoral Council, Francisco Távora, accompaniment missions would merely certify the holding of elections, rather than reviewing, monitoring or scrutinising them. An agreement signed with the Bolivarian Republic of Venezuela meant that that state reserved the right to expel members of the mission, following communication of such a decision to the various organs of Unasur<sup>5</sup> - thus reinforcing domestic control of international missions. Not surprisingly, both the opposition and independent NGOs (e.g. Human Rights Foundation) criticized the Electoral Council's acceptance of these conditions. The Unasur Electoral Council issued an official declaration the day after the presidential election, supporting and congratulating the Venezuelan people for the electoral process, without mentioning opposition complaints.<sup>6</sup>

The Council of Heads of State also took a distinctly pro-government position on the crisis through the Declaration of Lima. Within Unasur, a Presidential Declaration requires consensus among the twelve member state governments. Accordingly, President Nicolás Maduro attended the Lima summit and signed the Declaration of Lima, which recognized him as the new and legitimate President of Venezuela, and called on all actors to do the same, and to drop any violent activity that could jeopardize social peace. Furthermore, the Declaration endorsed the CNE proposal for a recount, and for the creation of a Unasur commission to accompany it, disregarding the opposition’s demands for identity checks (this opposition concern reflected its fears of widespread fraud through the inclusion of votes which did not correspond to any voter).

The Commission of Chancellors has sought to play an impartial role as mediator between the government and opposition. It made three visits to Caracas between March 2014 and March 2015, meeting with representatives of the government and the opposition during the first two meetings. Following its first visit, the Commission called for the rejection of violence and the toning down of the bellicose rhetoric pervading the Venezuelan political sphere, pointing out President Maduro's openness to accepting recommendations from the opposition representatives. During the same visit, a group of NGOs handed them a report indicating cases of human rights violations by the government. During the second visit, broadcast on the national television network, the government representatives denounced the violence of the opposition demonstrations, the alleged attempts at coup d'état, and the non-recognition of the presidential elections of 2013. In turn, the opposition leaders denounced the government for violating the constitution and limiting the right to demonstrate. Furthermore, they criticized the government's economic policy, and requested an amnesty law.

However, the Commission of Chancellors has also been subject to Unasur's structural bias towards the incumbent. Its actions depended on the willingness of the incumbent government to cooperate, leading to increasing questioning of the Commission's legitimacy as a mediator. The Commission's

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<sup>5</sup> Article 9 Regulation on immunities of Unasur mission Available at: [http://www.mp.gob.ve/c/document\\_library/get\\_file?p\\_l\\_id=10240&folderId=2194690&name=DLFE-6223.pdf](http://www.mp.gob.ve/c/document_library/get_file?p_l_id=10240&folderId=2194690&name=DLFE-6223.pdf). Accessed: 1-06-2015.

<sup>6</sup> Official Declaration Unasur, issued in Caracas on 15th April 2013. Lic. Carlos Chacho Álvarez, special representative and Dr. Wilfredo Penco, general coordinator of the Electoral Mission. Available at <http://www.sela.org/view/index.asp?ms=258&pageMs=77941>. Accessed: 13-05-2015.

visits to Caracas always followed an explicit invitation from President Maduro. Additionally, the Commission lacks a clear definition of its goals and scope. Resolution 02/2014 defines it as a sort of diplomatic mission to accompany, advise and support. And while this affords significant room for manoeuvre, in practice the role assumed by the Commission has been that of a fact-finding mission receiving the complaints of opposition and government. This fostered the expectation that it could be a vehicle for processing and responding to accusations that the Maduro government violated civil and political rights. But this perception did not last long: preceding the Commission's third visit to Caracas, several opposition leaders and demonstrators were convicted on various charges, including the Caracas mayor and opposition leader Antonio Ledezma, who was arrested on unknown charges on February 19<sup>th</sup> 2015. The Commission did not respond to these events, reflecting its distance from the opposition. The latter criticized and repudiated the Commission's role in the crisis, contending that the government had used the Commission to legitimize itself.

The General Secretariat of Unasur received similar criticisms for its handling of the crisis. As stated above, the tight control that the governments have maintained over the decision-making process within Unasur – as expressed in its Constitutive Treaty and Democratic Protocol – has been at the expense of the General Secretariat, which boasts few formal competences. However, since the preferment of former President of Colombia Ernesto Samper as Secretary General, this office has carved out a more proactive role in directing the activities of Unasur, as seen in the intervention in Venezuela. The role of the Secretary General, however, has not escaped the structural bias in favor of the incumbent. At Samper's inauguration ceremony, President Maduro congratulated Unasur for its role in facilitating dialogue with the opposition. This might be interpreted as a signal that if the Secretary General wanted to have a role to play in mediating the political conflict in Venezuela, they would have to do so with the consent of the Venezuelan government. Accordingly, the interventions of the Secretary General have reflected explicit support for Maduro's claims, and an implicit lack of responsiveness to opposition accusations regarding the violation of political and civil rights.

During his first visit to Venezuela on February 4<sup>th</sup> 2015, the Secretary General stressed the commitment of Unasur to maintaining the stability of Maduro's government. Samper's official declaration stated that “[...] *“the position of Unasur is that whatever attempt to destabilize a democracy or a government (sic) will count with the rejection by unanimity of the countries of the South”*. This declaration ended with an acknowledgement by Samper of *“the interest and the concrete actions that President Maduro has disinterestedly taken, first as a foreign minister and then as a president, to carry out the peace-building dialogues in La Havana between FARC and the Colombian government”*<sup>7</sup>. This bridged the subject of Maduro's instrumental role in mediating Colombia's internal conflict with that of the stability of his government, fuelling the perception of a lack of neutrality on Samper's part. As a consequence, the opposition boycotted the last visit of the Secretary General and the Commission of Chancellors to Venezuela, and accused Unasur's Secretary General of acting to provoke the conflict and thereby disqualifying himself as a mediator.

As a regionalist project, Unasur's birth and development have been guided by a distinct purpose: that of carving out greater autonomy for South American states (see Sanahuja 2012; Mosinger 2012). This goal must be understood in the context of a history of external interventions in domestic conflicts and political crises in Latin America. It also has to do with a belief among certain sections of the South American political elite that in this sub-region – as distinct from North and Central America – it is possible to manage and resolve political conflict internally.<sup>8</sup> The swift reaction of Unasur to the US executive order aimed at representatives of the Venezuelan government is a case in point vis-à-vis this

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<sup>7</sup> Available at: <http://www.Unasursg.org/es/node/146>, Accessed: 10-05-2015

<sup>8</sup> In February 2011 the US Director of National Intelligence testified before the Congress that Unasur has become “[...] the premier security and conflict resolution mechanism in the region at the expense of the OAS and of bilateral cooperation with the United States [...] and ] present a common front against Washington on regional political and security issues”, quoted in Mosinger, E., 2012.

feature of Unasur. Indeed it was the very same day as President Obama issued his executive order (9th March 2015) that the Secretary General of Unasur responded with a declaration criticizing “*unilateralism, confrontation and polarization* and affirming that *Venezuelans, and only they, must find the way beyond this impasse, without putting peace and democracy at risk*”<sup>9</sup>. Two days after the US executive order, an extraordinary meeting of the Council of Ministers of Foreign Affairs was convened at the headquarters of the Unasur Secretariat in Quito. The Council strongly rejected the order, casting it as “an intervention in the domestic affairs of Venezuela” that flirted with insurgency. The Council appealed for the order to be revoked, and for the US to seek alternative ways to promote dialogue and help resolve the situation in Venezuela.

Fending off external actors is a legitimate goal of South American regionalism and of the Unasur project. This was the interpretation, for instance, of the Brazilian government, which celebrated the fact that both the Venezuelan government and opposition recognized Unasur as the only international organization fit to promote dialogue amid the Venezuelan crisis.<sup>10</sup> Implicitly, this meant celebrating the *de facto* exclusion of the OAS, seen from this point of view as a US-led entity. However, when viewed in the context of the structural bias that we identify within Unasur, fending off external actors can also be seen to benefit the incumbent. The current scenario in Venezuela appears to be one in which the government advocates Unasur's exclusive role as sole supranational actor to intervene in the crisis, as long as it retains the power of veto over Unasur actions - while the opposition questions Unasur's role, and advocates instead the involvement of other international players, such as the Vatican, OAS and EU. Indeed, the opposition has publicly requested the presence of electoral missions from the OAS and the EU to monitor the next parliamentary elections in December 2015. Furthermore, the newly appointed Secretary General of the OAS – the former Uruguayan Minister of Foreign Affairs, Luis Almagro – has formally offered the OAS' services in electoral monitoring. At time of writing, however, the CNE had only invited Unasur to send an official “*accompaniment*” mission.

### **Walking on a tight rope**

Contrary to the assumption that the adoption and institutionalization of democratic protection mechanisms by regional organizations ought to contribute *per se* to democratic consolidation, we have argued that the performance of democratic clauses and electoral missions is tied to the interests of governments, when they are both the rule-makers and the enforcers of those mechanisms. Unlike human rights protection regimes, democratic clauses lack mechanisms for the delegation of cases to supranational enforcement agencies such as, for instance, international courts. Therefore intergovernmental dynamics shape their interpretation and enforcement, which become subject to governments' preferences and calculations. Similarly, the performance of electoral missions depends a great deal on the way in which these missions are organized, and on the margins of autonomy that they possess. When these missions are carried out by intergovernmental regional organizations, they become subject to the amenability of the member states to their activities - including those member states that are supposed to be under their scrutiny.

In other words, governments design democratic protection mechanisms in such a way as to reduce the chances of democratic clauses and electoral missions escaping their discretionary control. To do so, the provisions are kept loosely defined *vis-à-vis* certain key substantive questions (e.g. what democracy is, and what a democratic breach is), as well as some important procedural ones (e.g. how missions are made up, how sanctions are applied, and how rights of the parties are respected). Furthermore, governments keep tight control over the decision-making process, restricting the

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<sup>9</sup> Available at: <http://www.Unasur.org/es/node/163>, Accessed: 10-05-2015

<sup>10</sup> Available at [http://www.itamaraty.gov.br/index.php?option=com\\_content&view=article&id=8411:cancilleres-Unasur-esp&catid=42&Itemid=717&lang=es-ES](http://www.itamaraty.gov.br/index.php?option=com_content&view=article&id=8411:cancilleres-Unasur-esp&catid=42&Itemid=717&lang=es-ES) Accessed: 20-05-2015.

competences of regional bodies such as commissions and general secretariats. This tension is patent in the practices of many regional organizations that have adopted democratic protection mechanisms, ranging from the OAS to the Council of Europe or the African Union (see Closa, Palestini and Castillo 2015).

We have illustrated this tension vis-à-vis the case of Unasur's democratic protocol and Electoral Council, and the ways that they have been used in the ongoing Venezuelan political crisis. In the first section of the article, we showed that the design of the Democratic Protocol and of the Electoral Council entails a structural bias in favor of incumbent governments. The second section showed how this bias was reflected in the concrete actions carried out by Unasur in Venezuela.

A structural bias means that the organization's institutional design forces it to trade off independence of action against the guaranteeing governmental support for the organization itself. The calculus of costs and benefits is structurally tilted towards the latter: safeguarding government support. In the case at hand, had Unasur acted otherwise – that is, by stressing the need to respect the civil rights of the opposition, or by at least treating both parties in equal terms – it would have undermined Maduro's support for Unasur's mediating role. An irritated Venezuelan government could have blocked Unasur's consensus-based decision-making process, or fended off Unasur as a mediator altogether - as has happened to some degree with respect to the OAS. Moreover, this would have affected the still weak basis of legitimacy upon which Unasur rests. Hence, the calculus of the Unasur member states and Secretary General seems to be that it is better to have a mild role as mediator than none at all. And yet, prioritizing the stability of the incumbent over the rights of the opposition brings about a very serious trade-off - one that means losing credibility not only among the domestic opposition to Maduro, as is already the case, but also among those member states that are less convinced as to the democratic credentials of some of the Venezuelan government's actions.

To say that regional organizations face a structural bias is not to imply that this is impossible to correct. But for this to happen, Unasur and the South American political elites must first realize that through actions that are open to being perceived as biased, they are eroding the fragile output-legitimacy upon which their entire project rests. Second, better-defined procedures as to when and how the organization shall intervene, will reduce the risk of bias. Third, substantive definitions of what democracy is, and what a democratic breach is, are not also needed, but more importantly they must stem from a broader civil society societal constituency that cannot be encapsulated by the intergovernmental sphere. In this way, Unasur will become a mechanism to protect not only elected governments, but also the civil and political rights of the citizens, which is also a fundamental part of any liberal democracy. These are difficult conditions for an intergovernmental organization to meet; at the same time, however, they are necessary conditions for the future of Unasur and its democratic protection mechanisms.

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