GOVERNANCE Export by Regional Organizations

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Case Study Report: Andean Community.

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## Overview of regional organization

*Background*

The origin of the Andean Community –as it is known today– is closely linked to a broad integrationist movements of the 60s in Latin America. The experience of the European integration process had undoubtedly much influence in the efforts of Andean leaders and intellectuals to achieve integration. However, in contrast to the original goals of the European Communities, the main driver of Latin American integration was the desire to achieve economic development. The intellectual foundations were provided by the United Nations’ Economic Commission for Latin America and the Caribbean (ECLAC); most prominently its director, the Argentinean Raúl Prebisch. Under Prebisch’s lead ECLAC strongly influenced the strategies of the region in relation to the issue of development. The theoretical underpinnings followed the dictates of the dependence theory (*teoría de la dependencia*), according to which industrialized states maintained international economic structures as a means to bolster their dominant position. Hence, developing countries should strive for attaining autonomy from these international structures by creating their own markets and spurring economies of scale (REF). A noted example of such integrationist effort was the Latin American Free Trade Agreement (LAFTA). This free trade arrangement was signed in the early 1960s in the Uruguay, Montevideo –therefore known as the Treaty of Montevideo– and included all South American states plus Mexico.

During the lifetime of the Treaty of Montevideo, some states signalized some discontent with the most influential members of the agreement, Brazil and Argentina. Allegedly, these two states saw in it a mere commercial tool, whereas less influential members like the Andean states emphasized its potential for economic development (Marwege, 1995, Hufbauer and Kotschwar, 1998).

In 1966, representatives of Chile, Colombia, Ecuador, Peru, and Venezuela –all states that were geographically linked by the Andean Mountains– signed the Declaration of Bogotá, agreeing to a common position in relation to LAFTA. This common stance aimed at increasing their leverage in terms of benefit within the agreement. The strategy was reinforced in 1967 in the Declaration of the Presidents of the Americas (*Declaración de los Presidentes de América*), which contained a framework that would allow less developed countries to follow a stronger and more radical strategy for economic development; all this without leaving the Treaty of Montevideo. The result was that in 26 of May 1969, the Andean states signed the treaty called *Acuerdo de Integración Subregional*, also known as the Cartagena Agreement (*Acuerdo de Cartagena*). The member states became known as the “Andean Group” saw themselves as a pioneering that would advance regional integration at a faster pace than the rest of the members to LAFTA, with the hope that the latter would join the Andean states. The unofficial name of the agreement was “Andean Pact”(Marwege, 1995). In institutional terms, the Cartagena Agreement was understood as embedded into the legal framework of LAFTA (Villagrán Kramer, 1989). This is also the reason why many official documents refer to the “Sub-regional Agreement” when the talk about the Andean integration.

*Subsequent Modifications to the Cartagena Agreements*

1. Goals of the Cartagena Agreement

The highest goal of the Andean group has been industrial and economic development by means of regional integration.[[1]](#footnote-1)

Further sub goals are stated in articles 1 and 2 of the text of the Cartagena Agreement

* Harmonic and balanced economic development
* Improvement of the living conditions of the Andean population
* Diminish the member states’ difference in economic development under the principle of solidarity
* Bolstering member states’ bargaining position in international economic and trade negotiations
* Development of physical infrastructure

1. Institutional Framework: Main Organs

*The Andean Commission*

The semantic similitude with the European Commission should not induce us into mistake. The Andean Commission is, according to art. 6 of the Andean Agreement, the highest organ of the Andean Community. It reminds us to the Council of the EU rather than to the European Commission, since it is the law-making organ of the Andean Community, and it ordinarily gather the ministers of integration of the Andean member states (de Piérola 1987: 12; Marwege 1995). It is the truly intergovernmental organ of the system, in that it is constituted by the representatives of the member states. Thus, national interests become predominant (Andueza 1985a: 29). Nicolás de Piérola characterises it as a “political organ”, made up of member states representatives that act in accordance with the instructions received from their governments (de Piérola 1987: 12). Nevertheless, this intergovernmental dimension is mitigated by the fact that the Andean Commission’s Decision are taken by the vote of two third of its members (Andueza 1985a: 30).

Its main task is to determine the general policies of the Andean Community and the adoption of the necessary measures to meet the goals of integration (Art. 7, a).

The Commission has legislative, administrative, and control attributions. The means for performing its legislative functions are the adoption of *Decisiones* (Art. 6 II).

Among the administrative tasks are, for example, the appointment of the members of the General Secretariat (REVISAR), and the approval of the budget of the Andean Court of Justice (Art. 16 TACJ) and the General Secretariat (Art. 7, h; Art 5, c, Decisicion 6)

Before the establishment of the Andean Court of Justice, the Commission was entrusted the responsibility of oversee the member states’ compliance with the obligations that derived from the Cartgena Agreement (Art. 7, lit g; and Art 1 Decisión 218)

*The General Secretariat*

The General Secretariat (GS) inherited most of the competences of the *Junta*.

The Junta was the “technical organ” of the Cartagena Agreement” (Art. 131). Scholars have compared the executive character of the GS with that of the European Commission, in that both act in the interest of the community (Frischhut 2003: 237; Marwege 1995: 46-7; de Piérola 1987: 13; Andueza 1985a: 31). Although, at its inception the Cartagena Agreement avoided the explicit term of “supranationality” the Junta was conceived as an autonomous organ. For this purpose, it was foreseen, that its members were not appointed by the member states, but by the Andean Commission, this is, a Community organ. Moreover, Junta official did not forcefully have to be a citizen of an Andean, but of any Latin American state (Art. 14; and Art 2 Decisión 9)

The tasks of the Junta were strikingly similar to those of the European Commission; among them:

1. The implementation of the tasks delegated by the Commission (Art 15, h; Art 7 (8) Decisión 9);
2. The elaboration of the proposals that were to be presented to the Commission in order to be legislated upon (Art 15, c, d; Art 7 (3), (4) Decisión 9)

(3) The oversight of the compliance with the provisions of the Cartagena Agreement as well as the Decisiones adopted by the Commission (Art. 15, a; Art 7(1) Decisión 9)

Its annual budget rises to aprox. US$ 5'659’200[[2]](#footnote-2)

*The Andean Parliament*

The treaty that established the Andean Parliament in October 25th 1979 did not declare it a main organ of the Andean Pact. This characterization only came by means of the article 5 I of the new version of the Cartagena Agreement. This led the Andean literature to debate on the actual nature of the parliament (Marwege 1995: 49) It has, nevertheless, its own juridical personality, which not even the Andean Pact had as such (Marwege 1995: 49). This contrasts to the EC, which established its nature of juridical subject of international public law in article 210 and 211 CEE. VER.

Among the reasons for its establishment, scholars have mentioned the goal of reaching legitimacy (Marwege 1995: 51).

The Andean Parliament is mainly an advising organ that represents the peoples of the Andean region. The representatives are elected in direct elections, but until this is implemented, it will be a “parliament of parliaments” (Marwege 1995: 50; Sáchica 1985b: 74)

The actual relevance of this organ lies on evaluating the course of integration through issuing *Recomendaciones*, and therefore strongly deviating from the current attributions of the European Parliament; its attributions on democratic control of institutions is non-existent (da Cruz Vilaça and Sobrino 1998: 43). Its functions have been described as “declaratory” or advising (Frischhut 2003: 242; Marwege 1995: 51). Nevertheless, some scholars suggest that despite the lack of formal coercion, *Recomendaciones* might have an influence on the legal order, by shaping Andean statutes (Sáchica 1985a: 11-2)

*The Andean Court of Justice*

The Andean Court of Justice is not a founding institution of the Cartagena Agreement. It was established on May 28, 1979, by virtue of the Treaty of Creation of the Court of Justice of the Cartagena Agreement, and had begun its work on January 5th, 1984, after a long process of national ratifications.[[3]](#footnote-3) The ACJ was deliberately modelled after the ECJ, together with its system of judicial remedies, in an attempt to emulate the European success (Helfer and Alter 2009: 3)

Its annual budget rises to aprox. US$ 1 170 667[[4]](#footnote-4)

1. Membership

There were considerable changes in the Andean Group during the 1970s. Chile withdrew on 30 October 1976 (on the reason that led to Chile to exit, see Emmes and Mols, 1993) Venezuela joined the Group on 13 February 1973. Some scholars suggest that the delay was not Venezuela’s inability to compete in an advanced free trade scheme, but rather the influence of national and U.S. business interests (Marwege, 1995).

In addition to the full members, the Agreement has associate members. These members do not have decision-making rights and do not participate in the (imperfect) custom unions. These states are Argentina, Brazil, Paraguay, and Uruguay[[5]](#footnote-5), as well as Chile[[6]](#footnote-6). These associate member can participate in the institution’s meetings; they have no decision-making power though.

1. Institutional Changes: From the Andean Pact to the Andean Community

With the adoption of the Trujillo Protocol on March 10th, 1996, the Andean Pact’s import-substitution policy took a twist towards free trade scheme based on a common market: “open regionalism”. This was mainly consequence of International Organisations pressing for deregulatory reforms (Helfer and Alter 2009: 8) Organs were to be linked through a system –the Andean System of Integration (SAI)– so as to reinforce effective implementation of supranational norms (Comunidad Andina 2006: 15), and the whole scheme was “rechristened” as the Andean Community (Helfer et al. 2009: 10). This reform procured the strengthening of the Council of Foreign Affairs Ministers as Intergovernmental political organ, and converted the Junta into a General Secretariat (GS) (da Cruz Vilaça and Sobrino 1998: 26) with an increase in both, size and budget, as well as the explicit goal of promoting regional integration.[[7]](#footnote-7)

Consistent with those major reforms, member states amended their national constitutions, so as to adapt them to the process of regional integration. With the only exception of Bolivia, the topic of Latin American integration, as well as Andean integration were incorporated into the Constitutions of Colombia (1991), Peru (1993), Ecuador (1997), and Venezuela (1999) (Tangarife 2001a: 124)

The current structure of the Andean Community (Andean System of Integration, SAI)



Graphic 1. Source: Andean Community’s Website, <http:www.comunidadandina.org/ingles/sai/que.html>

## Mapping Governance transfer

The analytical framework proposed by “Governance Export by Regional Organizations” involves some challenges in the case of the Andean Community. Because the first analytical step requires the search for documents that prescribe and/or promote legitimate governance it is here were most of the research has to devote most the time. As I show below, the quantitative dimension of prescribed standards of legitimate governance that are related to human rights, the rule of law, and democracy is impressive. In terms of the adoption or application of these standards, the number decreases considerably. This data might suggests, that there is a clear consensus among the Andean member states on *what* the standards should be. It remains to be seen though, whether there is some degree of consensus that is nearly as consensual as when it comes to the question of *how* to adopt these standards.

When assessing the data, one should keep in mind that the Andean Community stems form a project that was drafted mainly by economists. Neither social scientists, nor lawyers where involved in the outset of the Andean Group (REF). The founding group took much inspiration from writings that believed in the driving force of economies of scale. (REF Balassa). When combining these assumptions with a critical approach that dominated in the “dependence theory”, the result is a clear emphasis in protecting regional markets from the international markets. During the early 1990s, amidst a new wave of regionalism, the logic of open economies permeated the whole region. The requirements of the Washington Consensus resonated in many states of South America, possibly because the international context was changing rapidly. The WTO had been established and the European Community had managed to adopt the Maastricht Treaty setting an ambitious agenda. Therefore, almost all the efforts of the Andean Group and the subsequent Andean Community (from 1996 onwards), were concentrated in establishing their internal market; be it as a means to break with industrialized economies –as the protectionists demanded in the 1970s– or as a means to attract foreign direct investment from the international markets. Be it as it may, the common goal of every phase of Andean integration was “development through regional integration”; this constantly meant establishing a common market. The implications of the underlying philosophy of Andean integration is that the regional institutions are primarily oriented towards technical aspects of integration, meaning that those decisions that involve strong values are possibly left to other organizations. This approach might be a partial explanation for the efforts devoted by the general secretariat to measures like the harmonization of customs denominations (Nomenclatura Andina, NANDINA)[[8]](#footnote-8), or the disproportionate efforts of the Andean Court of Justice to advance case law in the field of Intellectual Property and Patents (Alter/Helfer 2009). When it comes to community organs, there does not appear to be a similar emphasis on fields related to human rights/democracy/good governance/rule of law. This claim should be taken with care, as the search of further data is not over!

### Prescription & promotion

Below is a narrative related to documents found so far. I present them divide into the headers of human rights/democracy/rule of law/good governance. However, most documents (if not all of them) can only be categorized with difficulty, because they tend to be overarching. Their content is often very broad in scope, and includes all of these dimensions. The categorization, therefore, follows an intuitive logic that considers the broader context, and maybe the relative importance of the concepts in each document.

### Carta de Riobamba, 11 September 1980

The Riobamba Charter is a declarative document signed by the member states of the Andean Group as representatives of their states. In a strict sense, it is not a documents of the Regional Organization. However, I considered it as a relevant document because: first, the content was agreed by a regional organ. The Council of Ministers of Foreign Affairs met in the Ecuadorian city of Quito in 12-15 March 1980, and negotiated the terms of the charter. Second, it is very common for the member states of the Andean Group to issue documents concerning the fields of human rights and Democracy in their individual state capacity. One can speculate on the reasons for this. The clear tendency, however, is to appear as representatives of the member states, despite the invocation of fancy ideals taken from the wars for independence in the XIX century. An example for this is the initial invocation of the “ideals of the Liberator, Simón Bolivar”.

The context in which the Charter is issued shows some complexity. To begin with, the members were not the same. Chile withdrew from the Agreement in 1976, basically because of incompatible views in regard to foreign direct investment policies. The fact that Chile was under the rule of dictatorship possibly precipitated the withdrawal, because the military junta was not accountable in (nearly) any decision related to international affairs. Second, the threats of war were explicit. Chile and Argentina almost engaged in an armed conflict in 1978, which could only be avoided through mediation and conciliation of the Pope John Paul II. It is plausible to think that the incidence was a major threat to a fragile geopolitical balance, especially because neighbour states had also a stake in the conflict in regard to territorial claims against the beligerants.[[9]](#footnote-9)

The peaceful settlement did not hinder the continuation of systematic violation of human rights in both countries. The formal issuance of the state of exception suspended most constitutional guarantees of the population. In Argentina, this period is known as the “dirty war” (*guerra sucia*).

In addition, border disagreements between Peru and Ecuador had led to an armed conflict in 1941. The territorial claims concerned two provinces in the Amazonian area. Despite a provisional settlement, the problem escalated in 1981 into a brief military clash known as the “Paquisha War”. Commentators of military affairs suggest that the incident could be ended thanks to the intervention of delegates from the US, Argentina, Brazil and Chile (Marcella 1995: 7-9); and still, the efforts could not hinder the conflict of 1995 between the same states, over the same territories: “the Cénepa War”.

Lastly, the Colombian government had been engaged in a fight against its domestic rebelling forces (*guerrillas*) already since 1964.

Against that historical backdrop, it is not surprising at all, that the Andean Council of Ministers of Foreign Affairs considered such declarations to be necessary in March 1980, and that the Presidents signed it in September in Ecuador.[[10]](#footnote-10) Interestingly, Ecuador did register the text only after the “Paquisha War”, on the 1 March 1983.

The only mention to security issues is paragraph 5, as the presidents endorse the disarmament goals of the Declaration of Ayacucho. Possibly under the shadow of war, par. 4 encourages peaceful means for settlement disputes between countries of the Andean group. Whether this mention is an implicit reference to the Peruvian-Ecuadorian conflict, should be further investigated. The rest of the declaration mainly deals with democracy and human rights.

Democracy

In terms of democracy, the Charter promotes participation and ideological pluralism (Par. 1.) It calls for the establishment of subregional political order originating from democracy. However, it does not promote a particular type of order, nor does it establish any instrument for this.

Good Governance

In terms of good governance, the Charter promotes the establishment of “Integral Development Schemes”, aimed at repairing unjust social structures. What these schemes should look like, and what particular social structure should be dismantled, is not further specified in the Charter. The addressees of such measures are not clear either, especially considering that the Andean Community (by that time the Andean Pact) did not have institutionalized competences for implementing such measures.

Human Rights

Concerning the proper human right dimension, the Charter envisions joint action aimed at promoting respect for “human, political, economic and social rights”. It remains unclear, however, what kind of joint action is meant by this. In terms of addressee, it can be deduced that this would be a matter concerning member states; whether this should be done in a pure intergovernmental way, or within the Andean Council is again left open.

Possibly the most prominent part of the Charter, may be its endorsement of international human rights law. Although it does not specify further mechanisms, it explicitly mentions (non-Andean) international agreements like the Charter of the United Nations, the Charter of the Organization of American States, the Declaration on the Establishment of a New International Economic Order, the Cartagena mandate of 28 May 1979; the Quito Declaration of 11 August 1979; the Panama Act of 1 October 1979, and the Lima Declaration of 29 July 1980 (See Table on the Riobamba Charter of Conduct). Although these international agreements were already binding law, it seems fair to speculate that these declarations had a strong signaling purpose.

### Evaluación del cumplimiento de los mandatos presidenciales. August 1995

This document is an overall assessment of the performance of the Andean Group and Andean integration. It provides a brief monitoring of Andean action in a vaiety of policy field, like health, transportation, free movement of people, science & technology.

In term of rule of law, it refers to the fight against drug dealing, and the declarations made in the Acta de la Paz and Acta de Caracas. The addressees of this policy goal were the Andean Council, electoral organs of the member states, the Andean Parliament, and the Andean Council of Foreign Affairs Ministers. The assessment made up to that date suggests that the “member states are promoting the subscription of agreements with third countries on the issues related to illegal trafficking with drugs” (p.2)

Human Rights: It devotes a section the Free Movement of people, acknowledging that Bolivia, Colombia, Ecuador and Peru already adjusted their legislations to the presidential directive of eliminating any visa requirements for nationals of the member states. This goal was included in the Acta de la Paz, and addressed member states, the Council and the Junta. (p. 16)

### Decisión 458 del Consejo Andino de Ministros de Relaciones Exteriores (Política Exterior Común) 25.May 1999

Decisión 458 aims at establishing guiding principles for the Community’s external relations. It is very broad, as the standards it seeks to set include all the four dimensions analysed by the research. In addition to explicitly mentioning democracy, the rule of law, human rights, it relates them to policies of poverty reduction, fight against corruption and environment protection. It establishes a small set of instruments in order to attain the main goals, although it calls them “modes of action” (*modalidades de acción*). These are the adoption of joint decisions, coordination among diplomatic missions, and eventual joint diplomatic missions. I also calls the Community to use of multilateral for a and international cooperation. These modes of dialogue, however, are stated in general terms; it does not specify a particular procedure or content.

Democracy

It reaffirmed the democratic order and citizen participation as a cornerstone of a Common External Policy. Among its goal was the development and consolidation of democracy within the region, as well as across regions.

The goals would be attained by a) adopting common positions as well as appointing a common speaker in order to address matters relevant to democracy, b) coordinating Andean diplomatic missions before third countries, or c) joint representations before third countries or international organizations. The Andean Commission implements these measures.

Regarding the promotion of democracy across the region, the Andean Council drafted an additional protocol to the Cartagena Agreement containing the Andean Community’s Commitment to Democracy. This protocol declares the validity of democracy; in case of interruption of democracy, the rights conferred by the Cartagena Agreements to the infringing state will be suspended. This “democratic clause” was also agreed with MERCOSUR in the South American Summit of 2000 in Brasilia. In case of infringements or threat to democracy, the agreement establishes procedures of consultations and the exclusion from future summits.

### Informe del Seminario Andino Sobre Democracia y Derechos Humanos. 06 October 2000

Following the agenda fort he Common Foreign Policy, adopted by the Andean Council of Foreign Affairs Ministers, a Seminar on Human Rights was jointly organized by the Ministry of foreign relation of Ecuador and the General Secretary of the Andean Community on the 23 and 24 of August 2000. The outcome was disclosed in a report of 06.10.2000.

Among the issues that were explicitly addressed, are rights of indigenous and afroandean peoples, of women and children, promotion of the right to development, and the performance of the “Defensorías del Pueblo”.

Human Rights: Ecuador’s “Plan Nacional de Derechos Humanos” was addressed explicitly as a measure to be followed by the member states (par. 4). This plan contains 26 operative plans, establishes a participatory mechanism and is articulated by the Ministry of Foreign Affairs. According to the document, Bolivia and Venezuela also have such national plans. In its conclusions, the documents calls for an exchange of experiences among member states. Moreover, the participants call for the establishment of an Andean program of cooperation on the issue of HR.

In addition, General Secretary official Allan Wagner Tizón reaffirms that it is an explicit goal of the Common External Policy, approved through *Decisión* 458, to defend and promote human rights, as well as democracy, as a requirement for the process of regional integration.

Among the conclusive remarks, there is an explicit recommendation in order to recognize the “right to development” (*derecho al desarrollo*), and to codify it. The recommendation suggests that this should be promoted within the organs of the United Nations. Similarly, a right to peace” (*derecho a la paz*) should be promoted by means of dialogue and social participation, which in turn, would foster a “culture of peace” (*cultura de la paz*). Also included in the conclusions, is the importance of protecting the human rights of migrants. Therefore, they call member states to ratify as soon as possible the United Nations Convention on this issue, and develop common policies aas well as common actions in this regard.

The conclusive remarks also address the “rights of indigenous peoples” (*derecho de los pueblos indígenas*). The conclusions acknowledge that the national constitutions of all five member states recognize them as multicultural and multiethnic states (*pluriculturales y multiétnicos*), and contain rights that protect indigenous groups. The document calls the states to reaffirm their commitment towards protecting them, and preserving their identity and organizations, as well as promoting their representation and participation in the organs of the state.

Policy: the document calls for measures that lead to the development of an indigenous community law (derecho comunitario indígena) that could harmonize the existing legal pluralism that characterize multicultural settings. Moreover, it calls for the further integration of ethnic groups that live near national borders, by means of double nationality.

The document reminds the commitments made by the member states in regard to the Beijing Action Platform that aims at protecting the rights of women and eradicate any form of discrimination contained in national legislations.

Policy: The participants recommend taking common actions like diffusion, promotion, and teaching of the principles of the United Nations Convention, and its related documents.

They also call to protect the rights of children and adolescents.

Policy: For that, they recommend the prompt ratification of all protocols that ban kidnapping, human-trafficking and prostitution of minors, as well as child-labor and the use of children in armed conflict.

Other explicit rights that should be protected are “cultural diversity”, “protection of the family”.

In terms of sovereignty, the document states that international actions that aim at defending human rights do not constitute intromission into domestic affairs of the states.

The document commends the role played by the “Defensorías del Pueblo” in the defense of HR. Therefore, the participants call for the creation of an Andean mechanism that could foster cooperation and coordination among the different *defensorías*.

As a concrete policy measure that aims at protecting HR generally, the document recommends the study and adoption of the treaty on the International Criminal Court. Related to this, the participants make an explicit recommendation to the General Secretariat that a report be drafted on the status of ratification and ratification by Andean member states of the international agreements on HR. They agreed to provide the relevant information regarding each state to the General Secretariat.

Finally, the drafters recommend the drafting and approval of an Andean Charter of Human Rights that should orient the community’s policies in this field. This charter should also contain programs aiming at strengthening HR in the Andean states. The Ministry of Foreign Relations of Ecuador assumes the task of proposing a draft on the Charter, in cooperation with the General Secretariat.

Democracy

There is an explicit reference to the *Carta de Riobamba*, and the Protocol “Compromiso Andino por la Democracia”, as well as the numerous international instruments that Andean member states have signed.

Policy: The Mesa will interact with the Andean Council of Foreign Ministers or with the General Secretariat by providing opinions and initiatives, based on the consensus of its members.

Democracy and Rule of Law:

The participants underscore that democracy and the rule of law are essential for protecting civil and political rights. This entails the improvement of the judiciary and all its related organs.

### Acta de Carabobo, de 24 de June 2001

The Act of Carabobo was signed in Valencia, Venezuela on June 24, 2001, by the member states during the XIII meeting of the Andean Presidential Council. This document was signed in times where the Andean Group had already been reformed. The Andean System of Integration, this is, a institutional framework that reordered the functioning of the organization with enhanced competences for the General Secretariat (former Junta), for making proposals and monitoring the pace of integration (Parlamento Andino 1999)

Democracy

Although the Act of Carabobo includes all aspects that are relevant to the project, this is, democracy/human rights/good governance/rule of law, it seems to focus on the dissemination of democracy. Contrary to many other Andean documents, it refers to explicit mechanisms that should help to achieve that goal. Concretely, in paragraph 30, it endorses the "Initiative: Education for Democracy" with the support of the Organization of Iberoamerican Countries and the "Andean Human Rights Program" sponsored by the European Union. They further welcomed the creation of the Andean International Studies Network at the same academic center. The adressee is the Simón Bolívar Andean University, a Community Body entrusted with the dissemination of Andean integration. In this way, the educational agenda of the University is brough in line with the main goal of the Act of Carabobo. As I show further ahead, this content is also included in the Andean Charter for the Protection of Human Rights, and adopted through the Andean Program of Human Rights. Moreover, some researcher working within the European Initiative for Democracy and Human Rights suggest that educational content on democratic orders and values has permeated into local universities. (Tuijtelaars, Hey, and Fox-Decent 2006). The Act also endorses democracy in the usual general terms, as in par. 9 as it states that democratic governance is a priority and that any temporary difficulty should be overcome by “constitutional means”. The Act does not specifiy what it mean by “difficulty” nor by “constitutional means”. However, the contemporary context makes it clear: one year before, in 2000, Peru’s President Alberto Fujimori fled to Japan, amidst charges of corruption. Moreover, in 1999, Hugo Chavez came to power in Venezuela, spurring concerns in the region about the scope of his planned political reforms. Lastly, former member Chile witnessed how Augusto Pinochet got arrested in London by virtue of an international order issued by a Spanish judge, and finally released in 2000, which produced considerable tensions in the region. One could plausibly read the Act as a call to ease the political atmosphere, and to overcome such challenges without the intervention of military forces.

Human Rights

Nevertheless, a decisive sign for promoting the protection of human rights, is contained in par. 8, in which the member states make explicit “their intention to approve an Andean Human Rights Charter that would contribute to ensuring the exercise of human rights, strengthen democracy and the constitutional state, and firmly establish a culture of peace in the Andean nations“. The Andean Human Rights Charter would be signed and adopted in July 26, 2002 (See below). The member states also included an explicit instruction to the Andean Council of Ministers of Foreign Relations, in order to draw up the Charter within the framework of the Inter-American Convention on Human Rights, and the 1980 Riobamba Charter of Conduct (See above). The instructed content is clearly related to the frequent problems experienced during the phases of dictatorship in the region, as well as the challenges experienced during the late 1990 and early 2000, briefly described above. Among these issues, we find: strengthening the constitutional state and administration of justice, promotion of peace and tolerance through dialogue, and the protection of human rights. In this regard, the Act also refers to the establishment of an Ombudsman’s office in the member states (*defensoría del pueblo*). These feature would later be included among the standards and objectives of the Andean Charter of Human Rights.

### Declaration of Machu Picchu of 2001, democracy, rights of indigenous peoples and fight against poverty, signed on July 29, 2001,

This document was also a means of the Andean Presidents to instruct the Andean Council of Ministers of Foreign Affairs to prepare a draft fort he Andean Charter fort he protection of Human Rights (Par. 4). Echoing the Act of Carabobo, this declaration also hinted at transforming the content of the charter into a community policy. The main theme of this declaration, however, are human rights related to indigenous people. It makes an early attempt to draft possibly proto-catalogue of fundamental rights and fundamental freedoms of indigenous peoples (Par. 7). Considering the Republican Constitutions of most South American states, mostly inspired in the ideals of the XIX century, such positive discriminating rights in favour of native indigenous population is certainly a novelty. It is unlikely that provision like right to identity, to language, and protection of sacred places are found at all in national constitutions for the general population. The instrument of round tables is introduced as a means to foster dialogue in this regard. The Council of Ministers of Foreign Relations is charged with the task of making a proposal in this direction. This concrete inclusion of Rights of Indigenous People in the declaration of Machu Picchu might be of considerable relevance considering the fact that they were later explicitly included in the subsequent Andean Charter of Human Rights (2002).

Good Governance

In terms of Good Governance, the declaration acknowledges the previous Act of Carabobo (Par. 18). It recognizes that good governance is essential for overcoming social inequality (Par. 13), and fighting corruption is a core objective (Par. 14-18). The mechanism mentioned for this purpose is also the establishment of round tables (*mesa de concertación social*).

### Propuesta de la Secretaría General para la creación de la mesa de trabajo sobre Derechos de los pueblos indígenas, 06 July 2002

This document resulted from the work done by the General Secretary, who made consultations and led the a first meeting of the *Mesa Indígena* (probably “indigenous round table”) in may 2002, which gathered representatives from indigenous organizations, member states, government officials and the *Defensorías del Pueblo*.

The *Mesa Indigena* initiative has its genesis in the X ordinary meeting of the Andean Presidential Council, which called for stronger participation of groups coming from labor and civil society. The document acknowledges that the Mesa Indigena should be regarded as politically established in the Declaration of Machu Picchu, and legally constituted by means of the *Acta de Urubamba*. It cites among other the goal of the Mesa: Address ways of “improving the quality of life of indigenous peoples”[[11]](#footnote-11), as well as promoting their active participation in the process of regional integration.[[12]](#footnote-12)

The document refers frequently to the content of the Acta of Urubamba

“we firmly support every effort aiming at promoting and protecting the rights and fundamental freedoms of the indigenous peoples”,[[13]](#footnote-13) and “our states have the duty to guard and guarantee the application of the provisions of the American Declaration on the Rights and Duties of the Man, the American Convention on Human Rights, as well as other existing instruments in the regional and universal dimension”[[14]](#footnote-14).

Policy and Instruments: The Mesa shall serve as a means to establishing (common) positions in international fora; monitor the application of norms, agreements or international treaties that promote the rights of indigenous peoples.

### Decisión 524, Establishing the Round Tables for Indigenous Peoples in the Andean Community 07 July 2002.

This Decision contains the draft decision of the proposal of 06.07.2002.

### Andean Charter for the Protection and Promotion of Human Rights, signed in the Ecuadorian city of Guayaquil, 26 July de 2002

Human Rights

As explained earlier, the Andean Charter stems directly from the Acta de Carabobo, and the Declaration of Machu Picchu, through which the presidents of the Andean member states had instructed the Andean Council of Ministers of Foreign Relations to prepare the draft. It appears as a cornerstone of the activity of the Andean Presidential Council, as well as the Andean Council of Ministers of Foreign Affairs. However, although the Charter seems to have attracted much attention, especially as a legal antecedent of many following declarations, it si not a central policy of the Andean Community. As of today, the central goal of the Andean Community is the establishment of a common market. Human Rights within the Andean region –within the Andean states– are not functionally linked to the faith of the Andean Common Market. The Andean Law-makers have not dared such a step, and neither have done Community organs. The Andean Court of Justice, for instance, has not been willing to follow the European Court of Justice. This is somehow different to what occurred in the European Community of the 1970s, where the ECJ established that “fundamental human rights were enshrined in the general principles of Community Law and protected by the Court.[[15]](#footnote-15) Furthermore, in the case Nold[[16]](#footnote-16) the ECJ clarified that protection for fundamental rights found inspiration not only in the common national constitutional traditions, but also in international treaties like the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter (Craig and de Burca 2008: 383-5). Conversely, the Andean Court of Justice never linked Human Rights with the interpretation or development of Andean Community Law. Contrary to the establishment of the European Single Market, the prospective Andean market was not tied to the notions of fundamental freedoms circulation of goods or people. It is therefore reasonable to think that the notion of human rights and fundamental freedoms were invoked by Andean presidents as a matter that was accessory to regional integration. As far as the search has shown, the principal point of reference for matters of human rights and fundamental freedoms are not regional integration arrangements, but rather continental organizations that were entrusted with the main goal of overseeing, monitoring and promoting human rights. The Inter-American System of human rights is possibly the most accurate example. The work of its organs, the Inter-American Court and the Commission, is frequently cited in Andean declarations. However, it has not been incorporated into matters related to the common market or the customs union. One might postulate that human rights and regional economic integration follow different paths. The same could be said in regard to democracy, where the major point of reference is the Organization of American States. However, one should not overstate this claim until more research is available.

In terms of content, the Charter is very broad. Following the innovative style of the Act of Carabobo and the Declaration of Machu Picchu, it combines rights that have been established long ago in several national constitutions, with rights that are novel even for the member states. As most charters do, it devotes most of its content to declare and prescribe standards, or rights. Recognition of Human Rights features prominently, together the assertion of the goal of protecting them. These kind acknowledgement usually cites and endorses international human rights law, especially the Inter-American Democratic Charter (e.g. Art. 4, 14). The addressees are often undetermined. It is clearly a declaration made by member states representatives, but the content is stated in terms of universal validity. In terms of mechanisms, the Charter is generally not explicit. It reiterates the need to implement and incorporate binding international human rights law, but it does not propose mechanisms that would induce or favor such results. It takes a similar approach in regard to the rule of law, calling the member states to comply with decisions of the Inter-American Court (Art. 7, 8, 9). It does establish some mechanisms; especially related to report and exchange of information (Art. 76, 80). Sanctions or deadlines, however, are not established.

Rights of women, children, adolescents, older adults, persons with disabilities, ethnic minorities, workers, migrants and refugees are example of the new approaches of the Charter in comparison to national constitutions.

Non-discrimination features prominently. It bans any form of discrimination based on race, nationality, gender, race, color, religion, orientation, and immigration status. I believe it is safe to say, that none of the Andean constitutions have such a broad portfolio of criteria for assessing discrimination. It broadly mentions some mechanisms that could warrant these prescription: strengthening criminal law and fostering educational plans and programs (Art. 10, 11). This mention is, however, very general and does not specify what these mechanisms should look like.

Good Governance

In relation to good governance, the Charter includes civil society, and calls it to participate in national action plans. It does not explain how and when this should be done. Nonetheless, against the backdrop of most Andean national constitutions, the inclusion of civil society is not necessarily an obvious move. To certain extent, it might be considered an innovation. Also significant is the introduction of the Ombudsman (*defensor del pueblo*). It calls the member states to establish these organs and to coordinate them horizontally (Art. 70-72).

Rule of Law

Finally, in terms of the rule of law, the charter explicitly addresses the rights of people deprived of liberty. Maybe echoing a possible endemic problem of developing countries, it asserts the necessity to implement “procedural celerity”, in order to avoid unnecessary delays of trials that could cause more harm (Art. 57). The same logic is invoked for people that are seeking asylum, who shall not be expelled to countries where the their lives or security might be endangered (Art. 58).

Democracy

The Charter also profusely addresses democracy, especially in reiterating previous commitments. Key issues like the right to vote, participation, and access to information are explicitly reaffirmed (Art. 21-23)

### Propuesta de la Secretaría General sobre creación del Consejo Electoral Andino. 16 June 2003

The Andean Electoral Council (Consejo Electoral Andino, or CEA) was conceived as a consulting organ pertaining to the Andean System of Integration, with the general task of assisting the national electoral agencies and issue opinions in electoral matters.

This document contains the draft for a decision establishing the CEA. In its first section it acknowledges the facts that originate it.

It refers to the Aditional Protocol to the Cartagena Agreement “Compromiso de la Comunidad Andina por la Democracia”,[[17]](#footnote-17) which declares that the Andean Community is a community of democratic nations that have demonstrated their will to promote the validity of a democratic life and the rule of law.[[18]](#footnote-18) It also makes a reference to the Andean Presidential Council, which has repeatedly underscored the need to promote the “organized participation of civil society in the process of decision-making within the Andean Community, with goal of […] strengthening the democratic principles, values and practices in the sub-region”.[[19]](#footnote-19)

Policy and Instruments: Proposal 101 contains a draft decision for the establishment of the Andean Electoral Council. It also states its competences and attributions in article 2. Among them: a) Issue opinions to the Andean Council of Foreign Affairs Ministers and the General Secretariat; b) draft the Andean Electoral Statutes; c) support mechanisms for horizontal cooperation and technical assistance between national electoral agencies; d) supervise and monitor electoral processes for the Andean parliament; e) suggest measures for improving national electoral laws of member states; f) propose measures of modernization and automatization of electoral processes within the region and for each member states.

### Propuesta de la Secretaría General sobre adscripción del Consejo Andino de Defensores del Pueblo al Sistema Andino de Integración. 25 June 2004

The document refers to the Andean Council of Public Defenders (Consejo Andino de Defensores del Pueblo, CADP), which was agreed on 1 February 2002, in Quito, Ecuador, and was originally not part of the Andean System of Integration. It comprised the heads of each national Public Defender, and was open to the peers of other countries.

The goal of this council is to promote the defense of HR, as well as national practices of Good Governance. In addition it pursues the autonomy and independence of the different *Defensorías*.

It cites the agreements reached at the IX Meeting of the CADP, Lima 2 February 2004, in order to collaborate with the General Secretariat in the diffusion of the Andean Charter of HR among the people of the Andean region. It was agreed, that further mechanisms would be explored at the following meeting of the Council of Foreign Affairs Ministers.

Policy: The document declares the need to reach the adscription of the CADP to the Andean System of Integration, prior consultations with the member states. The draft of the decision is parte of this proposal (see P. 2)

### Propuesta de la Secretaría General sobre el establecimiento de un programa de apoyo al fortalecimiento de la Democracia, el Estado de Derecho y la Participación ciudadana en la Comunidad Andina. 12 September 2005

This document also contains two parts: a first part containing the reasons for adopting a program on democracy, rule of law, and participation, and a second part with a draft for the decision that should implement it.

The first part declares that since the inception of the Cartagena Agreement in 1969, the prevalence of democracy has guided regional integration in the Andes. According to the text, the Andean Council of Foreign Ministers, since its establishment in 1979, has strived towards linking democracy with the process of regional integration. In turn, national governments have repeatedly declared that it is the existence of democratic regimes which provides integration with legitimacy and international support. As a result, they subscribed in 1998 the “Protocolo Adicional al Acuerdo de Cartagena: Compromiso de la Comunidad por la Democracia”, which introduces a “democratic clause” into the Community legal order. In addition, Decision 458, which lays the foundation for a Common External Policy is based on the prevalence of a democratic order rooted on citizens’ participation and social justice; moreover, in 2002, the Andean Presidential Council approved the Andean Charter for the Promotion and Protection of Human Rights.[[20]](#footnote-20)

The draft contained in the document is the consequence of a directive issued by the XVI Andean Presidential Council addressing the Andean Council of Foreign Affairs Ministers, in order for it to conceive such a program that aims at “strengthening democracy, participation, and the rule of law in the Andean subregion”.[[21]](#footnote-21) The draft begins by acknowledging that “the Cartagena Agreement is founded on the principles of equality, justice, peace, solidarity and democracy”.[[22]](#footnote-22) The draft also explicitly acknowledges the Andean Charter of Human Rights and states that “democracy, the development and respect for human rights and fundamental freedoms are interdependent and reinforce each other”. It continues stating that “development and consolidation of democracy and the rule of law, as well as the promotion and respect for human rights and fundamental freedoms are goals of the Common External Policy” of the Community.[[23]](#footnote-23)

Policy and Instruments: The document acknowledges that the General Secretary has acted as an international observer in the Ecuadorian process for appointing a new Supreme Court, together with the Organization of American States and the United Nations.[[24]](#footnote-24) In addition, on a request by the Bolivian government, it is expected to assist that country in a set of issues related to democratic governance, especially those regarding consensus building in a *pre-constituant* phase.[[25]](#footnote-25)

The draft for the decision states its goals as mandated by the Andean Presidential Council: promote studies on political and social processes in the region, support mechanisms for citizens’ participation, dialogue and coordination, as well as the strengthening of the democratic institutional system; in addition it should strive for the exchange of information between academics.[[26]](#footnote-26)

### Informe Reunión de expertos gubernamentales en estadísticas sobre participación ciudadana , pobreza subjetiva, gobernabilidad y democracia. 23 Septiembre 2005

Policy and Instruments: Between 21-23 of September 2005, governmental representatives and experts held their 6th meeting on Statistics on Citizens’ Participation, Subjective Poverty, Governance and Democracy, in Bogotá, Colombia. As they discuss the perspective of one of their statistical projects (called Metagora), the governmental experts make a common pledge to what they term “fundamental aspects”. 1) They commit themselves to maintain their joint efforts in order to institutionalize their work on Governance and Democracy; 2) move up with the development with the statistical work; 3) acknowledge the necessity of disseminating information that allows states to position the discussions on these topics in their agendas; guarantee the feasibility of common spaces for technical discussion within the region.

Furthermore, the document refers to the interest of the General Secretariat to work with statistical data on Governance and Democracy, especially in relation with the ongoing Integrated Plan on Social Development (*Plan Integrado de Desarrollo Social*), the Program on Governance and Democracy, and the Andinobarómetro.

### Informe del Seminario Taller Subregional sobre lucha contra la corrupción. 12 October 2005

The document is reports on the design of the Andean Plan for the Fight against Corruption (*Plan Andino de Lucha contra la Corrupción*, PALCC). It is a follow-up of a previous workshop named “Hacia un Plan Andino de Lucha contra la Corrupción”, held on 21 and 22 April 2005. In that workshop series, the member states concluded that corruption was a real problem in the region. Furthemore, the member states acknowledged that the international perception related to the levels of corruption in the region was negative.

It also contains the draft decision establishing the PALCC. In this draft, the Andean Council of Foregin Affairs Ministers declare:

a) reaffirm the member states’ commitment to the fight against corruption as an indispensable requirement for protecting the State’s assets, strengthening the democratic system, consolidating institutional legitimacy, and bolstering the integral development of Andean peoples;[[27]](#footnote-27) b) that the activities related to the strengthening of democracy and the fight against corruption contribute to stability and allow to reap benefits from the integration process in an egalitarian way; c) that corruption undermines the legitimacy of public institutions, as well as society, morality, justice and the integral development of peoples; d) that representative democracy, a requirement for stability, peace and development, demands that corruption be fought against; e) that corruption should be fought against with a broad interdisciplinary approach; f) that prevention and eradication of corruption is a responsibility of all states, who should cooperate with civil society and non-governmental organizations.

Furthermore the Andean Plan laid out in the decision, states its guiding principles. These are:[[28]](#footnote-28)

1. Strengthening of democracy and the rule of law
2. Non-intervention in internal affairs.
3. Respect for principles and norms of international law.
4. Consolidation and deepening of the process of Andean integration.
5. The common Andean identity
6. Safeguarding the assets of the States.
7. Ethical and moral values of society
8. Defense and promotion of the rule of law.
9. Social and economic development of the member states

The decision making body of the PALCC is the Andean Council of Foreign Ministers and it is entrusted the task of defining and evaluating the any progress made in this plan. There is also an Executive Committee, composed of three officials coming from the national foreign ministries, the authorities charged with the fight against corruption, and the judiciary. The executive committee operates, coordinates and monitors the lines of action that are defined in the PALCC.

Policy and Instruments: The Andean Plan divides its policy lines in three. A) Legislative development, B) Measures of prevention, and C) International cooperation and technical assistance.

Under the policy area of legislative development, PALCC should strive towards subscribing or ratifying international treaties related to the fight against corruption, especially the Interamerican Convention against Corruption, among others, (points 1, 2); bring legislations inline with international conventions and harmonize them at a community level (point 3); carry out comparative legal analysis of the topic, (points 4) to further the implementation of disciplinary statutes, as a means of enforcing existing laws (point 5); promote the adoption of an additional protocol to the Interamerican convention including rules concerning the recovery of assets in case of acts of corruption.

Under the issue prevention, the PALCC calls for the establishment of independent national organs that could carry out the relevant policies (nr. 1), optimizing statutes, norms (Nr. 2), enhancing interaction of the states with the citizen’s in order to tackle distrust, modernizing the structures of national organ’s that exert control over state action by providing the necessary independence and resources (4, 12) and drafting a program that can coordinate the entities involved in the fight against corruption like the judiciary, public prosecutors, and other similar organs (8), introducing the duty of public servants to declare their possessions (5), promoting the exchange of information between state entities charged with public acquisition and establishing formal procedures (6), promoting the creation of Agendas of Self-Regulation (*Agendas de Autoregulación*) in order to identify cases of bad practice (7), disclose sanctions imposed for acts of corruption (8) and ban corrupt official from public service (12, see also Nr. 10 at “Prevention”), disclose information regarding funding of political parties and electoral campaigns (9), promote information and educational campaigns among the public, in order to raise awareness of these issues (10), enhance citizen’s participation in controlling public entities; establish a *Contraloría Social* (Public Social Auditing), promote the creation of Andean Network of Civil Institutions (Red Andina de Instituciones Civiles) as a venue for institutions and organs that could contribute in the fight against corruption (13), make policies that guarantee open access to information generated by public institutions and establishing sanctions for infringements (14), safeguard the free press and the “right to inform” (15), promote the adoption of norms related to the private sector, transparency and the prevention of conflicts of interests (16).

In terms of criminalization, the decision calls for the adoption (tipificación) of the criminal types laid out by international treaties, establish mechanisms for the harmonization of these criminal provisions (1, 11) and harmonize provisions regarding “statutes of limitation” (*Verjährung*) (10), increase the severity of criminal sanctions for acts of corruption (2) carry out an Andean plan for training officials that investigate acts of corruption (4), monitor the ongoing judicial proceedings in matters of corruption in order to avoid the risk of deficiencies in the defense of the state (5), launch programs of protection for witnesses that collaborate with the justice (6) as well as programs that channel citizen’s’ reporting of acts of corruption (7), revise and harmonize immunities that public servants currently enjoy (8),

In terms of international cooperation and technical assistance, it calls the member state to: conceive international cooperation as a strategic means for channeling common actions and policies (1), to promote separate agreements with other international organizations (OAS, UN, WTO and EU) (2, 3), promote agreements related to the fight against corruption with other regional blocs (4), enhance international agreements dealing with extraditions and judicial cooperation among member states and with third countries (6), draft a program for technical assistance to member states with a view to implementing the mechanisms of the Inter-American Convention against Corruption (OAS) (7)

The document also refers to the Andean Instrument of Cooperation between State Prosecutors (*Instrumento Andino de Cooperación entre los Fiscales Generales*), signed in February 2002, and which is still being negotiated in regard to its inclusion into the Andean Integration System. In addition, Bolivia, Colombia, Ecuador and Perú participated in joint regional workshops of anticorruption organs.

### Informe de la reunión de altas autoridades nacionales de las instituciones competentes en la lucha contra la corrupción de los paises miembros de la Comunidad Andina. 27 November 2006

In this document, the High Authorities involved in the fights against corruption meet in accordance with the 13. Directive of the *Acta de Lima*. In this meeting, the national authorities approve the draft decision presented by the General secretariat, and make a recommendation to the Andean Council of Foreign Minister in order to approve this decision as soon as possible.

### Propuesta de la Secretaría General sobre Plan Andino de lucha contra la corrupción. 05 December 2006

This document contains the modifications introduced to the draft presented by the General Secretariat in 2005. It was textually adopted through Decision 668 of the Andean Council of Foreign Affairs Ministers.

It contains most of the standards introduces by the draft report of 2005, with some differences:

It allocates most of the competences to the Andean Executive Committee, giving it the responsibility to carry out the tasks that are part of the PALCC. In the previous draft, the concrete policies did not always feature a concrete addressee. Sometimes they were a call for member states to take action; sometimes they were implicitly directed to the future executive council in a general provision. In Decision 668, the Andean Executive Committee is mentioned explicitly in every task that it has to implement, monitor, or promote.

Furthermore, the Decision reorders the tasks and duties according to a new ordering. Therefore, instead of the three fields of action contained in the draft (legislative development, prevention, and international cooperation), there are 10 sections, each with its emphasis. These are:

1. Citizens’ education, participation and social control
2. Media of Communication
3. Legislative development
4. Transparency of Public Management
5. Measures aiming at the private sector
6. Strengthening of the national auditing organs
7. Actions aiming at preventing impunity in cases of corruption
8. Monitoring declarations of ownership and their compliance with national law
9. Monitoring judicial defense of the state
10. Public contracting

### Decisión 674, establishing the Consultative Council of the Round Table for Indigenous Peoples in the Andean Community. 27 September 2007.

This decision incorporates the draft of the General Secretariat. See proposal of 06. July 2002

### Propuesta de la secretaría general para la adscripción del consejo de defensores del pueblo de la comunidad andina al sistema andino de integración. 08 November 2007

The document is a direct consequence of Decision 590, which approved the incorporation of the Andean Council of Public Defenders into the Andean System of Integration (SAI).

This proposal for a draft decision, gives the Andean Council of Public Defenders of the Andean Community consultative competences (Art. 1). Its opinions to the different organs of the CAN are not binding, but it can present recommendations to the member states’ external policies related to Human Rights (Art. 3 letter e); promote the diffusion Andean HR Law (b); and take actions of coordination, cooperation, and exchange of information between the Public Defenders of the member states (c), among other.

### Informe Segunda Reunión del comité ejecutivo Andino del plan de lucha contra la corrupción. 20 April 2008

This is the report on the second meeting of the executive committee of the Andean plan against corruption, held on the 29 and 30 April 2008.

The document acknowledges the external collaborators that are providing technical assistance to the fight against corruption in the Andean region. There is an explicit mention f the GTZ, CARE international, the Spanish Agency for International Cooperation (AECI), Carter Center, Revenue Watch Institute for Latin America, and the Collins Center for Public Voices, and the DIAL Institute.

It also acknowledges the “Meeting of Auditors of the Andean Region” (*Encuentro de Contralorías de la Región Andina*) in Lima 3 and 4 of March 2008; as well as the international forum on institutional prevention of corruption “*Articulación Interinstitutcional como Herramienta para la Prevención y Lucha contra la Corrupción*”, on 3 and 5 of march 2008, where the Decision 668 containing the Andean Plan on Fight against Corruption was formally presented.

In terms of decisions made, the executive committee formally decides the adhesion of the Andean Community to the UN Convention against Corruption.

It also instructs the General Secretariat to draft a project on transparent access to information of CAN’s institutions. (p. 5)

Finally, the document includes a table that monitors the individual measures taken by the member states in regard to the Andean Plan. Most of these measures consist of documents and reports on the situation of corruption in the region (11 documents that are listen in the annex), one approved legal statute on popular control and participation (by Bolivia, p. 13), one yet unfinished “Pool of Projects” (*Banco de Proyectos*, by the GS), and the online platform “eCAN”. (p. 15).

### Informe vigésima reunión de expertos gubernamentales en estadísticas sociales – gobernabilidad y derechos humanos –. 25 November 2008

This report contains an account of the member states related to their experience with statistical analysis of governance and human rights, based on a meeting of the governmental experts in 25 November 2008.

It acknowledges the content of the Andean Charter of HR, especially the duties of the member states to:

1. Give diffusion to its principles,
2. Promote an Andean culture of respect to HR
3. Promote the development of International Human Rights Law

In order to reach these goals, the document mentions measures like a web presence, workshops, and academic programs.

In addition, and more concretely, it refers to the intended incorporation of the Andean Council of Public Defenders into the Andean System of Integration (SAI)

### Informe Vigésimo quinta reunión de expertos gubernamentales en encuestas a hogares. Gobernabilidad y democracia. 28 October 2009

This is a meeting held by governmental experts in public queries and statistics, held on the 28 October 2009. It contains the agreement to hold a conference (*conferencia magistral*) as a venue for analyzing:

1. A regional report on statistical data concerning governance and democracy, to be provided by a European scholar (Javier Herrera)
2. National reports, provided by national institutions in collaboration with the experts of this group.
3. Reports by guest scholars.

### Informe Reunión de expertos gubernamentales y seminario en estadísticas sobre participación ciudadana, gobernabilidad y democracia. 07 December 2010

This meeting contains several account of the member states’ policies in regard to statistics and democracy.

In terms of community action, it makes a call for the harmonization of methods and content of statistical procedures.

### Propuesta de la secretaria general sobre establecimiento de la mesa del pueblo afrodescendiente de la comunidad andina. 21.07.2011

The document is a result of the X. Andean Presidential Council, and the Decision 1083 of the Andean Parliament, which instructed the Council of Foreign Minsters to establish a round table for the rights of the communities of African descent in the Andean region.

Drawing to the Declaration of Machu Picchu, it acknowledges that “cultural and ethnical diversity is a source of richness and union between our societies”,[[29]](#footnote-29) and the Andean states are willing to further develop strategies for enhancing ethnic pluralism in the region

According to the draft decision, the round table of the peoples of African descent will be a consultative organ, similar to its peer for the indigenous peoples. It shall issue non-binding opinions to other Andean organs, and shall promote joint actions for developing a common Afro-Andean agenda (Art. 4). It shall promote respect for the rights of the peoples of African descent, especially the eradication of racism, xenophobia, and other types of discrimination.

Moreover, it shall support the member states in their effort to implement the Andean Charter of Human Rights (Art. 4, e), and promote the exchange of information and experiences within the member states (f, g).

### Decision 758, establishing the Round Table of the Peoples of African Descen in the Andean Community. 22 August 2011

This Decision incorporates the content laid down in the previous report of the General Secretariat. (See report of 21 July 2011)

### Adoption & application

It is getting increasingly clear, that there is an considerable asymmetry between the declared rights, standards, policies, etc. that appear on paper, and the actual adoptions or application. It would be reasonable to ask whether this is so because there is to few implementation, or maybe too much prescription. Considering the impressive content of the Andean Charter of Human Rights both, quantitatively and qualitatively, the actual degree of application of measures is meager. Beyond the frequent calls for implementing international law, the Andean Community does not avail itself of too many instruments. Joint actions (see table Joint Actions), as well as Reports and exchange of information (see table) seem so far to be the most frequent ones. Through Decision 458, the Andean Council adopted the mandate of the Andean Charter by establishing joint diplomatic missions.

In terms of reporting and exchange of information, there have been developments regarding the coordination of national Ombudsmen (defensores del pueblo). This measure is an adoption of the provision of the Andean Charter of Human Rights. However, due to the delay of the National Human Rights Plans, the contribution of the Ombudsmen has not met the expectations (Tuijtelaars, et al. 2006: 31).

The adoption and application of educational programs seems to be much more encouraging, as the Andean University Simon Bolivar has implemented the prescription of Art. 11 of the Andean Charter by offering several programs in human rights and democracy; notably a master degree in democracy and human rights. In doing so, it has formed a network of participating universities that also include institutions from Brazil and Argentina.

### Establishment of the Round Tables of the Peoples of African Descent in the Andean Community

Decision 758, formally established this round table during august this year. As a first activity of the table, a conference was held in Cochabamba, Bolivia, on 16-18 September. (*Jornadas de Participación Ciudadana en la Integración Ciudadana*) A formal declaration was issued containing new standard related to the integration of African-Andean peoples.

In addition, the content of this conference was diffused using its new Web presence. See: <http://www.comunidadandina.org/Jornada_Cochabamba.htm>

### Establishment of the Round Tables of Indigenous Peoples in the Andean Community

The round table for the indigenous peoples was approved by Decision 524, 7 July 2002. Since then, the its Consultative Council was established by Decision 674, and began its formal work on the 8 September 2008.

It has, since then, organized international conferences, and issued a manifest that sets new standards related to the current state of indigenous peoples. See: <http://www.comunidadandina.org/documentos/actas/manifiesto_indigenas.htm>

### Measures Pertaining to the Andean Plan for the Fight against Corruption.

Following the Andean Plan for the Fight against Corruption, the Andean Parliament endorsed the creation of an Andean Observatory Agency for Transparency and Fight against Corruption (*Observatorio Andino de Transparecnia y Lucha Contra la Corrupción*), which has yet to be implemented.

The Executive Committee, however, is already holding regular meetings

### Incorporation of national Ombudsman into the Andean System of Integration

The Executive Committee for the Andean Plan for the Fight against Corruption held its first meeting in Quito Ecuador, as a consequence of Decision 668. It issued its first report in that first meeting on 12 July 2007

Measures:

The report discusses concrete measures, like for instance:

1. the establishment of “sub committees of high authorities” belonging to anti corruption organisms, in order to monitor the implementation of Decision 668. This proposal was provisionally discarded, as it was not the time yet.
2. the possible incorporation of Chilean officials into the committee, in the capacity of associated member of CAN.

It is interesting to note, that the document includes the brief statement of the organizations that provided technical assistance, like the *Deutsche Gesellschaft für Technische Zusammenarbeit* (GTZ), the Instituto Interamerican de Derechos Humanos (IIDH), and the European Commission,

The parties put much emphasis on the need of ratifying and implementing existing international treaties, especially the Inter-American Convention on the Fight against Corruption

## Bibliography

Emmes, M. & Mols, M., 1993. Integration, Kooperation und Konzertation in Lateinamerika. Regionalismus und Kooperation in Lateinamerik und Südostasien im Zusatz ein politikwissenschaftlicher Vergleich. Münster.

Hufbauer, G.C. & Kotschwar, B., 1998. The Future of Regional Trading Arrangements in the Western Hemisphere. "The US-Canada Free Trade Agreement", Michigan State University.

Marwege, R., 1995. Der Andengerichtshof. Das Rechtsschutzsystem des Andenpaktes mit vergleichenden Bezügen zum Recht der Europäischen Gemeinschaft. Berlin: Duncker & Humblot.

Villagrán Kramer, F., 1989. Sistematización de la estructura jurídica el Acuerdo de Cartagena. In A. Zelada Castedo (ed.) Derecho de la integración económica regional, lecturas seleccionadas. Buenos Aires: BID/INTAL, 183-193.

Marcella, Gabriel (1995) War and Peace in the Amazon: Strategic Implications for the United States and Latin America of the 1995 Ecuador War. Army War College; Strategic Studies Institute

Parlamento Andino (1999) Organismos del sistema andino de integración: Estructura normativa. Gente Nueva, Bogotá

Tuijtelaars, C., Hilde Hey, Evan Fox-Decent (2006) Evaluations EIDHR. Programa Andino de derechos humanos y democracia. Human European Consultancy.

Craig, Paul and Gráinne de Burca (2008) EU Law. Text, Cases, and Materials. New York, Oxford University Press.

1. Quotation from the Andean Community’s current website: “*We are a Community of four countries that decided voluntarily to join together for the purpose of achieving more rapid, better balanced and more autonomous development through Andean, South American and Latin American integration.   
   We have planned to move ahead in deepening an* ***integral integration*** *process that will contribute effectively to sustainable and equitable human development, in order to live well, with respect for the diversity and asymmetries that agglutinate the different visions, models and approaches…”,* at <http://www.comunidadandina.org/ingles/who.htm> [↑](#footnote-ref-1)
2. Year 2007, Decisión 664. [↑](#footnote-ref-2)
3. On the process of ratification, and particularly the Venezuelan position, see Marwege 1995:104 [↑](#footnote-ref-3)
4. Year 2008, Decisión 680. [↑](#footnote-ref-4)
5. Decision 613, 17.07.2005 [↑](#footnote-ref-5)
6. Decision 645 of 20.09.2006 [↑](#footnote-ref-6)
7. Based on interview to Monica Rosell, former Legal Secretary of the ACJ, Helfer, Alter, and Guerzovich report on the appointment of a “new cadre of young lawyers pager to use the Secretariat’s enhanced resources to promote regional integration: (Helfer et al. 2009: 10) [↑](#footnote-ref-7)
8. Decisión 653: Actualización de la Nomenclatura Común - NANDINA  
   publicado 17.11.2006 [↑](#footnote-ref-8)
9. This might be especially true for the consequences of the War of the Pacific (Chile/Peru/Bolivia 1879-1884), and the [↑](#footnote-ref-9)
10. Note that Peru did not send the President to Quito, but his Personal Representative instead: Javier Alva Orlandini. [↑](#footnote-ref-10)
11. “la mesa abordará temas de alcance regional relativos al mejoramiento de las condiciones y calidad de vida de los pueblos indígenas” (p. 2) [↑](#footnote-ref-11)
12. *“[F]acilitará su participación active en el proceso de integración*” (p. 2) [↑](#footnote-ref-12)
13. *“[A]poyamos firmemente todos los esfuerzos encaminados a la promoción y protección de los derechos y libertades fundamentals de los pueblos indígenas*” (p. 1, citing the *Acta de Urubamba*) [↑](#footnote-ref-13)
14. “*Nuestros Estados tienen el deber de cautelar y garantizar la aplicación de las disposiciones de la Declaración Americana de los Derechos y Deberes del hombre, la Convención Americana sobre Derechos Humanso y los demás instrumentso existentes en los ámbitos regionals y universal*…” (p.2, citing the *Acta de Urubamba*) [↑](#footnote-ref-14)
15. ECJ Case Stauder v. City of Ulm [1969] ECR 419 [↑](#footnote-ref-15)
16. ECJ Case Nold v. Commission [1974] ECR, 491 [↑](#footnote-ref-16)
17. SIgned on 17 October 1998, in Oporto Portugal [↑](#footnote-ref-17)
18. “la Comunidad Andina es una comunidad de naciones democráticas que desde la constitución de su proceso integrador han demostrado una ermanente voluntad para promover la vigenia de la vida democrática y el estado de derecho” (Proyecto de Decisión, p. 1) [↑](#footnote-ref-18)
19. “*Que el COnsejo Presidencial Andino ha reiterado , en diversas oportunidades, la necesidad de promover la participación organizada de la sociedad civil en el proceso de toa de decisiones al interior de la Comunidad Andina, con el fin de […] propiciar el fortalecimiento de los principios, valores y prácticas democráticas en la Subregión*” (p. 2) [↑](#footnote-ref-19)
20. “*El corolario de todo ello fue la suscripción en 1998 del “Protocolo Adicional al Acuerdo de Cartagena: Compromiso de la Comunidad por la Democracia”, instrument jurídico que introduce una cláusula democrática en el ordenamiento comunitario. Adicionalmente, la Comunidad Andina sentó las bases de una Política Exterior Común – Decisión 458 – que se sustenta, entre otros principios, en la vigencia del orden democrático fundado en la participación ciudadana y en la justicia social, y se dotó de una Carta Andina para la Promoción y Protección de los Derechos Humanos, aprobada por el Consejo Presidencial Andino en Julio de 2002*” (p. 1) [↑](#footnote-ref-20)
21. [*Un programa] “orientado al fortalecimiento de la democracia, la participación y el Estado de Derecho en la Subregión Andina*” (p.2) [↑](#footnote-ref-21)
22. [↑](#footnote-ref-22)
23. “Que el desarrollo y la consolidación de la democracia y del Estado de Derecho, así como la promoción y el respeto de los derechos humanos y las libertades fundamentals son objetivo de la Política Exterior Común” (p. 3) [↑](#footnote-ref-23)
24. According to the document, the active participation as an observer is grounded on the explicit requirement inserted in the national organic law that reforemd the system, as well as the authorization granted by the Andean Council of Foreign Affairs Ministers“ (p. 1) [↑](#footnote-ref-24)
25. “*Asimismo, atendiendo una solicitud del Gobierno del Presidente Eduardo Rodríguez Veltzé, se espera contriburo con le República de Bolivia en un conjunto de temas directamente vinculados al fortalecimiento de su gobernabilidad democrática, especialmente para la formación de consensus en el periodo pre-constituyente”*. (p. 1) [↑](#footnote-ref-25)
26. “*Que de conformidad con el mandato del Consejo Presidnecial Andino, dicho program podrá fomenter estudios sobre los procesos politicos y sociales en los países andinos, apoyar mecanismos que promuevan la participación ciudadana, el diálogo y la concertación, así como el fortalecimiento del sistema institucional democrático, y deberá propiciar el intercambio de información entre académicos y estudiosos andinos sobre estos procesos*” (p. 3). Also contained in Article 2. [↑](#footnote-ref-26)
27. “*Que los Jefes de Estado de los Países Miembros de la Comuidad Andina han reafirmado en diversas oportunidades, su compromise de combater la corrupción como requisite indispensable para resguardar el patrimonio del Estado, fortalecer el sistema democrático, consolidar la legitmidad institucional, y potenciar el desarrollo integral de los pueblos andinos*” (p. 4) [↑](#footnote-ref-27)
28. “II PRINCIPIOS:

    el fortalecimiento de la democracia y el estado de derecho

    La no intervención en asuntos internos

    El respeto a los principios y normas del derecho internacional

    La consolidación y profundización del proceso andino de integración

    La identidad común andina

    La salvaguardia del patrimonio del Estado

    Los valores éticos y morales de la sociedad

    La defensa y promoción del estado de derecho

    El desarrollo económico y social de los Países Miembros” (p. 6) [↑](#footnote-ref-28)
29. “*La Declaración de Machu Picchu sobre la Democracia, los Derechos de los Pueblos Indígenas y la Lucha contra la Pobreza, adoptada por los Presidentes de los Países Miembros de la Comunidad Andina, reconoce que la diversidad cultural y étnica es una fuente de gran riqueza y unión entre nuestras sociedades y por este motivo, expresa la decisión de los Estados Andinos de continuar desarrollando estrategias y políticas dirigidas a revalorizar la pluralidad étnica y la multiculturalidad de nuestras naciones, con el fin de promover la plena participación de estos Pueblos étnicos*” (p.1) [↑](#footnote-ref-29)