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after Lima and Lisbon**

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European Union-Latin American Relations after Lima and Lisbon

Aimee Kanner Arias *

The fifth European Union-Latin American/Caribbean Summit that took place in Lima, Peru, in May 2008 presented a series of challenges and opportunities for the future relations between these two regions. The fact that current relations are in a period of minor difficulties is not news, nor is the idea that both regions have a vested interest in revitalizing interregional relations, a process to which all relevant actors are at least theoretically committed. The European Commission has addressed this situation by commissioning a “Study on Relations between the European Union and Latin America: New Strategies and Perspectives”, and by proposing in December 2005 a renewed strategy for “A Stronger Partnership between the European Union and Latin America”.

Challenges affecting each of the regions individually put pressure on relations between the two as resources and attention to this “strategic partnership” are diverted amid pressing regional interests. The European Union (EU) and its member states have been dealing with the rejection of the Treaty establishing a Constitution for Europe by the French and Dutch citizens since 2005. Just when it seemed that there was a light at the end of the tunnel with the Reform Treaty of Lisbon, the Irish voted against it in a referendum on June 12, 2008, leaving the EU in another period of limbo and reflection. In addition to long-term issues such as income distribution inequalities, poverty, drug trafficking, and guerrilla movements, there is the current feud between Venezuelan President Hugo Chavez and Colombian President Alvaro Uribe. All of these issues create adversity in terms of consolidating relations between the EU and Latin America.

While many scholars and practitioners have come to similar conclusions regarding the causes of the lack of depth in EU-Latin American relations, few have taken on the task of theoretically and conceptually analyzing these relations to better understand, explain, and to some extent predict their nature, benefits, disadvantages, and optimal direction for the future. In this paper I analyze the EU-Latin American relations, and particularly the relations between the EU and the Andean Community (CAN), from a soft law perspective. I argue that a) based on the characteristics of the current and pending “legal” agreements between the EU and the CAN, these regional organizations have already begun the creation of a soft law governance arrangement; and b) given the asymmetrical relationship between the EU and the CAN, a soft law regime (rather than hard law) is currently the optimal outcome for the governance arrangement between these organizations.

Soft Law

In 2000, *International Organization* dedicated a special summer issue to the concept of legalization. The authors argue that given the increased global social interconnections and the lack of a centralized world authority, legalization has become a method relied on more and more frequently in terms of international governance. According to the authors of “The Concept of

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Legalization”, Kenneth W. Abbott, Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter and Duncan Snidal:

‘Legalization’ refers to a particular set of characteristics that institutions may (or may not) possess. These characteristics are defined along three dimensions: obligation, precision, and delegation. *Obligation* means that states or other actors are bound by a rule or commitment or by a set of rules or commitments. Specifically, it means that they are *legally* bound by a rule or commitment in the sense that their behavior thereunder is subject to scrutiny under the general rules, procedures, and discourse of international law, and often of domestic law as well. *Precision* means that rules unambiguously define the conduct they require, authorize, or proscribe. *Delegation* means that third parties have been granted authority to implement, interpret, and apply the rules; to resolve disputes; and (possibly) to make further rules (401).

The authors argue that the concept of legalization is formulated on the idea of a continuum ranging from the absence of legalization to hard legalization. When there are high degrees of obligation, precision and delegation, the international agreement is considered to be moving along the continuum, and is more likely to fulfill the requirements to be considered a hard law arrangement. When none of these dimensions are present in an international agreement, the agreement falls on the opposite end of the continuum, and there is considered to be the absence of legalization. Between these two opposing poles, and with varying degrees of obligation, precision and delegation falls soft law international agreements. The conceptual framework of legalization is built upon primarily through operationalizing the three dimensions of obligation, precision and delegation. It is within this conceptual framework that the international agreements and governance arrangements of interregional relations, specifically those between the EU and the Andean Community of Nations (CAN), are analyzed in the following section of this paper.

EU-Andean Community Relations

Since the Spanish colonization of much of Latin America in the sixteenth century, historical, economic, and cultural ties have evolved between these two regions. Their relations have been reinforced through processes of immigration from Europe to Latin America and, currently, a reverse trend is being experienced from most Latin American countries towards Europe; as well as increased European investments in Latin America, especially after the end of the Cold War; and the institutionalization of relations between the EU and Latin America.

EU-Latin American relations are developed on three different levels: regional, sub-regional, and bilateral. The three pillars of these relations are economic cooperation, political dialogue and trade. On the regional level, the EU has institutionalized relations with the Rio Group, which includes all of the Latin American countries, and is the basis of the bi-regional political dialogue between the EU and Latin America. Since 1999, Summits of the Heads of State and Government of the EU, Latin American and Caribbean countries have convened every few years to strengthen and to provide direction to the bi-regional relations. The EU has supported sub-regional integration in Latin America through economic cooperation and dialogue with the Central American Common Market, MERCOSUR, and the CAN. In addition to these regional and sub-regional frameworks the EU has developed bilateral relations with each individual Latin American country.

Comunidad Andina (CAN)

The CAN, since 1997 the successor to the Andean Pact (which was created through the Cartagena Agreement of 1969) is a regional organization that encompasses a free trade area and a customs

union. The current member states of the CAN are Bolivia, Colombia, Ecuador, and Peru. The Andean Integration System is a network of institutions, including a Commission, Parliament, Council of Foreign Ministers, and Court of Justice among others that provide the administrative and organizational basis for all aspects of the objectives and work of the CAN.

While European-Andean relations have been developing for centuries, European Community-Andean Pact relations began in the 1970s. During the first few decades until the middle of the 1990s these relations were predominantly economic in nature. After the members of the Andean Pact made a conscious and political effort to deepen integration, and the Andean Pact was reorganized into the CAN, relations between the EU and the CAN also assumed a new meaning and dimension.

After nearly a decade of institutionalized relations consisting of a high-level political dialogue established through the June 30, 1996 Declaration of Rome, a high-level specialized dialogue on drugs, financial, technical and economic cooperation, and the establishment of most favored nation status, and the CAN member countries' inclusion in the EU's Generalized System of Preferences, the EU and the CAN decided to work towards negotiating a fourth-generation association agreement, such as exists already between the EU and Mexico and Chile, respectively, and as the EU is also in the process of negotiating with MERCOSUR. On January 21, 2005, the European Commission and the CAN launched a joint assessment of regional economic integration in the Andean Community as an intermediate stage prior to the beginning of negotiations for an association agreement. This was agreed upon during the May 2004 Guadalajara Summit.

Interregional flows and networks between the EU and the CAN have been deepening over the past decade. While they are not representative of the strongest flows and networks of the EU, they are not negligible. In fact they represent just one element in a web of global interregional flows and networks which are in the aggregate considerable, and hence are the focus of this study (represented as a single case study). Physical flows between the EU and the CAN have both positive and negative characteristics. The negative aspects tend to be related with the effects of illegal activities such as drug trafficking and money laundering in both regions. Due to their nature, precise numbers are not available for these interregional flows. For flows having to do with for example (legal) trade, investment, and immigration, however, there are data available.

The total value of trade between the EU and the CAN in 2004 was \$15 billion. EU exports to the CAN in 2004 equaled \$6 billion, and CAN exports to the EU equaled \$8.8 billion that same year. For the CAN, the EU represents its second largest trading partner, representing 14.5% of the CAN's total trade. For the EU, the CAN is its 29th "smallest" trading partner, representing just 0.7% of the EU's total trade (European Commission, "Trade Issues"). While there are clearly skewed trade relations between these two regions in terms of importance, the value of trade between the two regions is fairly comparable. Nevertheless, trade between the EU and the CAN still accounts for \$15 billion in world trades. Furthermore, the CAN benefits from the EU's General System of Preferences, giving CAN member countries duty free access to the EU-market, a system which gives the CAN member countries even greater special preferences for so-called sensitive products due to its role in the fight against drug production and drug trafficking. In 2003 EUR 1.6 billion of CAN's exports to the EU entered the EU market under the duty free advantages of this system (European Commission, "Trade Issues").

With regard to foreign direct investment (FDI) in the Andean region, the EU is one of the most important sources of FDI for the CAN. In fact, the EU accounts for more than one quarter of total FDI in the CAN (European Commission, "Trade Issues").

In terms of immigration, up until several decades ago migration flows were predominantly from the EU to the CAN, while today the opposite is true. In 2000 CAN immigration to the EU totaled 166,316 immigrants, with the great majority coming from Ecuador and arriving in Spain (European Communities 2003, 32-34). While 166,316 may not seem like a significant number, it is a physical interregional flow that in some way nevertheless has to be

regulated. In addition, secondary flows result from this primary one, such as money remittances from the EU back to the CAN. The EU's single market, allowing for the free movement of people within the internal borders of the EU member states, makes the impact of these flows indeed regional, even though it is only a single EU member state, Spain, that receives the majority of the CAN immigrants.

The three pillars of the EU-CAN relations: political dialogue, economic cooperation and trade, are supported by legal international agreements. The legal documents of the political dialogue are the Declaration of Rome and the Political Dialogue and Cooperation Agreement, signed in Rome, Italy, on December 15, 2003, and currently in the ratification process. The legal bases of cooperation are Council Regulation (EEC) No. 443/92 of 25 February 1992 on Financial and Technical Assistance to, and Economic Cooperation with, the Developing Countries in Asia and Latin America; the 1993 EU-CAN Framework Agreement on Cooperation; Council Regulation (EC) no. 807/2003 of 14 April 2003, adapting to Decision 1999/4681EC the Provisions Relating to Committees which Assist the Commission in the Exercise of its Implementing Powers, laid down in Council Instruments and adopted in accordance with the Consultation Procedure (Unanimity); and the 2003 EU-CAN Political Dialogue and Cooperation Agreement (still undergoing the ratification process). Trade between the EU and CAN is regulated under the legal framework of Council Regulation (EC) No. 2211/2003 of 15 December 2003, amending Regulation (EC) No. 2501/2001 "Applying a Scheme of Generalized Tariff Preferences" for the Period from 1 January 2002 to 31 December 2004 and Extending it to 31 December 2005 (European Commission, "The EU's Relations").

The EU and the Andean Community: A Soft Law Governance Arrangement

The EU-Andean Community relations are neither governed by a hard law regime nor by the complete absence of legalization. Their respective relations and the legal agreements that govern them fall somewhere on the continuum between these two ideal types, therefore exemplifying soft law governance arrangements.

The institutionalized and regularized relations between the EU and CAN have already established the basis for a soft law governance arrangement. The commitments included in the pending legal documents as well as the public discourse of the leaders of the EU and CAN indicate that rather than moving in a direction along the continuum toward the *absence* of legalization, the EU and the CAN will not necessarily move in the direction of a strong *hard* law regime either, but will likely move toward solidifying the soft legalization of their governance arrangement.

Soft legalization is not necessarily a negative in terms of EU-CAN relations. In fact, it may be the best option for all actors involved. Abbott and Snidal (2000) argue that there are costs and benefits of both soft law and hard law, and that it is the weighting of the tradeoffs between the advantages and disadvantages of both that determine the optimal outcome for different arrangements. They are also extremely clear in expressing their academic convictions that hard legalization does not always deliver the most favorable results.

The benefits of hard law in international relations have been part of the discourse for some time, and are reiterated by Abbott and Snidal (2000) as reducing transactions costs, reducing uncertainties, and reinforcing the credibility of commitments. They contend that there are also significant benefits to soft legalization: these types of arrangements are easier to achieve, they are less threatening to sovereign autonomy, and they usually involve a learning process which may reduce the costs of negotiating future commitments. Of course, soft law also has its disadvantages which generally become more evident after the agreement is in force rather than while it is being negotiated (2000).

Most importantly for the consideration of the EU-CAN relations, Abbott and Snidal argue that in the case of asymmetrical relations and divergent interests, soft legalization is often

the best alternative (2000). It provides an institutionalized framework for attaining compromise and commitments between actors that are not entering the negotiations on equal footing, an obvious characteristic of the EU-CAN relations. Although post-agreement costs are higher, costs for negotiating agreements are lower. Establishing a legal framework for the governance arrangement is certainly a better option than the total absence of legalization at all. Given the asymmetrical relationship between the EU and the CAN, a soft law governance arrangement, either permanently or as a transition to one based on hard law, can be considered as the optimal outcome.

Conclusion

EU-Latin American relations other than EU-CAN relations are experiencing a difficult phase. At the same time, interactions in the form of flows and networks continue to slowly but steadily increase between these two regions. Furthermore, there has been a serious commitment from actors in both the EU and the CAN to rejuvenate and strengthen their relationship. In October 2005, Benito Ferrero-Waldner, European Commissioner for External Relations and European Neighbourhood Policy, in a speech at the 40th Anniversary of the Austrian Latin America Institute in Vienna, Austria, stated:

Today, our [EU-Latin America] friendship is strong, both politically and economically. Together, we represent nearly a billion people. Our relations are based on long-standing historical and cultural ties and shared values. Europe is Latin America's second largest trade and investment partner, with rapidly expanding business ties. Finally, our broad consensus around the international agenda is an important axis of today's multilateral world order. In short, Europe and Latin America are natural partners (2005).

Clearly, while experiencing certain problems, the EU-Latin American, and in turn, EU-CAN relations will continue, and more than likely, strengthen in the future.

As already established, the EU-CAN relations are a soft law governance arrangement. This is not, however, necessarily detrimental to these relations. In fact, it may be argued that given the asymmetries between the actors currently involved in these relations, soft legalization is optimal. In light of the recent EU-Latin America/Caribbean Summit in Lima, Peru, in May 2008, priority should be given to flexible agreements based on soft laws. These agreements or package of agreements will further strengthen the governance arrangement and allow for an institutionalized learning process which will, in time, determine whether this legal framework should remain soft, or if indeed, there are significant advantages for moving along the legalization continuum toward more hard law.

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