



Governance Transfer by the Organization of American States (OAS)

A B2 Case Study Report

Mathis Lohaus



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Foreword

Tanja A. Börzel and Vera van Hüllen

This working paper is part of a series of eight case study reports on governance transfer by regional organizations around the world. It was prepared in the framework of the SFB 700 project B2, “Exporting (Good) Governance: Regional Organizations and Areas of Limited Statehood”. Together with regional experts, we have investigated how and under which conditions regional organizations prescribe and promote standards for (legitimate) governance (institutions) at the national level. A comparison of major regional organizations shall enable us to evaluate to what extent we can observe the diffusion of a global governance script. Do regional organizations demand and promote similar criteria for “good governance” institutions, or do regional and local particularities prevail? The B2 case study reports present detailed findings for eight regional organizations in Africa, the Americas, Asia, and the Middle East. They cover the African Union (Julia Leininger), the Economic Community of West African States (Christof Hartmann), the Southern African Development Community (Anna van der Vleuten and Merran Hulse), the Organization of American States (Mathis Lohaus), Mercosur (Andrea Ribeiro Hoffmann), the North American Free Trade Agreement (Francesco Duina), the Association of Southeast Asian Nations (Anja Jetschke), and the League of Arab States (Vera van Hüllen).

The B2 case study reports rely on a common set of analytical categories for mapping the relevant actors, standards, and mechanisms in two dimensions of governance transfer.¹ First, we examine the prescription of standards and the policies for their promotion (objectives, instruments) that create the institutional framework for governance transfer. Second, we investigate the adoption and application of actual measures. Regarding the actors involved in governance transfer, we are interested in the role of regional actors on the one hand, as standard-setters and promoters, and domestic actors on the other, as addressees and targets of governance transfer. Even though the question of which criteria regional organizations establish for legitimate governance institutions is an empirical one, we relate the content and objectives of governance transfer to the broader concepts of human rights, democracy, the rule of law, and good governance. Finally, we classify different instruments of governance transfer according to their underlying mechanism of influence, distinguishing between (1) litigation and military force (coercion), (2) sanctions and rewards (incentives), (3) financial and technical assistance (capacity-building), and (4) fora for dialogue and exchange (persuasion and socialization).

The B2 case study reports result from more than two years of continuous cooperation on the topic, including three workshops in Berlin and joint panels at international conferences. The reports follow the same template: They provide background information on the regional organization, present the findings of a systematic mapping of governance transfer, and suggest an explanation for its specific content, form, and timing. They form the basis for a systematic

¹ For detailed information on our analytical framework, please refer to our research guide for case study authors (Börzel et al. 2011).

comparison of governance transfer by these eight regional organizations (for first results, see Börzel, van Hüllen, Lohaus 2013), as well as further joint publications.

We would like to thank the people who have made this cooperation a pleasant and fruitful endeavor and one that we hope to continue: In particular, we would like to thank our regional experts, Francesco Duina, Christof Hartmann, Anja Jetschke, Julia Leininger, Mathis Lohaus, Andrea Ribeiro Hoffmann, Anna van der Vleuten and Merran Hulse for their willingness to share our interest in governance transfer and for their conceptual and empirical input into the project. We are also grateful to Heba Ahmed, Carina Breschke, Mathis Lohaus, Lea Spörcke, Sören Stapel, and Kai Striebinger for their valuable research assistance and other support to our joint B2 project. Special thanks go to Anne Hehn, Anna Jüschke, Clara Jütte, and the entire “Team Z” of the SFB 700, who have unfailingly smoothed the way in all matters concerning administration and publication. Finally, we gratefully acknowledge the financial support from the German Research Foundation (DFG), which made the project possible.

Governance Transfer by the Organization of American States (OAS)

A B2 Case Study Report

Mathis Lohaus

Abstract

This case study examines to which extent the Organization of American States (OAS) engages in governance transfer to its member states. Both the standards and policies prescribed in regional documents as well as their application are analyzed. Historically, the organization has emphasized two areas. Human rights are protected through multiple treaties and a strong regional legal regime. Democracy is protected by strong incentives to avoid coups and supported via different types of assistance, including a long-standing system of election observation. The OAS addresses good governance since the 1990s, particularly with regard to combating corruption and modernizing public management. Provisions concerning the rule of law are addressed in connection with the other standards. After analyzing the framework and measures of governance transfer, this report explores how the observed patterns can be explained and briefly discusses the future prospects for the OAS.

Zusammenfassung

In dieser Fallstudie wird untersucht, inwiefern die Organisation Amerikanischer Staaten (OAS) Einfluss auf die politischen Strukturen in Mitgliedstaaten zu nehmen versucht (Governance-Transfer). Dabei umfasst die Analyse sowohl die in regionalen Abkommen spezifizierten Standards und Richtlinien als auch deren Anwendung. Blickt man zurück auf die Geschichte der OAS, so hat die Organisation sich besonders in zwei Themenfeldern engagiert. Erstens schützt sie Menschenrechte durch eine Reihe von Abkommen und ein regionales Justizwesen. Zweitens setzt die OAS auf starke Anreize, um Demokratien vor Coups zu schützen, sowie auf unterstützende Maßnahmen zur Förderung demokratischer Prozesse, beispielsweise indem Wahlen beobachtet werden. Seit den 1990er Jahren engagiert sich die OAS auch im Bereich Good Governance, insbesondere bei der Korruptionsbekämpfung und der Reform öffentlicher Verwaltungen. Rechtsstaatlichkeit wird ebenfalls thematisiert, allerdings primär in Zusammenhang mit anderen Standards. In diesem Report werden zunächst der rechtliche Rahmen und die praktisch durchgeführten Maßnahmen in all diesen Bereichen analysiert. Anschließend geht es darum, wie sich die Ergebnisse erklären lassen und wie zukünftige Entwicklungen in der OAS aussehen könnten.

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1. Introduction

Comparable to the Council of Europe and the African Union, the Organization of American States (OAS) is a regional organization characterized by its continental reach and a focus on issues other than economic integration. All 35 independent countries of the North, Central, and South American regions are members of the OAS, which was established shortly after the Second World War. The preamble of its founding treaty refers to a “framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man” (OAS 1948). This reference, among others, suggests that the OAS is a promising case for the study of governance transfers by regional organizations.

The roots of the OAS human rights regime can be traced back to the organization’s beginnings in 1948. Other important documents followed in 1969 and 1988. More and more aspects of human rights are covered by increasingly detailed documents that prescribe standards and policies. The protection of human rights is the most formalized part of governance transfer by the OAS, with specialized bodies established relatively early on (Commission in 1960; Court in 1969). Both appear to be relatively active and resourceful, although their authority is not accepted by all member states. Historically, Latin American countries have been more ready to ratify documents and accept the Court’s jurisdiction than the English-speaking members of the OAS.

Regarding democracy, the OAS has introduced more standards as well as instruments over the decades. Interestingly, democracy is often linked to development. Whereas the OAS Charter had always contained a pledge to embrace representative democracy, it became the basis for economic and political sanctions in 1991, and a suspension-of-membership clause was added in 1992. The 2001 Democratic Charter also contains guidelines to strengthen democracy in all member states, which goes beyond measures to avoid coups. This is reflected in practice: Election monitoring and support are important tools of the OAS. Furthermore, it has reacted strongly to anti-democratic coups in the hemisphere, albeit leaving room for political maneuvers instead of a formalized suspension process.

The OAS is active as a promoter of good governance. Particularly since the 1990s the organization is most active with regard to anti-corruption measures as well as the reform and modernization of public management. The former is based on a 1996 convention to fight corruption, which has since been accompanied by additional documents. These contain anti-corruption standards as well as policy recommendations and mechanisms to monitor and strengthen the process on the regional level. Apparently, the respective regional framework is in active use. Regarding modern and effective governance, the results seem to be less comprehensive. Several documents have been published during the past few years regarding reforms in the public sector, and the OAS engages in capacity-building and provides technical assistance in a number of member states.

Regarding the rule of law, there is a remarkable lack of precise definitions and policy recommendations in the main documents. While the rule of law is often mentioned in relation with democracy and human rights, its promotion does not seem to be a focal point of OAS activities

– at least not separate from the other two concepts. Legal cooperation between member states is an important aspect addressed by the OAS, but outside of the analytical scope of this research project.

This case study is mostly based on the analysis of primary sources, most of which can be accessed via the OAS website. This includes the summary documents produced after the organization's annual plenary sessions (for resolutions, declarations etc.), international treaties and declarations (including the Summits of Americas), as well as reports and PR material published by different bodies. In addition, the report relies on media coverage of the OAS activities and on secondary (academic) literature.

In the next section, the history and structure of the OAS will briefly be presented. Mapping the governance transfer will then proceed in two steps: First, this case study will describe the framework for governance transfer, i.e. the standards and policies prescribed in OAS documents. Second, the actual implementation of these measures will be analyzed. Both sections are organized according to the four broad concepts democracy, human rights, good governance, and rule of law. Section 4 will then reflect on how the patterns of governance transfer by the OAS can be explained. It is followed by the final section, which will summarize the findings and close with remarks on the prospects for the OAS.

2. The Organization of American States (OAS): An Overview

The Organization of American States was established in 1948 by the Charter signed in Bogotá, Colombia. The historical roots of the OAS can be traced back to the 1826 Congress of Panama as well as the Conferences of American States that were first held in 1889/1890. In addition, several predecessor organizations in the early 20th century covered specific policy areas (OAS 2013a). For the purpose of this analysis, it makes sense to focus on the period of American regionalism beginning with the 1948 OAS Charter.

Headquartered in Washington, D.C., the OAS comprises all 35 independent American states (see figure 1). The founding members are Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, the United States of America, Uruguay and Venezuela. A number of current member states joined later, in most cases after gaining sovereignty rights: Barbados as well as Trinidad and Tobago in 1967, Jamaica in 1969, Grenada in 1975, Suriname in 1977, Dominica as well as Saint Lucia in 1979, Antigua and Barbuda as well as Saint Vincent and the Grenadines in 1981, the Bahamas in 1982, Saint Kitts and Nevis in 1984, Canada in 1990, and Belize in 1991.

Figure 1: Member states of the OAS

No country has ever formally left or been expelled from the OAS, but in 1962 Cuba was excluded from participating in response to the revolution and the establishment of a communist regime. In 2009 this suspension was lifted, leading to a declaration by the Cuban government that they had no interest in resuming active participation in the organization (Granma International 2009). In the same year, the OAS member states decided to suspend the membership of Honduras after a coup d'état. Full membership was reinstated in 2011 (see section 3.2.1 below).

2.1 Mission statement

According to article 1 of the OAS Charter, the organization was founded by the American states “to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence.” The organization is seen as a regional agency of the United Nations. Article 2 states a number of purposes for the OAS: to strengthen peace and security and to settle disputes; to promote and consolidation of democracy; to solve “political, judicial, and economic problems” between member states; to promote development and eradicate extreme poverty; to limit conventional weapons in the region.

Therefore, the OAS is different from regional organizations that focus on economic integration: At the core of the treaty stands not the pursuit of economic goals, such as integration focused on trade, but instead regional cooperation with regard to governance, development and peace. This is similar to the Council of Europe or the African Union. From a rational-choice perspective, one might expect that in the absence of economic incentives for member states to cooperate, the OAS has little leverage to bolster the effectiveness of governance transfer. As stated in article 1 of the Charter, the OAS is not authorized “to intervene in matters that are within the internal jurisdiction of the Member States”. However, since the introduction of standards other than economic policies is a core mandate of the OAS, one might expect a lot of governance transfer. It remains to be seen whether the organization is rather a “talk shop” or a “norm entrepreneur”, and whether it serves as a role model for other regions.

2.2 Institutional setup

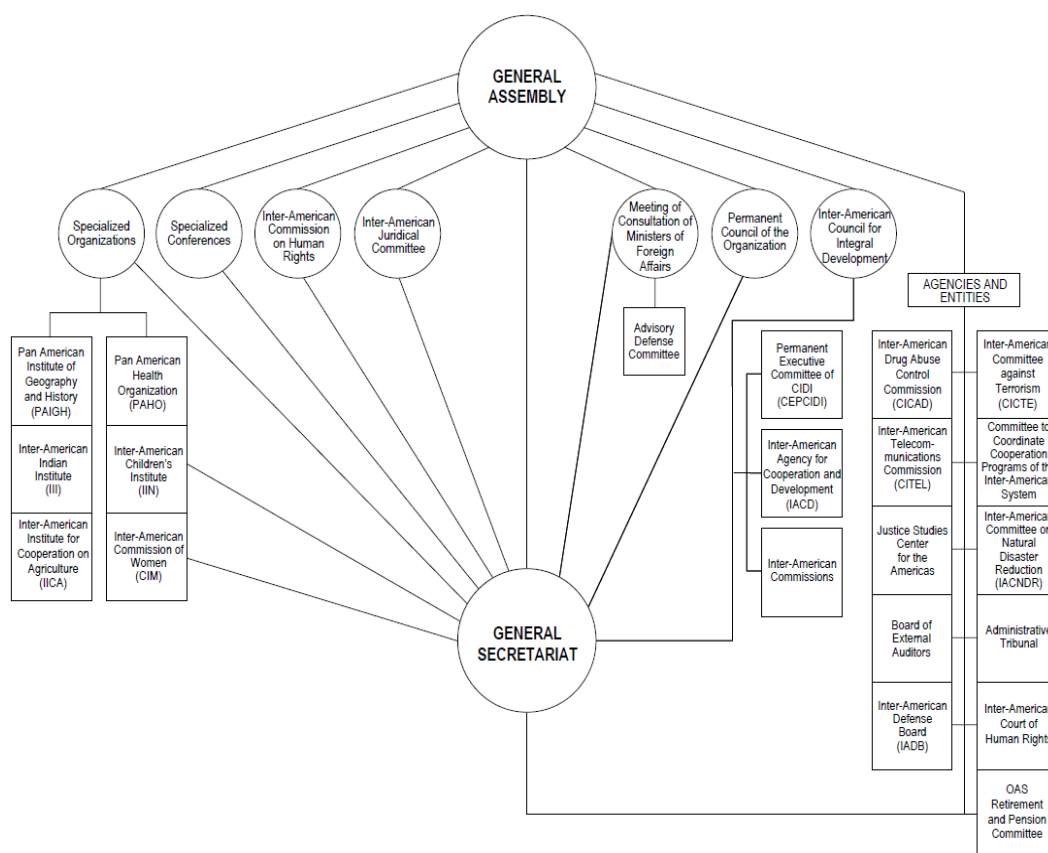
According to the Charter, the supreme decision-making body of the OAS is its General Assembly (GA)¹, which convenes annually for its regular sessions and can hold special sessions if two thirds of the member states request it. Each member state is represented at the GA and has one vote. As defined in Chapter IX of the Charter, the General Assembly is responsible for deciding the “general action and policy” of the OAS, with decisions requiring an absolute majority among member states.

Next to the GA, there are a number of councils and meetings taking place continuously. The Meeting of Consultation of Ministers of Foreign Affairs primarily deals with matters of security and other “problems of urgent nature”; in addition, it may be asked by the GA to report on specific subjects. Furthermore, the OAS has two Councils: the Permanent Council of the Organization and the Inter-American Council for Integral Development, both of which report to the GA and control a number of subordinate bodies and committees. The Permanent Council consists of representatives from each member state and is responsible, among other things, for the preparation of GA sessions and the settlement of disputes between OAS members. It decides the latter with a two-thirds majority. The Council of Integral Development, on the other hand, has a rather narrow mandate focused on the fight against poverty and related issues. It holds regular meetings before each session of the GA.

Furthermore, the OAS includes a vast number of commissions, committees, conferences and agencies that deal with numerous subjects (see figure 2), as well as a General Secretariat with administrative functions.

Since 1994, representatives from the OAS member countries also meet regularly at the so-called Summits of the Americas. Six of these meetings have been held so far, the latest of them in April 2012 in Colombia. Formally, they are not part of the OAS structure, but coexist with the regional organization, “gathering the heads of state every four years to decide on the general orientations concerning inter-American relations” (Mace/Migneault 2012: 165). According to the OAS website, the majority of the mandates given to the organization in recent years have resulted from these meetings, for which the OAS provides technical and organizational services. Thus it appears that the Summits have become the *de facto* forum for decision-making, as they result in plans of action for the OAS and its member states. The official decisions adopted by the General Assembly often directly reference Summit outcomes, translating the latter into the formal and legal context of the OAS. A dedicated committee at the OAS – the Summit Implementation Review Group (SIRG) – is tasked with supervising the Summits follow-up, while the foreign ministers “meet periodically in order to establish a more specific agenda on the various issues” (Mace/Migneault 2012: 166-167).

¹ In the original 1948 Charter, this body was called Inter-American Conference and set to convene every five years. The current *modus operandi* was established by the 1967 Protocol of Buenos Aires.

Figure 2: OAS organizational structure (OAS 2013b)

2.3 Budget, Staff, Offices

The regular budget of the OAS is based on a quota system that specifies the commitments of each member state. Of the 81.5 million US dollars that were allocated to the OAS Regular Fund program budget for 2011², the US government accounted for roughly 60 percent, not including another 9.3 million dollars in the form of tax reimbursements. Canada provided 13.8 percent, Mexico 8.1 percent, followed by Brazil (8 percent), Argentina (3.2 percent), and Venezuela (2 percent) (OAS General Assembly 2010: 453). These quotas are calculated much in the same way as the contributions to the United Nations, which means they are based on GDP data.

In addition, there is a system of Specific Funds, which receives money not only from OAS member states (62 percent in 2009), but also from permanent observers (28 percent) and third countries (10 percent). Canada and the US are major contributors to these funds, while Spain, Sweden and other EU countries have been the most important non-member donor countries. In 2009, the Specific Funds budget amounted to 70 million USD compared to 90 million in the regular program budget (OAS Secretary General 2007: 193; 2009: 58-59).

² The total Regular Fund budget for 2011 was 85 million US dollars, of which 3.5 million came from other sources than the quota contributions.

Half of the 158 million US dollars in expenditures that the OAS projected for the 2012 budget were marked as personnel costs (OAS Secretary General 2011b: 36). This includes the staff that works in the various departments of the Washington, D.C. headquarters as well as the employees of units in other locations, such as the human-rights bodies, specialized committees and local offices in member states. For the Inter-American Court of Human Rights, roughly half of the budget came from voluntary contributions³, indicating a lack of funding via the regular OAS budget (OAS Court 2011: 15-19).

According to José Miguel Insulza, Secretary General of the OAS since 2005, the organization's budget has been frozen for most of the last two decades (Brookings Institution 2010). The addition of Canada as a new member state in 1990 brought a change in quotas, but did not lead to a significant rise of the regular budget. This is reflected in a decrease of the OAS staff "by one-third in the past decade" (Brookings Institution 2010). In 2006 and 2009, the budget was raised to the current levels. But since the growing importance of summitry has led to higher expectations about what the OAS should achieve, the organization appears to be suffering from a "serious lack of resources" (Mace/Migneault 2012: 167-168).

As a recent report by the US Congressional Research Service notes, rising costs forced the OAS to draw on its reserves despite the budget increase in 2006. This led to the exhaustion of those funds by 2009 and a number of cuts to the budget over the next three years, including significant staff reductions (Meyer 2012: 25). Nevertheless, a structural deficit remains and the organization is vulnerable to delays in contributions:

"In 2011, for example, the OAS was forced to borrow from its Scholarship and Training Program Fund in order to sustain daily operations after Brazil withheld its contributions over a disagreement with the IACHR. According to the most recent report of the Board of External Auditors, the OAS ended the 2011 fiscal year with a deficit of \$2.9 million. The organization also faces costs in excess of \$39 million for the repair and updating of its property as a result of years of deferring maintenance." (Meyer 2012: 26)

The OAS headquarters are in three centrally located buildings in Washington, D.C., with the addition of the Art Museum of the Americas and the Casita. There are dedicated OAS offices in 28 member states. Argentina, Brazil and Colombia have assigned staff from domestic ministries; Canada, Chile and the US rely on their representatives in the headquarters; Cuba does not participate. Next to the infrastructure for the General Secretariat and major bodies, there are offices for several independent OAS bodies. The most important one is the Inter-American Court of Human Rights, which resides in San José, Costa Rica.

3 Interestingly, Norway contributed ca. 600,000 USD, roughly one-sixth of the budget.

3. Mapping Governance Transfer by the OAS

The first section of this chapter contains a chronological mapping of documents relevant for the prescription of standards and the development of instruments of governance transfer. Section 3.2 then examines the measures taken by the OAS, in particular the application of instruments.

3.1 Framework of Governance Transfer: Prescription and Policy

The following list contains documents that are relevant for governance transfer by the OAS regarding human rights, democracy, good governance and the rule of law. The emphasis lies on binding legal documents such as treaties and decisions by OAS bodies, but relevant declarations will also be considered. For documents that are legally binding and require ratification, the entry-into-force date will be indicated.

Figure 3: Governance Transfer by the OAS: Prescription and Policy⁴

Date	EIF	Document	Dem	HR	GG	Law
1948		American Declaration on the Rights and Duties of Man		X		
1948	1951	OAS Charter	X	X		
1948		Inter-American Convention on the Granting of Civil Rights to Women		X		
1948		Inter-American Convention on the Granting of Political Rights to Women	X	X		
1967	1970	OAS Charter Revision: Buenos Aires Protocol	X	X		
1969	1978	American Convention on Human Rights	X	X		
1985	1987	Inter-American Convention to Prevent and Punish Torture		X		X
1985	1988	OAS Charter Revision: Cartagena de Indias Protocol	X			
1988	1999	Protocol of San Salvador on Economic, Social, and Cultural Rights		X		
1989		Resolution 991 on Human Rights and Democracy: Electoral Monitoring	X	X		
1990	1991	Protocol to Abolish the Death Penalty		X		
1990		Resolution 1063 on a Unit for Democratic Development	X			
1991		Santiago Commitment to Democracy	X			
1991		Resolution 1080 on Representative Democracy	X			
1992	1997	OAS Charter Revision: Washington Protocol	X			
1992		Declaration of Nassau	X			
1993		Declaration of Managua for the Promotion of Democracy and Development	X			
1994	1996	Inter-American Convention on Forced Disappearance of Persons		X		

⁴ Source: Author's own compilation

Date	EIF	Document	Dem	HR	GG	Law
1994	1995	Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women		X		
1996	1997	Inter-American Convention against Corruption			X	
1997		Resolution 1477 on the Inter-American Program for Cooperation in the Fight against Corruption			X	
1999	2001	Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities		X		
2000		Resolution 1729 on the Adoption and Application of the Inter-American Program on the Promotion of Women's Human Rights and Gender Equity and Equality		X		
2000		IACHR Declaration of Principles on Freedom of Expression		X		
2001		Inter-American Democratic Charter	X	X	X	X
2001		Resolution 1784 on the Mechanism for Follow-Up of Implementation of the Inter-American Convention Against Corruption			X	
2003		Declaration of Santiago on Democracy and Public Trust: A New Commitment to Good Governance for the Americas	X		X	X
2004		IACC Declaration of Managua			X	
2004		Statute of the Mechanism to Follow Up on the Implementation of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women		X		
2005		Program for Democratic Governance in the Americas	X	X	X	X
2006		Declaration of Santo Domingo: Good Governance and Development in the Knowledge-Based Society			X	X
2006		IACC Inter-American Program of Cooperation to Fight Corruption			X	
2008		Resolution 2434 on the Right to Freedom of Thought and Expression and the Importance of the Media		X	X	
2008		IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas	X	X		X

Before mapping the standards and policies according to issue area, the developments will be summarized chronologically. As the table above indicates, the frequency of documents being added has increased over time. The OAS Charter was adopted in 1948 and amended four times. In 1967, 1985 and 1992, sections relevant to governance transfer were added. Since its beginnings, the organization has emphasized commitments pertaining to human rights and democracy, which were then gradually expanded by adding more detailed standards and instruments to encourage their implementation.

An important document is the 1969 Convention on Human Rights, which prescribed increasingly detailed standards and established an instrument of litigation (legal coercion) – the Inter-American Court of Human Rights. From 1985 onwards, treaties specializing on different aspects of human rights have followed and referenced the 1969 Convention. Instruments pertaining to democracy were formalized in the General Assembly resolutions 991 and 1080, which created the basis for election observation and sanctions in cases of coups, respectively. Another major step for governance transfer by the OAS is the 2001 Democratic Charter, which provided more substance to the organization’s long-standing commitment to democracy by defining concrete standards for member states. Moreover, the 1996 Inter-American Convention against Corruption with its follow-up mechanism MESICIC is a case illustrating an expansion of the OAS mandate into the realm of good governance.

3.1.1 Human Rights

1948: American Declaration on the Rights and Duties of Man

Since its inception, the Organization of American States has been linked to the idea of a regional system of human rights. The oldest text within the OAS framework to be dedicated exclusively to the issue of human rights is the American Declaration on the Rights and Duties of Man (Conference of American States 1948a), adopted in May 1948 at the Ninth International Conference of American States together with the OAS Charter (OAS 2010b). As indicated by its title, the document is divided into two parts listing rights and duties, all of which are given a headline and briefly described. According to the preamble, the Declaration is meant to serve as a “guide of an evolving American law”. Rights are based on human nature rather than citizenship, and their fulfillment is the American peoples’ “principle aim”. Part I then contains a list of 27 rights, covering amongst others personal freedoms, judicial and political rights, protection of families, education and culture, and work and fair pay. Part II refers to duties that every person has vis-à-vis the family, the society and the state. Next to obligations such as paying taxes and obeying the law, this list contains points such as the duty to vote, or the duty to work “in order to obtain the means of livelihood or to benefit [the] community” (Conference of American States 1948a). To this day, the regional human rights court (created in 1969) considers the Declaration to be “a source of international obligations for member states of the OAS”, and its standards continue to be applied to those states that have not ratified subsequent treaties (Pasqualucci/Cerna 2009: 145-146).

1948: OAS Charter

While the OAS Charter is mainly concerned with the relationship between member states and the institutional setup of the organization, it also contains further references to human rights. The first sentence of the preamble focuses on the goal of offering citizens a land of liberty and opportunities. Article 5 j contains an implicit reference to the principle of universality: “The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed or sex.” Along with these broad statements in favor of basic rights, there

are two more precise references in the text. Articles 28 and 29 refer to “social standards” including decent living conditions and the right to work; articles 30 and 31 are concerned with “cultural standards”, namely compulsory primary education and equal access to higher education, as well as “free cultural interchange by every medium of expression”. Thus, human rights play a role in the founding document of the OAS – but the respective passages are of a rather broad declaratory nature, and they are accompanied by various references to member states’ sovereignty and “due consideration for the national character” (cf. OAS 1948: articles 5b, 8, 9, 15, 31).

1948: Inter-American Convention on the Granting of Civil Rights to Women & Inter-American Convention on the Granting of Political Rights to Women

Next to the American Declaration and the OAS Charter, delegates at the Ninth International Conference of American States adopted two conventions on the rights of women, each containing only one article other than preambles and procedural rules. The first states that all “American States agree to grant to women the same civil rights that men enjoy” (Conference of American States 1948b), while the other declares that all parties “agree that the right to vote and to be elected to national office shall not be denied or abridged by reason of sex” (Conference of American States 1948c).

1967 OAS Charter Revision: Protocol of Buenos Aires

The Protocol of Buenos Aires declares the Inter-American Commission on Human Rights (IACHR) to be one of the primary OAS bodies (new article 51) and contains references to a future convention on human rights. The IACHR was put into operation in 1960 by the Permanent Council, after the Ministers of Foreign Affairs had proposed to create such a body in 1959 (OAS 1967, 2010b). Additionally, the Charter was expanded regarding the rights of individuals: the “economic standards” section now included references to help improve the standards of living (working conditions, housing, food, medicine etc.; see new article 31), and new provisions were introduced pertaining to social as well as educational, scientific and cultural standards (OAS 1967: new articles 43-50). These changes have been described as important steps towards a treaty-based human rights system (Buergenthal 1970).

1969: American Convention on Human Rights

Within the framework of the OAS, the 1969 American Convention on Human Rights (Pact of San José) is the second important document dedicated exclusively to this issue. Part I is concerned with listing human rights (and some duties) as well presenting provisions regarding their interpretation and application. Part II establishes a means to protect these rights by giving more powers to the IACHR and establishing the Inter-American Court of Human Rights (OAS 1969). Contrary to the earlier OAS documents, the Convention required ratification to come into effect, which means that member states are affected differently by it, depending on their choices (not) to ratify (parts of) the treaty.

The first part of the document contains a list of civil and political rights, many of which were also included in the 1948 Declaration. Among the rights protected by the Convention are: the rights to life, humane treatment and freedom from slavery; the rights to a fair trial and legal compensation; freedoms of conscience, religion, thought and expression; rights of assembly and association; rights to family, nationality, property; rights to move freely and participate in government. Most of these issues are addressed in some detail, with sub-paragraphs indicating detailed rights for citizens and/or duties for states. Following these numerous political and civil rights, in article 26 the document contains a reference to the goals for economic and social rights mentioned in the revised OAS Charter, urging states to ensure a “progressive development” in these areas (OAS 1969).

In Part II of the Convention, there are relatively detailed provisions regarding the human rights bodies, regulating the mandate and institutional setup of Commission and Court. In essence, it establishes a division of labor between the two bodies: The Commission is tasked with collecting information on the human rights situation, raising awareness for problematic developments, and advising member states. Moreover, its main task is reacting to the petitions that can be filed by NGOs and individuals to criticize human rights violations. Whenever a member state has been accused of rights violations via a petition to the OAS system, the Commission first has to decide if the complaint is admissible based on formal criteria such as exhaustion of domestic remedies and the provision of all necessary information. Then, the concerned state is asked to react, and the Commission can hold hearings or conduct on-site visits ideally resulting in a friendly settlement. Should there be no settlement, the IACHR will consider the merits of the case and issue a recommendation to the respective country on how to change its behavior in order to resolve the situation in accordance with regional law (Pasqualucci/Cerna 2009: 148-149). While these are not binding judicial decisions, the 1969 Convention obliges states to make efforts to follow them (Góngora Mera 2011: 19).

As mentioned earlier, the Commission was established in 1960 and later gained the status of a primary OAS body. Its rules of procedure were introduced in 1980 and modified subsequently, with the last major amendments made in 2009 (OAS Secretary General 2009: 86). The Commission consists of seven independent members serving up to two four-year terms after being elected by the General Assembly. According to the rules of procedure, it has to hold regular sessions at least twice a year, and can hold “as many special sessions as it deems necessary”. Moreover, the IACHR is equipped with a secretariat and can appoint specialized rapporteurs as well as working groups. Every year, the IACHR has to prepare a report to the General Assembly (OAS IACHR 2009).

In case of non-compliance with the recommendations, the Commission can forward the case to the Court, provided the concerned member state recognizes its jurisdiction. This body, which is staffed by judges from different member states and required to be impartial, can then decide on the matter at hand: If it finds a violation of rights, it can rule that the claimant be allowed to exercise the right in question, that national law be changed, and that “fair compensation be paid

to the injured party” (article 63). The Court can also order provisional measures (e.g. to protect individuals) to be implemented while the case is still open.

When the Convention entered into force in 1978, after the eleventh party had ratified it, the Court could be established (OAS Court 2011: 1). In 1979, the first judges were elected by the General Assembly and the Court became operational (Cançado Trindade 1998: 133).

But not all member states have the same obligations based on the Convention. Clearly, the 25 ratified parties to the treaty are bound by it, as one would expect from international law. But which states are subjects to the authority of Commission and Court? While the Commission’s petitions system is based on article 44 of the Convention and requires no additional ratification, there is an optional second mechanism described in article 45. It allows any party to file a “communication” with the Commission and thus allege human rights violations by another party; however, this clause has only been ratified by ten OAS members and seems to be of little importance.⁵ The Court’s authority, in turn, is dependent on the willingness of member states to recognize its contentious jurisdiction, which has to be expressed during the process of ratification (OAS 1969: article 62). This condition is met by 22 OAS member states. It is worth noting that many countries have ratified the document decades after their initial signature, and either recognized the OAS bodies later or not at all.

Lutz and Sikkink further note that victims of human rights abuses have only limited access to the Court due to institutional arrangements. First, all domestic remedies must have been exhausted. Second, individuals cannot access the Court directly: all cases have to undergo the IACHR’s petition system and only reach the Court at the discretion of the Commission (Lutz/Sikkink 2000: 640-641).

1985: *Inter-American Convention to Prevent and Punish Torture*

In addition to the list of rights introduced in the major treaties, the OAS human rights framework consists of additional documents dealing with specific issues. The first specialized human rights treaty was adopted by the OAS in 1985 and addressed the prohibition of torture (OAS 1985a). Article 2 contains a definition of torture and is followed by several articles on how to fight it. States are obliged to outlaw torture and hold officials responsible for it (articles 3-6), train their staff to prevent abuses (article 7), and ban statements obtained via torture from court proceedings (article 10). Among other things, parties to the treaty are required to provide victims with access to courts and compensation (articles 8 and 9) and allow for the extradition of perpetrators (articles 11 and 13). Overall, the definition of torture and the duties for member states are similar to those set forth in Part I of the UN “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”, which had been adopted by the General Assembly in December 1984 (United Nations 1984).

⁵ According to Pasqualucci and Cerna (2009), this procedure – which requires both states to be parties to article 45 – was only used once up to 2008, resulting in the case being dismissed by the Commission.

1988: Protocol of San Salvador (Economic, Social and Cultural Rights)

The catalog of human rights established in the Declaration and the Convention was expanded with the 1988 Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador). This document contains twelve provisions including the rights to work and good working conditions, to health, food, and culture, as well as the protection of children, the elderly, and the handicapped (OAS 1988: articles 6-18). As well as requesting governments to report on their commitment to these rights, article 19 emphasizes that violations of trade union rights or the right to education may evoke a petition that will be handled by the HR Commission or Court.

1990: Protocol to Abolish the Death Penalty

The 1990 Protocol to the American Convention on Human Rights to Abolish the Death Penalty contains just one legal obligation apart from procedural matters: “The States Parties to this Protocol shall not apply the death penalty in their territory to any person subject to their jurisdiction” (article 1). In the preamble, this is justified by the importance of the right to life and the dangers of judicial error; times of war are cited as the only possible scenario for exceptions (OAS 1990).

1994: Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women

In the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (OAS 1994b), violence is on the one hand understood in a narrow, physical sense (articles 1 and 2) and on the other in the broader context of society and “stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination” (article 6). The document emphasizes that women must be able to exercise their human rights. Articles 7 and 8 contain the duties of member states, which must ensure that women are protected by law as well as in government practices. In addition, the document demands measures aimed at raising awareness, changing social patterns, and fostering research and exchange.

1994: Inter-American Convention on Forced Disappearances of Persons

A second 1994 treaty is the Inter-American Convention on Forced Disappearances of Persons (OAS 1994a). It targets the practice of depriving people of their freedom without giving them recourse to the legal system and without releasing information about their whereabouts. Article III requires the parties to define such actions as criminal offenses, and article IV requires them to take judicial steps whenever their citizens are victims or perpetrators, or in case disappearances occur on their territory. Next to procedural matters and the question of extradition (articles V and VI), the treaty specifies that its regulations also apply under special circumstances

such as war (article X), and that detainees shall have quick access to judicial authorities and be available to relatives and attorneys (article XI).

1999: Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities

The latest specialized OAS human rights treaty is the 1999 Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities (OAS 1999). Article I defines discrimination as “any distinction, exclusion, or restriction” that impairs the exercise of human rights for people with disabilities, but allows for affirmative action. Parties to the treaty are required to remove obstacles – by improving the accessibility of goods, services, public and private buildings and infrastructure – and to engage in training, research, and awareness-raising (article III). Furthermore, the document calls for cooperation among states (article IV) and establishes a follow-up Committee (article VI).

2000: Resolution 1729 on the Adoption and Application of the Inter-American Program on the Promotion of Women’s Human Rights and Gender Equity and Equality

In 2000, the OAS General Assembly passed a resolution that embraced the concept of gender mainstreaming by adopting a “Program on the Promotion of Women’s Human Rights and Gender Equity and Equality” (OAS General Assembly 2000). This plan of action contains a set of standards as well as policies to be fulfilled by member states and OAS bodies. All of the standards aim at the objective of securing gender equality in all areas of economic, social and political life (section III). Member states are given a list of 19 tasks, which broadly aim at reviewing and changing domestic legislation and strategies, creating institutions and exchanging information; the program also contains commitments by the OAS bodies themselves (section IV).

In addition to standards and policy recommendations, the comprehensive program consolidates the role of the Inter-American Commission of Women (CIM) within the OAS. The CIM, which was founded in 1928 and was formally integrated into the OAS as a specialized organization in 1953 (OAS CIM 2013a: 2), is established in the program as “principal forum for generating hemispheric policy” and tasked with reporting to the General Assembly “on progress made in executing the Inter-American Program” (OAS General Assembly 2000: 111).

2000: IACHR Declaration of Principles on Freedom of Expression

Some additions to the OAS human rights framework were adopted directly by the Inter-American Commission on Human Rights, meaning that they were not open for ratification by member states. In 2000, the IACHR adopted the Declaration of Principles on Freedom of Expression (OAS IACHR 2000). This document complements article 13 of the Convention with a broader and more detailed list of standards: Freedom of expression is named not only as a human right, but also as prerequisite for democracy; the Declaration emphasizes citizens’ rights to access

information held by the state; it also contains a number of clauses to protect journalists and support a diverse and free media landscape.

2001: *Inter-American Democratic Charter*

Another reference to the right of individuals to “present claims or petitions” to the OAS human rights bodies is made in article 8 of the Inter-American Democratic Charter, which also contains a reference to workers’ rights and the ILO in article 10 (OAS 2001).

2004: *Statute of the Mechanism to Follow Up on the Implementation of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*

At the First Conference of States Parties to the 1994 treaty on women’s rights, the follow-up mechanism MESECVI was adopted. The declared goal of this mechanism, which involved the creation of an expert committee in addition to the conference of parties, was to foster the implementation of the treaty via new instruments:

“To establish a system of technical cooperation among the states parties, which shall be open to other member states and permanent observer states, for the exchange of information, experiences, and best practices as a means to update and harmonize their domestic legislation, as appropriate, and attain other common objectives associated with the Convention.” (OAS MESECVI 2004: article 1)

According to the provisions of the statute, parties to the treaty have to report to the committee on their progress implementing the treaty and will then receive policy recommendations in return. Thus, through this mechanism, the OAS has an instrument that serves as a forum for dialogue and assistance to member states.

2008: *Resolution 2434 on the Right to Freedom of Thought and Expression and the Importance of the Media*

The General Assembly adopted this resolution in 2008, including references to article 13 of the Convention as well as the 2000 IACHR Declaration of Principles on Freedom of Expression. In addition to reaffirming “that freedom of expression and dissemination of ideas are fundamental for the exercise of democracy” (OAS General Assembly 2008: 284), this document pays special attention to the media landscapes in member states. It urges member states to ensure pluralism, diverse ownership, transparent licensing, and to respect the independence of media outlets in concordance with international law. Additionally, member states are asked to review their media laws and practices, making sure they are not excessive.

2008: IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas

After its text on the freedom of expression in 2000, the IACHR adopted a second major document in 2008: “Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas” refers to a large number of related UN and other international agreements in its preamble. It lists 25 principles with detailed provisions, covering rights and legal proceedings, the living conditions of people that are deprived of their liberty, and standards pertaining to the system as a whole, e.g. regarding the training of personnel. Thus, the Principles are not only concerned with general human rights standards but also with the due process of law and detailed rules for the management of facilities such as prisons, psychiatric hospitals, or centers for migrants (OAS IACHR 2008).

Further documents on human rights

Some additional documents are still in the process of being drafted and negotiated. Examples include the Declaration on the Rights of Indigenous People, which was first presented to the General Assembly as a draft in 1997 (OAS General Assembly 1997b), and the Inter-American Convention against Racism and all Forms of Discrimination and Intolerance, which is in the making since 2001, with a “preliminary draft” discussed by the General Assembly in 2006 (OAS General Assembly 2006b).

3.1.2 Democracy

1948: OAS Charter

The original 1948 OAS Charter contains a reference to democracy (and human rights) in its preamble, stating that “American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man” (OAS 1948). In article 5 d, the “effective exercise of representative democracy” is again named as prerequisite for American solidarity (OAS 1948).

1967 Charter Revision: Protocol of Buenos Aires

When the Charter was amended in 1967 by the Protocol of Buenos Aires, references to democracy were added to a few articles, but no substantive changes were made.

1985 Charter Revision: Protocol of Cartagena de Indias

The 1985 Protocol of Cartagena de Indias placed more emphasis on democracy in the preamble by adding that “representative democracy is an indispensable condition for the stability, peace and development of the region” (OAS 1985b). Furthermore, to “promote and consolidate repre-

sentative democracy, with due respect for the principle of nonintervention” now became one of the “essential purposes” of the organization (OAS 1985b).

However, the newly introduced article 3e of the OAS Charter limits the reach of democracy promotion by the OAS: “Every State has the right to choose, without external interference, its political, economic and social system and to organize itself in the way best suited to it, and has the duty to abstain from intervening in the affairs of another State”.

1989: Resolution 991 on Electoral Monitoring

In 1989, electoral observer missions gained a clear legal basis in the OAS documents through General Assembly Resolution 991, the first “that expressly mentions the observation of electoral processes as a means by which to strengthen democracy in the region” (OAS General Secretariat 2008: 12). According to this Resolution, the General Secretariat should send observer missions on invitation by national governments, monitor the elections, and then “periodically issue public reports” (OAS General Assembly 1989).

1990: Resolution 1063 on a Unit for Democratic Development

With the General Assembly Resolution 1063, which directly referred to the commitments to democracy in the Charter and GA Resolution 991, the Secretary General of the OAS was ordered to establish a “Unit for Democratic Development”. The new unit was meant to develop mechanisms to help member states that “request advice or assistance to preserve or strengthen their political institutions and democratic procedures”, including dialogue and election observation (OAS General Assembly 1990: 110). In 1991, the “Unit for the Promotion of Democracy” was established (Herz 2011: 67) and the OAS had institutionalized an instrument for assistance and dialogue with member states.

1991: Santiago Commitment to Democracy and Santiago Resolution 1080

In 1991, the American heads of state issued the Santiago Commitment to Democracy and the Renewal of the Inter-American System, which again included their “inescapable commitment to the defense and promotion of representative democracy” (OAS General Assembly 1991b: 2). During the same session of the General Assembly, Resolution 1080 on Representative Democracy was adopted, instructing the Secretary General to issue a meeting of the Permanent Council or the GA within ten days after any disruption of democratic institutions in any member state. The Permanent Council is then mandated to “adopt any decisions deemed appropriate, in accordance with the Charter and international law”. Resolution 1080 also requires the Permanent Council to “devise a set of proposals that will serve as incentives to preserve and strengthen democratic systems” (OAS General Assembly 1991a). In effect, the resolution introduced economic and political sanctions on member states in which the democratic order is disrupted. Thus, the OAS had formally adopted the concept of using incentives to influence member states that had deviated from their commitment to democracy.

1992 Charter Revision: Protocol of Washington and Declaration of Nassau

The Santiago Commitment's plan of action was reflected in the 1992 Protocol of Washington, which amended the Charter to include article 9:

“A Member of the Organization whose democratically constituted government has been overthrown by force may be suspended from the exercise of the right to participate in the sessions of the General Assembly, the Meeting of Consultation, the Councils of the Organization and the Specialized Conferences as well as in the commissions, working groups and any other bodies established. (...)” (OAS 1992)

By introducing the suspension clause, the OAS had completed the move from a declaratory statement in favor of democracy to a strong incentive. Following this trend, the Declaration of Nassau was published as a result of the 22nd regular GA session (OAS General Assembly 1992). In this document, the members declared their will to “develop OAS mechanisms to provide member states with the assistance they request to build, preserve and strengthen representative democracy” and expressed the “strongest and most categorical rejection of any attempt against the democratic institutional order in any of the member states”. Additionally, cooperation in other areas was framed in terms of promoting democracy, e.g. by defining extreme poverty as an obstacle to democracy (OAS General Assembly 1992: 4).

1993: Declaration of Managua

The “link between improving the quality of life of the American peoples and consolidating democracy” was further recognized in the 1993 Declaration of Managua:

“[T]he Organization's mission does not exhaust itself in the defense of democracy wherever its fundamental values and principles have collapsed, but also calls for ongoing and creative work to consolidate democracy as well as a continuing effort to prevent and anticipate the very causes of the problems that work against democratic rule. (...)”

[C]onsolidating democracy requires initiatives and programs aimed both at prevention and incentives for its development, and entails extraordinary efforts to achieve, among other aims, the eradication of the extreme poverty which undermines the full development of democracy among the peoples of the Hemisphere.” (OAS General Assembly 1993: 4)

2001: Inter-American Democratic Charter

The next step regarding the prescription of democratic standards was the 2001 Inter-American Democratic Charter. It was adopted at a special session of the GA in Lima, Peru that coincided

with the 9/11 terrorist attacks (Graham 2002). Article 1 states that the “peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it”, calling democracy “essential for the social, political and economic development” (OAS 2001). Throughout the 28 articles of the charter, references are made to various aspects of democracy, human rights, the rule of law and good governance. With regard to the first point, the text mentions the importance of participation (articles 2 and 6), free, fair and secret elections with universal suffrage (article 3), strong political parties and sound financing of electoral campaigns (article 5), the relation between living standards and democracy (articles 11-12), and education (art. 16). Articles 17 to 22 address crisis situations in member states. Member states that fear for their democratic system may turn to the OAS bodies for support (articles 17-18).

Furthermore, any breakdown of democratic order is defined as an “insurmountable obstacle” to participation in the OAS, meaning that the respective member will be by a majority of two thirds of the other states. At the same time, “the Organization will maintain diplomatic initiatives to restore democracy in that state”, and lift the suspensions once democracy is restored (articles 19-22). Articles 23 to 25 are concerned with electoral observation missions, which the OAS can carry out on request of the concerned member states, “strengthening and developing their electoral institutions and processes”. Articles 26 to 28 address the organization’s commitment to “promote democratic principles and practices and strengthen a democratic culture in the Hemisphere [sic]”, with special emphasis on the education of youth.

Thus the OAS is equipped with a document that prescribes certain standards of democracy. Article 21, which regulates the suspension of membership, provides the organization with measures to “penalize those who violate its widened definition” (Graham 2002: 7). The Democratic Charter clearly refers to instruments including incentives, assistance and dialogue. However, it does not constitute a legal obligation, but depends on political and diplomatic activities for enforcement.

2005: Program for Democratic Governance in the Americas

After several resolutions by the General Assembly on different revisions, the Permanent Council’s “Program for Democratic Governance in the Americas” was approved in 2005. It translates the goals from the Democratic Charter into more precise policy objectives. These encompass a wide range of instances of governance transfer to member states:

“In the political-institutional area, the Program aims to consolidate the basic institutions of representative democracy, to promote citizen participation, to facilitate the democratic management of conflicts particularly through conflict prevention and through conflict resolution, and to promote a democratic culture. In this domain, the Program further seeks to strengthen the capacity of key actors in democracies, in particular political parties and civil society organizations, as well as to strengthen the rule of law, the separation of powers and independence of the branches of government, the protection of human rights, and the fight

against corruption. The underlying premise is that a well functioning democracy is a prerequisite for economic and social development.” (OAS Permanent Council 2005: 4)

As evident in the quote above, democracy is of central importance, but human rights, good governance and the rule of law are mentioned as well. Two major objectives mentioned in section IV of the text seem to be particularly relevant for this analysis: (a) enhancing the transparency and credibility of democratic institutions, and (b) strengthening political representation and citizen participation. Both contain more detailed goals. Section IX of the document links the objective and concrete lines of action back to the political framework, e.g. the relevant passages in the Democratic Charter. It also contains a very detailed list of the activities that are to be carried out by different actors, such as the General Secretariat’s political departments (OAS Permanent Council 2005: 9-39). These activities are grouped in several “operational components” that correspond to types of instruments: (1) Special meetings of the Permanent Council and (2) other high-level meetings as a means of dialogue; (3) research studies, (4) political and technical cooperation, and (5) workshops as a form of assistance. Thus, while the Program does not introduce new standards of governance, it does refer to many policy instruments.

3.1.3 Good Governance

1996: *Inter-American Convention against Corruption*

The central document with regarding the OAS anti-corruption effort is the Inter-American Convention against Corruption (IACC), which was adopted in March 1996 at a specialized conference (OAS 1996). In the preamble to this document, it is stated that “corruption undermines the legitimacy of public institutions and strikes at society, moral order and justice, as well as at the comprehensive development of peoples”. Corruption is linked to (a lack of) democracy and to international crime and violence, emphasizing a need to develop regional cooperation to tackle the problem. According to article II, the IACC’s purpose is to strengthen states’ mechanisms to “prevent, detect, punish and eradicate corruption” and to promote cooperation between the states to that end. Article VI defines an act of corruption as the acceptance of “any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions” by any official; vice versa, the offering of such incentives is also covered by the convention.

Next to establishing goals and defining the subject matter, the IACC is concerned with policy recommendations. Article III describes preventive measures against corruption for signatory states to consider, such as standards of conduct for public officials and monitoring mechanisms. Other articles caution member states against instances of transnational bribery (VIII), illicit enrichment by government officials (IX), and misuse of government property (XI). States are furthermore asked to extradite persons that are prosecuted by another state for corruption-

related offenses (article XIII), and to cooperate fully with other states to tackle corruption (XIV-XVI), especially by helping to identify property and by lessening bank secrecy (OAS 1996).

1997: Inter-American Program for Cooperation in the Fight against Corruption

Another important building block of the OAS anti-corruption measures is the Inter-American Program for Cooperation in the Fight against Corruption (OAS General Assembly 1997a). In 1997, the first of several versions of this program was adopted by the General Assembly, calling for measures in four areas. In the legal area, states decided to compile information on existing national laws, work on definitions of different aspects of corruption, and propose drafts for new laws, codes of conduct and publicity efforts. The document called for coordination of and advice/support for the relevant national institutions. Internationally, it aimed to cooperate with the UN, the Council of Europe, and other international organizations. Finally, the Program targeted civil society, specifically the media as well as professional and civil society organizations that could support anti-corruption efforts.

2001: Resolution 1784 on the Mechanism for Follow-Up on Implementation of the Inter-American Convention against Corruption

In 2001, the General Assembly and the Permanent Council of the OAS adopted measures to follow up on the anti-corruption efforts after there had been a first conference of the parties to the IACC. The result of these initiatives is the “Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption” (MESICIC), its purposes being: promoting the goals of the IACC; monitoring member states’ commitments; facilitating cooperation, exchange and harmonization (OAS General Assembly 2001). Thus, the OAS created an instrument of assistance and dialog to promote anti-corruption in member states, which will be analyzed in section 3.2.3.

2001: Inter-American Democratic Charter

Interestingly, state modernization and effective (good) governance are hardly mentioned in the OAS Charter or the Inter-American Democratic Charter. Article 4 of the Democratic Charter makes a broad reference to “[t]ransparency in government activities, probity [and] responsible public administration on the part of governments”, but includes these aspects of good governance along with human rights and freedom of expression (OAS 2001).

There is, however, the notion that democracy is linked to development, and that member states should ensure favorable conditions for economic development. Based on this, the website of the Secretariat for Political Affairs states that: “Effective government requires more than good political leaders; it requires an organized and professional civil service that is equipped to design and implement strategies and policies over time” (OAS 2011).

2003: Declaration of Santiago on Democracy and Public Trust

The connection between democracy, good governance and the rule of law is reflected in the 2003 “Declaration of Santiago on Democracy and Public Trust: A New Commitment to Good Governance for the Americas” (OAS General Assembly 2003). The text reaffirms the commitment to the Democratic Charter. Among many references to democracy, the need for development, and pledges for regional cooperation, the document includes direct references to governance and legal reform:

“Democratic governance calls for reinforced state modernization processes, incorporating new technologies, so as to raise levels of efficiency, probity, and transparency in public administration. Judicial reform and modernization leading to an independent, more expeditious, and more accessible justice system constitute a primary objective in the process of consolidating the rule of law.” (OAS General Assembly 2003: 2)

2004: IACC Declaration of Managua

In the Declaration of Managua, the parties to the IACC (inter alia) reiterate their willingness to cooperate on the issue of corruption, promise their support to strengthen MESICIC and commit to submitting national reports for scrutiny (OAS IACC 2004).

2006: Declaration of Santo Domingo on Good Governance and Development in the Knowledge-Based Society

A slightly more precise conceptualization of state modernization can be found in the 2006 declaration on “Good Governance and Development in the Knowledge-Based Society”. The preamble to this document states “that good public administration requires effective, representative, transparent, and publicly accountable government institutions at all levels, citizen participation, effective checks and balances, and the balance and separation of powers”, which should be encouraged by implementing modern technology (OAS General Assembly 2006a).

2006: Inter-American Program of Cooperation to Fight Corruption

In 2006, the original Program for Cooperation was renewed to reflect the developments since 1997 and set new priorities. First, the OAS members reiterated their support for MESICIC, including a commitment to increase funding. The second focal point is the dissemination of information, especially via the Internet and by means of training for officials and media cooperation. Regarding the cooperation between states, the document emphasizes the need to recover criminally obtained assets, conduct comparative studies, and extradite offenders. Finally, the Program makes references to the cooperation of the OAS with other international entities, the United Nations, and the civil society in member states (OAS IACC 2006).

3.1.4 Rule of Law

2001: Democratic Charter

All in all, it is remarkably difficult to single out instances of the OAS prescribing concrete standards related to the rule of law (beyond a mere mentioning of the ideal). In article 3 of the Democratic Charter, the rule of law is conceptualized as an element of democracy, as it is considered crucial to electoral processes. Article 2, on the other hand, is ambiguous and even contradictory regarding the relationship of democracy and the rule of law:

“The effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes of the member states of the Organization of American States. Representative democracy is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order.” (OAS 2001)

3.1.5 Summary

Before discussing the measures (adoption and application) taken by the OAS in the different areas of governance transfer, the framework (standards and policies) for human rights, democracy, good governance, and the rule of law will be summarized.

Human Rights

The OAS has been active in both the prescription of human rights standards and the development of instruments. Already in 1948, the organization’s first documents included a definition of human rights and corresponding duties for member states. In 1969, the OAS set of human rights was expanded and strengthened by the Convention. This document established the regional Commission (IACHR) and the Court of Human Rights, the activities of which will be analyzed in chapter 3.2.2. Over the following decades, new commitments were incrementally added via specialized treaties as well as IACHR documents on different issues, such as torture or the rights of persons with disabilities.

Regarding instruments, the Court judgments and (to a lesser extent) Commission orders constitute a form of legal coercion: They are binding for member states that have ratified the respective treaties, and in cases of non-compliance, there are penalties. By allowing individuals access to the system, the OAS has established the instrument of litigation concerning human rights. Yet, the OAS system of human rights protection is limited due to its dependence on acts of ratification (see table 2 below). Member states differ greatly in regard to the number of human rights documents they have ratified. In essence, there appears to be a division between the Latin American members on the one hand and the North American and Caribbean nations on the other, with the latter being very reluctant to accede to regional human rights laws (Lohaus

2012). This also affects the pivotal elements of the OAS human rights system, because their relevance differs from country to country: “The lack of universality complicates the functioning of the Commission, which must apply different criteria when determining whether a state has violated the rights set forth in the American Declaration or the American Convention” (Pasqualucci/Cerna 2009: 152).

Figure 4: Number of ratifications by human rights treaty⁶

Document	Adoption	Entry into force	Ratifications as of 2010
Charter of the OAS	1948	1951	35
Declaration on the Rights and Duties of Men	1948	n/a	n/a
Convention on the Granting of Civil Rights to Women	1948	n/a	n/a
Convention on the Granting of Political Rights to Women	1948	n/a	n/a
Protocol of Buenos Aires (Charter Amendment)	1967	1970	n/a
American Convention on Human Rights	1969	1978	25
- Art. 45 on the IACHR	“	“	10
- Jurisdiction of the Court	“	“	22
Inter-American Convention to Prevent and Punish Torture	1985	1987	18
Protocol of San Salvador (Economic, Social, Cultural Rights)	1988	1999	15
Protocol to Abolish the Death Penalty	1990	1991	11
Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women	1994	1995	32
Inter-American Convention on Forced Disappearance of Persons	1994	1996	14
Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities	1999	2001	18

Next to legal coercion, the OAS promotes human rights by means of assistance and dialogue. A case in point is the system to promote gender equality and women’s rights, which combines the work of the Commission for Women and the follow-up mechanism MESECVI, which is based on the 1994 treaty. The reports issued by the IACHR equally aim at disseminating information and assisting member states. Simultaneously, they constitute an incentive to comply since they identify laggards and leaders among the parties to the treaties.

Democracy

A commitment to representative democracy has been part of the OAS since its foundation, as documented by the original Charter as well as several revisions. In most instances, it is closely linked to human rights and (economic) development. Between 1989 and 1992, the OAS introduced three instruments for the promotion and protection of democracy: regular election observation, economic and political sanctions in case of anti-democratic developments in mem-

⁶ Source: Lohaus (2012)

ber states, and a suspension clause. Only since the Democratic Charter of 2001, however, standards such as universal suffrage are explicitly mentioned along with the general statements in favor of democratic forms of government. This illustrates the long-standing lack of precision in the OAS commitments to democracy.

Democracy protection by the OAS is a case of a regional organization using incentives: When democratic standards are violated, the OAS can react with political and economic sanctions. Next to acting in crisis situation, the organization promotes democratic governance through instruments that build on incentives, assistance, and learning. The reporting mechanism of the electoral observation missions is a case of incentives: A positive review constitutes a positive immaterial incentive, and vice versa. Assistance can then be offered in two ways. First, the guidelines offered by the observer missions constitute a form of assistance of their own, as they signal the desired way to conduct elections. More substantial technical assistance is provided in the form of audits and training programs. Finally, the meetings between national electoral tribunals are an example of best practice exchanges within the OAS framework.

Good Governance

The concept of good governance – which is not mentioned by name in the OAS Charter – encompasses a broad range of policies. For the OAS, the most significant components are measures taken to combat corruption and promote public management reform.

The 1996 Convention against Corruption defines the problem, locates it in the context of democracy and development, and establishes a number of policies to be adopted by member states. It has been ratified by 33 countries. Accompanying this treaty is a program for cooperation and, as the most important instrument, the 2001 follow-up mechanism called MESICIC. In the realm of public management reform, the prescription of standards and policies is not solely concentrated in one major treaty. Instead, the topic has appeared on the agenda during the 2000s in the form of declarations, inter alia regarding the use of modern technology to improve the effectiveness of public management. Overall, the OAS thus relies on assistance and dialogue in order to promote reforms aimed at good governance.

Rule of Law

It is difficult to isolate an OAS framework focused exclusively on the rule of law, which is not explicitly mentioned in the Charter. In later documents, the term is often used in conjunction with commitments to democracy and human rights. However, the relationship between these concepts is unclear, as the rule of law is at times conceptualized as part of democracy and/or human rights, and simultaneously also as a prerequisite. As a result of this ambiguity, this report covers much of what could be labeled as rule of law under the headings of democracy or human rights.

3.2 Measures of Governance Transfer: Adoption and Application

The following section examines how the OAS adopts and applies measures to protect and promote the standards identified above. This includes both the implementation of policies and instruments and the use of ad-hoc measures.

3.2.1 Human Rights

The regional system of human rights in the Americas is the only part of governance transfer in which the OAS uses instruments of legal coercion. It consists of a relatively complex regime that is comprised of two pillars: The first is the IACHR, which collects information and advises member states, but most importantly responds to petitions filed by individuals. The second is the Court, which delivers judgments in contentious cases whenever the IACHR decides that a petitions merits further attention, but an agreement could not be reached. This division of labor is based on the 1969 Convention (see section 3.1.2 for the details). Judging from secondary literature, the IACHR and the Court have been actively addressing several systematic issues throughout the region, setting priorities for the human rights agenda. According to Schönsteiner and her colleagues, the “major jurisprudential developments and (...) institutional changes” in recent years took place in a number of subject areas:

“In the case of the Commission, these are freedom of expression; discrimination on grounds of gender and sexual orientation; and human rights with regard to large-scale economic activities of private actors. For the Court, they are privacy and access to information; violence against women; and property rights of indigenous and afro-descendant peoples.” (Schönsteiner et al. 2011: 364)

Apart from this dual system for the protection of human rights, there is the Commission for Women (CIM), which specifically promotes women’s rights and gender mainstreaming.

Inter-American Commission for Human Rights

The IACHR was established by the Permanent Council in 1960, gained its position as a primary OAS body through the 1967 Charter revision, and was then established as the first step of the petition system in the 1969 American Convention on Human Rights (see previous chapter). Historically, the IACHR has been credited with playing an important role in exposing and fighting violations of human rights in the region. While this report will focus on the more recent developments, the IACHR’s activities in times when Latin America was home to various dictatorships should not go unmentioned:

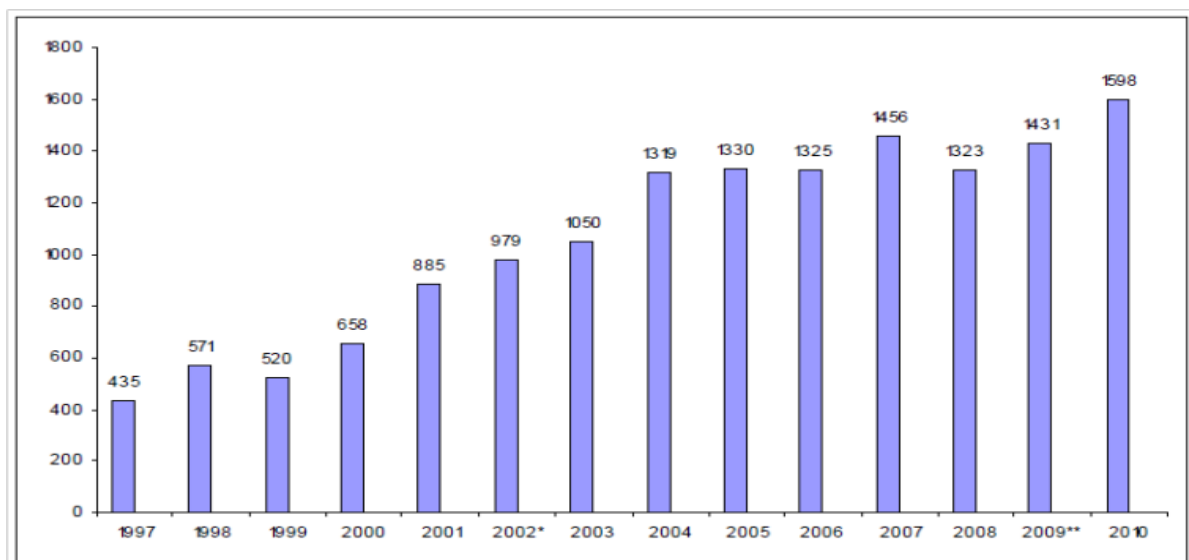
“The commission was able to play a crucial role during the 1970s and 1980s by adopting positions critical to mass and systematic violations of human rights by Latin American dictatorships, in particular forced disappearance. Moreover, this organ addressed the situation of specific victims, although it did not have a

mandate to do so, requesting information from member states, carrying out on-site visits and producing reports.” (Herz 2011: 63)

In 1979, a report by the IACHR on the situation in Nicaragua led to a GA resolution condemning the Somoza regime, which “for the first time in the history of the OAS, deprived an incumbent government (...) of its legitimacy, based on the human rights violations committed by that government against its own population” (Herz 2011: 63).

Let us now turn to the more recent role of the IACHR. According to the Commission’s 2011 annual report, around 1500 petitions reached the IACHR annually during the last years (see figure 7 below). In 2010, the IACHR passed on 275 petitions to the respective member states, granted 68 precautionary measures (after receiving 375 such requests), and held 88 hearings (OAS IACHR 2011a: 38-43).

Figure 7: Number of petitions to the Inter-American Commission on Human Rights⁷



Secondary literature indicates that the scope of issues covered in the petitions has increased in recent years. This can be interpreted as a shift from transitional justice to a more diverse spectrum of issues concerning human rights: Next to “massacres, extrajudicial executions and arbitrary killings occurring during authoritarian regimes”, the IACHR is now also concerned with issues such as “political participation, unfair dismissal, rape by public officials and private persons, wiretapping, and discrimination on grounds of sexual orientation” (Schönsteiner et al. 2011: 363).

In addition to the work revolving around the petition system, the contributions by elected rapporteurs on various issue areas are an important aspect of the Commission’s work. These officials and their offices support the Commission regarding petitions that concern their area of expertise, act as advisors to member states, conduct visits to gather information, and publish reports on various topics and countries. The current Strategic Plan of the IACHR contains

⁷ Source: OAS IACHR (2011a); 2002 excluding complaints related to the banking crisis in Argentina; 2009 excluding those related to the coup in Honduras.

information on eight rapporteurships in total, covering: the rights of women (since 1994), the rights of children and adolescents (since 1998), the rights of persons deprived of liberty (since 2004), racial discrimination (since 2005), the rights of indigenous peoples (since 1990), the rights of migrant workers and their families (since 1997), and the rights of human rights defenders (since 2011). Freedom of expression is protected through a “Special Rapporteurship” that was established in 1997 and publishes separate, more detailed reports on its activities (OAS IACHR 2011a: 16-26; 2011c; 2011d: 26-33).

Furthermore, the Commission also publishes country reports for those members “whose human rights practices [merit] special attention” (OAS IACHR 2011b); this is based on five criteria that were developed in 1997: lack of representative democracy; usage of emergency legislation or similar limitations of human rights; evidence of massive human rights violations; a phase of transition; disruptions of the rule of law or constitutional crises. For 2010, the Commission published special reports on Colombia, Cuba, Honduras, and Venezuela (OAS IACHR 2011b). Both the issue- and the country-focused reports serve as instruments of assistance, by giving advice and providing information, as well as incentives, by identifying laggards and providing rewards or criticism based on performance.

Finally, the IACHR report records interactions between the OAS and other human rights institutions, including dialogue with the UN and other regional organizations, as well as “outreach activities”, such as conferences and seminars (OAS IACHR 2011a: 27-29). Along with public relations efforts on the Internet and through print publications, this part of the Commission’s work is aimed at assistance (training and capacity-building) and exchange of information.

Inter-American Court of Human Rights

As discussed in the previous chapter, the Court received its mandate from the 1969 American Convention on Human Rights and became operational in 1979, one year after the Convention entered into force. The judges rule on contentious cases forwarded to them by the Commission, and judgments are binding for those 22 member states of the OAS that have ratified the Convention on Human Rights including its (optional) article on the Court.

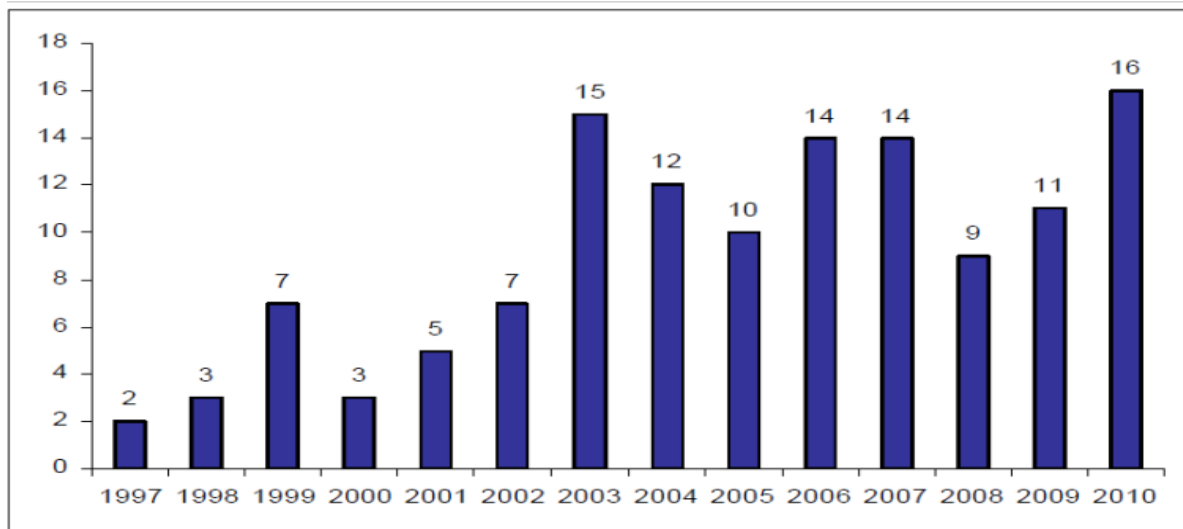
Similar to the IACHR, the Court has historically played a notable role in the opposition to Latin American dictatorships:

“The court issued rulings that set standards regarding abduction, arbitrary detention, torture, extrajudicial executions, the need to prosecute those responsible for human rights violations, and the responsibility of states regarding the protection of citizens’ human rights.” (Herz 2011: 63)

To illuminate the Court’s recent work, it is helpful to examine its annual reports. Regarding judicial activities, the 2011 document reports 11 “public hearings on contentious cases”, 10 hearings and 36 issued orders on provisional measures, and 22 hearings and 40 orders on the supervision

of such measures. Over the course of its four regular and two special periods in 2010, the Court delivered 9 judgments on contentious cases and issued 35 orders on monitoring compliance (OAS Court 2011: 3-6). 16 new cases were brought in front of the Court and 21 decisions were pending, which constituted a record high. Moreover, the number of cases being monitored for compliance with the judgments had grown to 111 by the end of 2010 (OAS Court 2011: 8-10).

Figure 8: Cases submitted to the Inter-American Court for Human Rights by year⁸



Apart from the immediate effects of its orders and judgments, the OAS Court points to the influence of its jurisprudence on national courts in member states:

“The Court’s jurisprudence in different cases has been applied by national courts of other states, which has generated the existence of a ‘jurisprudential dialog’ in which the organs of the Inter-American System interact with civil society organizations of the countries in the region, state organs at all levels, international bodies, and, mainly, with other courts at the national level (...).” (OAS Court 2011: 55)

According to the Court’s report, this dialogue also obliges domestic judges to “conventionality control”, which ensures that their laws and judgments are compatible with OAS human rights law and the Court’s “interpretation thereof” (OAS Court 2011: 55). Additionally, the reports discuss a number of areas that received special attention by the Court in 2010: forced disappearances, amnesty laws, access to information, military criminal jurisdiction, rape, immigrants’ rights, states’ obligations in military areas, exclusion of evidence obtained through coercion, indigenous and minority rights, and judicial matters involving public officials (OAS Court 2011: 56-66).

Finally, the Court provides information about its work and advertises its achievements on the Internet. It has also cooperated with other institutions, prepared several publications, and provided training for public officials, lawyers and judges (OAS IACHR 2011a: 21-25).

⁸ Source: OAS IACHR (2011a)

Thus, the Court serves several purposes. On the one hand, its judgments are an instrument of legal coercion, binding for those member states that ratified the respective treaty. On the other, the Court offers assistance and enables learning processes by providing training to officials, but also more indirectly through the dissemination of regional jurisprudence to domestic legal systems.

Commission for Women and MESECVI

As discussed in the section on the prescription and policies regarding human rights, the Inter-American Commission for Women (CIM) is tasked with implementing the 2000 Inter-American Program on the Promotion of Women's Human Rights and Gender Equity and Equality. Since 2004, a follow-up mechanism to the 1994 Convention on the Prevention, Punishment and Eradication of Violence against Women, which is called MESECVI, has played an important role. This report will briefly address the measures taken in those two areas; yet it should of course be noted that the CIM has carried out many more activities in its 85-year history.⁹

According to the most recent CIM annual report, the commission has been active in a variety of ways. Three high-profile meetings are mentioned: The "Second Hemispheric Forum" on women's citizenship and democracy, the "Assembly of CIM Delegates", and a meeting of national ministers and authorities for the advancement of women. The CIM Secretariat has conducted a range of activities on different topics, of which two are particularly relevant to governance transfer: first "Women's Substantive Political Citizenship for Democracy and Governance", and second "Women's Human Rights and Gender Violence". In both areas, the CIM offered workshops for national officials, roundtables and public events in different OAS member states (OAS CIM 2013a). Overall it seems that the Commission is actively disseminating information and providing member states with assistance as well as opportunities for dialogue.

According to the 2012 report on MESECVI, the first round of review was concluded in 2011, when the committee of experts presented its policy recommendations to member states at the conference of the parties to the treaty. The second round was ongoing at the time of reporting, with 28 country reports and 21 responses to questions of clarification already collected (OAC CIM 2012). Therefore, a second round of consolidated reports and policy recommendations is to be expected, and the instrument of dialog and assistance seems to be in active use.

3.2.2 Democracy

In order to assess the adoption and application of the OAS democratic standards, the two most important components will be analyzed: the protection of democracy in general, institutionalized for example by the democratic clauses to prevent coups, and the promotion of (more de-

⁹ The CIM, for example, publishes annual reports on the implementation of the 2000 program by OAS bodies. For the latest period under investigation (OAS CIM 2013b), the report shows that gender mainstreaming is conducted across a wide range of OAS bodies. Yet this is not governance transfer to *member states*.

tailed) democratic standards via specialized bodies and programs. The former is reinforced by incentive-based instruments, while the latter builds on assistance and dialogue.

Protection of democracy: Incentive-based instruments

As Graham (2002: 7) notes, the effectiveness of non-binding declarations such as the OAS pro-democratic documents is a “function of precedent”. A case in point is the 1991 coup in Haiti, when the newly elected president Jean-Bertrand Aristide was forced by the military to leave the country. Based on the principles of Resolution 1080, which had only been introduced months earlier (McClintock 1991), the OAS imposed far-reaching economic sanctions on the country. However, it has been argued that the OAS embargo was in fact ill-designed and suffered from a lack of compliance especially by the US, and that only a US policy reversal and the intervention of the United Nations would finally resolve the situation (Leininger 2006: 495-497; Werleigh 1993). Aristide returned to power in 1994 and was succeeded two years later by a political ally, René Préval.

Aristide’s return to the presidency in February 2001 after the manipulated election in 2000 resulted in increasingly violent unrest in the country. The OAS established a “Special Mission to Strengthen Democracy in Haiti” and issued several statements condemning the violence and undemocratic behavior, but to little effect (Leininger 2006: 497-499). After US and French intervention, Aristide resigned and left Haiti in February 2004, accusing the United States of forcing him out of office. The OAS, in this instance, issued statements supporting the CARICOM efforts to stabilize the country, called for elections and dispatched a special mission to support them. It did not, however, evoke the Democratic Charter to suspend Haiti’s membership or officially condemn the process in any form. One observer concludes that the OAS acted with a delay of three months and did not attempt to send an independent fact-finding mission, perhaps because the UN Security Council had legitimized the ouster of Aristide in a resolution on the same day (Berry 2005: 256). A request by twelve Caribbean countries in May 2004 to invoke article 20 of the Democratic Charter and further assess the situation was unsuccessful (Rudy 2005: 246).

In contrast, the OAS acted quickly, when in 2002 there was a 48-hours military coup against the Venezuelan president at the time, Hugo Chávez. Basing their actions on the Democratic Charter, the OAS Permanent Council condemned the coup and sent a diplomatic mission to investigate and mediate, and the General Assembly met for a Special Session. Next to expressing support for the elected Venezuelan government, the GA’s public statement made clear that the country’s respect for democracy would be monitored (Berry 2005: 253-254). It has been argued that the reaction to this coup illustrates the Charter’s merits: As Graham (2002) noted, the OAS did not act “based upon any hemisphere-wide affection for Hugo Chávez”, but respectful of “his legal and constitutional election”.

Another recent example of an OAS initiative to protect democracy is the 2009 crisis in Honduras. On June 28, the elected president Manuel Zelaya was ousted from office in a coup. Just two days earlier, he had formally asked the OAS for assistance by calling upon article 17 of the Democratic Charter for the first time in history (Legler 2011: 126). In reaction to the coup, the

OAS then invoked article 21 to suspend the country's membership – another premiere. After the interim government called for elections and a new head of state was chosen at the end of 2009, the OAS member states could not agree on whether to re-admit the country or not (Legler 2011: 121-122; Voice of America 2010). On June 1, 2011, the General Assembly lifted the suspension in accordance with article 22 of the Democratic Charter: It considered the situation to be resolved, given that the new president Lobo and the former president Zelaya had signed an "Agreement for National Reconciliation and Consolidation of the Democratic System in the Republic of Honduras" (OAS General Assembly 2011).

As the table below indicates, the OAS has taken action to protect democracy in a number of situations ranging from coups to constitutional crises since the beginning of the 1990s. The organization's actions have, however, differed greatly in their strength. Arceneaux and Pion-Berlin (2007: 12) developed a ten-step classification of crisis responses by the OAS: -1- no action, -2- declare support, -3- declare concern, -4- send fact-finding mission, -5- hold a meeting of minister of foreign affairs under the OAS framework, -6- officially mediate disputes, -7- officially express recommendations or criticisms, -8- set demands and timetable for compliance, -9- threaten punishment, -10- impose sanctions. Counting steps 1 to 3 as "weaker" response, 4 to 6 as "moderate", and 7 to 10 as "stronger" (Arceneaux/Pion-Berlin 2007: 12), one arrives at the following compilation of OAS reactions to various events:

Figure 9: OAS reactions to crises of democracy since 1990¹⁰

Event	Crisis Classification	OAS Reaction
1990 Suriname	coup	stronger
1991 Haiti	coup	stronger
1992 Peru	self-coup	moderate
1992 Venezuela	coup attempt	stronger
1993 Guatemala	self-coup	stronger
1994 Dom. Rep.	election failure	moderate
1996 Paraguay	coup	stronger
1997 Ecuador	constitutional crisis	weaker
1999 Paraguay	constitutional crisis	moderate
2000 Nicaragua	constitutional crisis	weaker
2000 Ecuador	coup attempt	stronger
2000 Paraguay	coup attempt	stronger
2000 Peru	election failure	moderate
2001 Argentina	constitutional crisis	weaker
2001 Trinidad & Tobago	constitutional crisis	weaker
2001 Haiti	const. / elect. crisis	moderate
2002 Venezuela	coup attempt	moderate

¹⁰ This compilation of cases and ratings of the OAS reactions is drawn from Arceneaux and Pion-Berlin (2007: 1-31). Asterisks (*) indicate cases in which the author has applied Arceneaux and Pion-Berlin's criteria to newer cases. Additional sources: Legler (2011) and Leininger (2006: 465-530). Also see Boniface (2007: 40-62) and Herz (2011) for discussions of some of the cases.

Event	Crisis Classification	OAS Reaction
2003 Bolivia	constitutional crisis	weaker
2004 Haiti	constitutional crisis	moderate
2005 Bolivia	constitutional crisis	weaker
2005 Ecuador	constitutional crisis	weaker
2005 Nicaragua	constitutional crisis	moderate
2008 Bolivia	constitutional crisis*	moderate*
2009 Honduras	coup*	stronger*
2012 Paraguay	constitutional crisis*	weaker*

Judging from the secondary literature, the OAS seems to have a powerful “anti-coup norm” that manifests itself in strong reactions against attempts to overthrow elected governments. In this context, Honduras can be regarded as the case with the strongest OAS response so far (Legler 2011: 121). Rudy (2005: 248) has argued that the organization’s commitment against coups might not always suffice to prevent them, but in some instances acted as deterrent. Below the level of clear-cut coups, however, it becomes evident that the OAS has been very reluctant to go beyond expressing criticism. The most powerful formalized instrument available to the organization – strong negative incentives in the form of a suspension of membership – has only been used once since its introduction.

Legler sums up the characteristics of the OAS regime to protect democracy. According to him, the OAS prefers “to address threats to democracy allowing room for political negotiation and manoeuvring [sic] rather than according to a strict legal logic” (Legler 2011: 114). In this respect the regime to protect democracy differs from the human rights regime with its legal bodies and more formalized rules; although there is overlap between the two, democracy and human rights are strictly separated within the OAS framework (Legler 2011: 114).

Not only do the OAS treaty documents leave much room for interpretation, but also the practical challenges to democracy appear to have diversified. It is helpful to distinguish endogenous from exogenous threats. The former term refers to anti-democratic behavior by elected officials, such as autogolpes (self-coups) or electoral fraud. A typical exogenous threat would be a coup d’état conducted by the military. As the cases discussed above have illustrated, the OAS has a history of reacting strongly to blatant coup attempts as well as severe cases of misbehavior by incumbents. As one author notes, the new challenge for the organization lies in more subtle forms of exogenous threats, which may involve mass protests and strategies that are at least quasi-legal, while paying lip service to the constitution (Boniface 2009: 186-188). Such “under-the-table” coups use pressure and intimidation to force elected officials out of office. They are, however, difficult to grasp within the OAS framework, which relies on actors’ formal respect for the constitution as an indicator for democratic behavior. Moreover, it is difficult to draw a line separating legitimate protests from “street violence as a dangerous substitute for the process of constitutional impeachment” (Boniface 2009: 194). As one observer put it: “One of the glaring omissions of the Inter-American Democratic Charter is an explicit definition of what would constitute a violation” (McCoy 2007).

A case in point is the “express impeachment” of Paraguay’s Fernando Lugo in June 2012, who was ousted in less than 36 hours on relatively obscure charges.¹¹ While this procedure was formally consistent with the country’s constitution, it has provoked sharp criticism by Argentina, Brazil, Venezuela and others and led to a suspension from MERCOSUR (Economist 2012c). The OAS reacted by sending a fact-finding mission, after which Secretary General Insulza stated that “the speed with which the impeachment was conducted was highly unfortunate and created an aura of illegitimacy”. The organization did not apply sanctions, arguing that a suspension could be harmful to the judicial process and the consolidation of democracy in the country. But the mission report suggests that the OAS Court might rule on the case in the future (OAS Secretary General 2012).

Promotion of democracy: Monitoring, assistance, exchange

Next to protecting democracy, as exemplified by the anti-coup norm, the OAS engages in the promotion of democracy by providing incentives, assistance and opportunities for dialog. A lot of these activities are carried out by the Secretariat for Political Affairs (SPA), one of six parts of the OAS General Secretariat. From 1991 to 2005/2006, there had been a Unit for the Promotion of Democracy (UPD) based on GA resolution 1063; the newly elected Secretary General José Miguel Insulza then changed the organizational structure (OAS Secretary General 1995; 2006: 15). Currently, the SPA contains two departments relevant for the promotion of democracy: the Department for Electoral Cooperation and Observation (DECO) and the Department of Sustainable Democracy and Special Missions (DSDSM).¹²

Observer missions have been an element of OAS democracy promotion for a long time. Between 1962 and 1984, there were 22 missions in different member states; all on an ad-hoc basis, since the official OAS mandate did not explicitly include such missions (Santa-Cruz 2007: 143-144). Some of these missions consisted of only three people, others involved about 40 observers – the missions being more of a “validation of the principle of holding elections” rather than serious audits (Lean 2007: 157-158).

The OAS adopted a more pronounced role for the first time in 1978, when the Dominican president Belaguer claimed he was losing an election due to fraud by the opposition: the observers openly disagreed and the incumbent finally stepped down after mediation by the US (Lean 2007: 159). The 1990 election in Nicaragua has been called “a watershed in the history of international election monitoring”, as the OAS and the UN successfully established a joint operation after being invited by the national government (Santa-Cruz 2007: 147). Other “landmark observations”, in which the OAS observers massively criticized the electoral process and disputed the authorities, include the Dominican Republic 1994, Haiti 2000, Peru 2000, and Venezuela 2005 (Legler 2011: 113). The OAS itself distinguishes three periods of observation: the first generation

¹¹ The impeachment took place a week after six policemen and eleven landless protestors were killed in a northeastern region, leading to accusations of the president’s “poor performance”.

¹² Compare the SPA website: <http://www.oas.org/en/spa/default.asp> for an overview; the third of the SPA departments (Effective Public Management) will be covered in the section on good governance.

of ad-hoc missions, followed by the second beginning with Nicaragua in 1990, and the current third generation that emerged from the more precise legal basis of the 2001 Democratic Charter. In total, there have been 177 missions up until 2011, 87 of which took place between 1962 and 2001 (OAS 2012b: 38-39).

Based on OAS records, it is evident that the OAS routinely conducts several missions a year, involving a substantial number of observers:

Figure 10: OAS election observation missions 1982-2009¹³

Year	No. of missions	No. of countries	No. of observers	Obs. per mission	Data missing?
1982	2	2	6	3	
1984	2	2	4	2	
1985	1	1	n/a	n/a	1
1987	4	4	19	5	
1988	1	1	3	3	
1989	2	2	6	3	
1990	5	5	689	172	1
1991	3	3	132	66	1
1992	2	2	268	134	
1992	4	4	191	48	
1994	3	3	60	20	
1995	3	3	558	186	
1996	3	3	174	58	
1997	6	6	120	24	1
1998	6	5	213	43	1
1999	6	4	285	48	
2000	5	5	422	84	
2001	4	4	355	89	
2002	5	4	189	38	
2003	3	3	164	164	2
2004	5	5	317	64	
2005	3	3	333	111	
2006	12	11	884	74	
2007	5	4	387	78	
2008	4	4	327	82	
2009	7	5	661	94	

¹³ This compilation is based on data provided to the author by Sharon F. Lean, Wayne State University. The table covers all missions sent to elections and referenda at the federal/national level for countries over 500,000 inhabitants, except for the United States and Canada. The final column indicates the number of missions for which data on the staff count is missing, leading to a less reliable account of average mission size.

Detailed reports regarding those missions are presented to the OAS Permanent Council and the majority of them are published online.¹⁴ This appears to be a relatively transparent procedure, illustrating the General Secretariat's efforts to "consolidate, systematize, professionalize, and refine" the process of election observation (OAS 2010a: 8). In 2007, the Secretariat for Political Affairs published a manual for observers, which provides theoretical foundations, information on suitable indicators and questionnaires for different situations during an observer mission (OAS General Secretariat 2007). The next year, the organization published a longer and more detailed "Manual for OAS Electoral Observation Missions" (OAS General Secretariat 2008). Further additions to these guidelines followed: A guide to monitor electoral technologies was published in 2010, and DECO examined the role of media in elections as well as on how to incorporate a gender perspective in observer missions. The most recent project concerns "a methodology for comprehensive observation of the various facets of political-electoral financing systems in effect in the countries of the region" (cf. OAS 2012b: 39).

As Lean (2009) concludes, election observation in the Americas has displayed several trends over the last decades. First, it has become more regulated, as illustrated by the move from ad-hoc visits to a formalized mandate. Second, the frequency of missions has increased, meaning that the vast majority of elections in the region are now externally monitored. Finally, electoral observers – not only from the OAS, but also from NGOs and other entities – have adopted more advanced polling and monitoring practices (Lean 2009: 204-206). Through the observer missions, the OAS fulfills a monitoring role. On the one hand, this is an exchange of information, making the electoral processes transparent across member states. On the other, the observer missions serves as an incentive to honor democratic commitments in the conduct of elections, since a positive review is an immaterial reward (or penalty in case of a negative evaluation).

Next to election observation, DECO offers technical cooperation and support for member states wanting to reform their electoral processes and conducts long-term studies regarding elections. This is based on a mandate from the GA Resolutions 991 and 1063 that were adopted in 1989 and 1990, respectively. Training and education is a part of that mandate: According to a recent report, the department held three seminars from 2008 to 2010, providing training for 121 officials from 31 member states. Additionally, members of the region's electoral tribunals have met at seven meetings since 2003 to exchange best practices. DECO also holds online courses and, since 2011, offers a degree in "Electoral Processes in the Americas" (OAS 2012b: 35-36). Regarding technical assistance, the same report mentions that DECO has signed agreements to assist Honduras and Ecuador to help with a number of issues. Moreover, between 2001 and 2011, it conducted five audits of electoral rolls, helped with biometric registration in Bolivia, assisted with the implementation of the ISO 9001 quality certification in three cases, and advised Honduras and the Dominican Republic on electoral reforms (OAS 2012b: 37-38). So next to the role as a supervising entity, the OAS uses instruments that fall into the category of assistance and dialogue.

¹⁴ See the SPA website: http://www.oas.org/en/spa/deco/moe_informes.asp. The Annual Reports released by the OAS Secretary General also contain information on the number of missions conducted each year.

Yet there are some limitations to the pro-democratic measures taken by the OAS. Unless there is a coup triggering the instruments regarding the protection of democracy, the organization will only become active if they are explicitly invited by a national government. Not surprisingly, “precisely those countries where election-related controversy has occurred in recent years” (e.g. Venezuela and Nicaragua) no longer invite the OAS to observe elections; and some others (US, Brazil, Argentina and Chile) are equally hesitant (Legler 2011: 124). A related caveat regards the practice of “executive sovereignty”: OAS activities are directed solely by government representatives, not by other actors such as civil society, parliaments, or courts, although the logic of democracy promotion would suggest giving them a say. Together with a number of other factors identified by Boniface (2009) and Legler (2011), this suggests that both the protection and the promotion of democracy by the OAS face serious practical challenges.

3.2.3 Good Governance

In the realm of good governance, the OAS is mainly active as a promoter of anti-corruption and public management reforms. The former part is based on the Inter-American Convention Against Corruption and subsequent documents, most importantly with regard to the follow-up mechanism MESICIC. The public management reform activities stem from a mandate of the Secretariat for Political Affairs, which refers back to the Democratic Charter amongst others.

Anti-corruption efforts

To assess the activities of the OAS in the realm of anti-corruption measures, this analysis will focus on the implementation follow-up mechanism (MESICIC). Its structure and tasks were specified in 2001 after the first conference of parties to the IACC (see section 3.1.3).

First of all, the respective document establishes that MESICIC consists of two bodies: the conference of States Parties for general decision-making and the committee of experts, tasked with technical analysis and the drafting of recommendations. Each country can appoint an expert, while administrative assistance is provided by the General Secretariat (OAS General Assembly 2001: 59-60).

The main responsibility of the committee is to choose a number of aspects from the IACC to be reviewed, instruct the member countries to report on their progress during a certain period of time (“round”) by answering a questionnaire, and then evaluate the data they gathered. First the committee prepares a confidential report and then revises it in light of the comments by the concerned state. To gather information, it can also turn to civil society representatives (OAS General Assembly 2001: 60-62).

Judging from the most recent MESICIC “hemispheric report”, which covers the third round of reporting (2009-2011), the mechanism appears to be in active use. The document covers the assessment process in detail, including the order in which countries were reviewed and the involvement of civil society actors, and provides a short list of issues covered: preventive

measures, transnational bribery, illicit enrichment, and extradition (OAS IACC 2011: 5-8). Another focal point of the report is the extent to which prior recommendations were adopted by the member states, differentiating between the most recent recommendations, the most common ones, et cetera (OAS IACC 2011). The country-specific reports are available on the OAS website.¹⁵

The OAS claims that all MESICIC members have – to a lesser or greater degree – received concrete policy recommendations or help with the development of action plans. An information exchange network is available to member states, and there is an anti-corruption portal on the OAS website. The OAS also provides best-practice examples in the form of guidelines and model laws. Since 2011, the committee of experts is visiting member states to monitor compliance, give recommendations and allow for participation by civil society and business actors (OAS 2012a: 60-61).

Thus, the activities carried out in the follow-up mechanism can be considered as an instrument of assistance by giving policy recommendations as well as an instrument of dialogue with various actors. They also provide a form of incentives to the extent that country performance is made public.

Public management reform

When discussing public management reform, one important actor to mention is the Department for Effective Public Management (DEPM)¹⁶, a part of the Secretariat for Political Affairs. Its current structure is described in the 2010 report by the Secretary General:

“The DEPM is comprised of the Public Management Training Section, the Executive Branch Support Section, and the Support to Legislative Institutions Section. A new initiative known as the Comprehensive Country Support Strategies for Effective Public Management was designed for the purpose of supporting implementation of national development and productive transformation plans and objectives, key elements for strengthening democracy.” (OAS Secretary General 2010: 32)

According to this report, the DEPM has provided internet-based training for 1,500 officials in 2010, engaged in initiatives to foster e-government, prepared a comprehensive publication as a guide for increased transparency in government, and directly assisted the governments of Bolivia, Haiti, and Paraguay (OAS Secretary General 2010: 32-33). A more recent document refers to “more than 5,000 participants in 28 member states” having received online training since 2003 (OAS 2012b: 44). Since then, the DEPM, in cooperation with two Canadian development agencies and the Inter-American Development Bank, also runs the “Network of e-Government

¹⁵ OAS Department of Legal Cooperation website: http://www.oas.org/juridico/english/mesicic_III_rep.htm

¹⁶ Former title: „Department of State Modernization and Good Governance” (OAS Secretary General 2009)

Leaders of Latin America and the Caribbean” (RED GEALC). This initiative holds workshops, fosters information exchange and best practice among member states, conducts and publishes research, and offers awards for public and private entities that contribute solutions for the effective use of technology in government (RED GEALC 2012).

The DEPM’s Comprehensive Country Support Strategy Program mentioned above is designed to provide “comprehensive technical assistance to member states that request it in order to support effective and transparent public management”. Bolivia, Paraguay and El Salvador were the first group of target countries, with a new round planned including Caribbean countries starting with Belize in 2012 (OAS 2012b: 43-44).

Another program within the Secretariat is the Universal Civil Identity Program in the Americas (PUICA), which was created based on a GA resolution from 2008. It is designed to support member states in their effort to provide “access to civil identity” for citizens, with the aim of providing universal and cost-free birth registration in the hemisphere by 2015. A recent report on PUICA mentions activities in Bolivia, Paraguay, Peru, Haiti and the Eastern Caribbean islands, all intended to modernize record-keeping and/or registration processes (OAS 2012a: 34-35).

Thus the OAS uses the DEPM to provide technical assistance as well as training for public officials from member states. In addition, the DEPM’s initiatives are meant to increase dialogue among relevant entities from member states.

3.2.4 Rule of Law

OAS activities concerning the fight against transnational crime or anti-terrorism measures probably have effects on the rule of law in member states. Yet these activities are not part of the mandate for governance transfer as defined in this research project. The aspect of anti-corruption was discussed under the term of good governance. Thus, this section will be brief.

Inter-American Human Rights System

According to Schliemann (2009: 333-338), the OAS human rights bodies are mainly concerned with three goals regarding the rule of law: upholding a separation of powers; ensuring that all political actors are bound by law; guaranteeing the respect for universal human rights. Obviously, these aspects are interconnected with democracy and human rights.

Judicial Committee & Secretariat for Legal Affairs

One example of how the OAS Secretariat for Legal Affairs engages in governance transfer is the “judicial facilitator” program. This service was established to allow disadvantaged individuals easier and better access to justice. It relies on volunteers to assist judges with mediation and inspection tasks, and also to help people with paperwork and advise them on the legal situation. Since the late 1990s, when the program was started in Nicaragua, the OAS has expanded

the reach of their facilitator agenda. Argentina, Guatemala, Panama and Paraguay have recently agreed to its establishment. According to a recent OAS report, “facilitators have performed more than 10,000 assists to judicial authorities and 25,000 prevention services, including mediations within the local legal framework. They have also providing civil-legal information to over 100,000 people” (OAS 2012a: 65). While these activities can be seen as a form of service provision, one might also argue that they constitute a form of governance transfer by assisting with procedural aspects of the rule of law.

Another important aspect is that of judicial cooperation between OAS member states, one of the core tasks of the Inter-American Juridical Committee. This body promotes international law but also harmonization of national legislation in the region.¹⁷

3.2.5 Summary

Regarding human rights, the OAS possesses instruments that are developed in great detail and have been established for a long time. The Commission and the Court continuously carry out measures to protect the rights of citizens in the region. The former monitors and reports on a number of issue areas via its eight rapporteurships. Additionally, the Commission handles the initial steps of the petition system, which allows individuals to file complaints if their rights have been violated. If there is no friendly settlement, the Court then decides on contentious cases and interprets regional law. Thus, the OAS system of human rights is the most formally coercive of the organization’s instruments, as it offers a litigation (legal coercion) mechanism to individuals, albeit only for member states that have explicitly ratified the necessary treaty. Court and Commission have handled a growing number of cases in recent years. This indicates that the petition system is in active use, but is also a consequence of the Court’s impetus to broaden its agenda. Next to handling litigation, the IACHR and the Court provide assistance in the form of recommendations and legal commentary as well as training to national officials. On the issue of gender equality, the Commission for Women and the follow-up mechanism to the 1994 treaty on women’s rights work similarly. Furthermore, the various reports serve as (immaterial) incentives, since they provide signals about the relative performance of member states.

The OAS has become an active protector of democracy in reaction to coups and constitutional crises since the end of the Cold War. Judging from secondary literature, the organization reliably acts in defense of constitutional order and democratic conduct in accordance with the regional rules. Yet the OAS has displayed different levels of commitment (and success) from case to case. Although the 2001 Democratic Charter added more detailed provisions, interventions are still based on political will rather than precise criteria dictated by regional statutes. Currently, there seems to be little consensus on when exactly sanctions would be warranted, as illustrated by the recent events in Paraguay. This means that one of the strongest OAS instruments, the use of severe negative incentives, is not used in a rule-based and predictable way but rather according to political considerations.

¹⁷ Website: <http://www.oas.org/en/sla/iajc/default.asp>

In order to monitor and promote democratic behavior, the OAS Secretariat for Political Affairs has conducted electoral observer missions since the 1960s. Until 1990, these were carried out in an ad-hoc fashion, but then gained a legal basis which was expanded further with the Democratic Charter in 2001. Not only have the missions become more regulated over time, but also more frequent and more technically sophisticated. Their reach, however, is limited as observers depend on an invitation by the respective country. Next to monitoring, the OAS is actively trains officials and assists with electoral processes. So overall it seems that the instruments for democracy promotion, which are based on assistance, learning and immaterial rewards as incentives, are in active use throughout the hemisphere, with a trend over time towards more clearly defined rules.

In the realm of good governance, measures to combat corruption play an important role since the establishment of MESICIC in 2001. The parties to the 1996 anti-corruption treaty hold regular meetings and have to report on their progress concerning the implementation of the treaty. Judging from related documents, this process appears to be active and ongoing, with a new round of evaluation currently underway. This instrument aims at the exchange of best practices and assistance, while also containing an element of incentives, since the publicity effect from reports constitutes immaterial rewards (or sanctions). However, one caveat concerns the details of implementation: While the reports are relatively comprehensive, they contain gaps in the reported data.

The Secretariat for Political Affairs also plays an important role in the area of good governance, although these activities could just as well be summarized under the term democracy. The Secretariat's Department for Effective Public Management offers online courses, workshops and technical assistance to officials from different member states. Two particularly large-scale programs are the Comprehensive Country Support Strategy Program and the Universal Civil Identity Program, both of which have been established recently. These are clear-cut examples of regional instruments aimed at technical assistance and capacity-building.

This report has not identified many measures of governance transfer taken to support the rule of law. It appears that the OAS documents do not tackle this topic in as much detail as the other three. But the choice of where to place the analytical focus plays a role: much of what has been subsumed here as part of the human rights topic relates to the rule of law as well, and the same is true for many measures regarding democracy. Apart from these cases of overlapping categories, the Inter-American Juridical Committee and the Secretariat for Legal Affairs are the OAS bodies most active in promoting the rule of law.

4. Explaining Governance Transfer by the OAS

Prior work in the B2 project has suggested different approaches to explain how and why regional organizations engage in governance transfer (Börzel/Van Hüllen/Lohaus 2013). A helpful distinction is that between demand- and supply-side factors driving governance transfer: An organization's choice to engage in certain types of governance transfer can be expected to be

influenced by the demands of member states, which in turn are driven by needs to address salient problems, minimize negative externalities, et cetera. On the other hand, there are stimuli that initiate governance transfers, such as regional hegemony that set the agenda, or references models that inspire specific elements of governance transfer. These supply-side factors are likely to shape the “how” of governance transfer, i.e. the policies and instruments chosen. In a second analytical dimension, it can be helpful to differentiate between rational and normative factors. Examples of the former are the curbing of externalities (demand) or the interests of powerful hegemony (supply). The logic of normative appropriateness matters when states appear to pursue international legitimacy by adopting standards at the regional level (demand) or when one finds support for the promotion of a global script of governance transfer (supply).

Several of these factors will be discussed in this section in order to shed light on how governance transfer by the OAS has developed over time. Given that the focus of this report lies on mapping governance transfer, the following is more of an overview of several factors than a systematic discussion.

Leadership: Hegemonic Power and Coalitions

US foreign policy goals shape both the demand and the supply of governance transfer by the OAS. Historically, the US government has had great influence on the organization. During the Cold War, this became evident in the use of the OAS as a means to combat Communism, as illustrated by the suspension of Cuba’s membership:

„When Cuba was suspended in 1962, the link between the defense of democracy within the OAS and the organization’s involvement in the fight against communism was reaffirmed. The contrast between the decision to suspend Cuba in 1962 and the lack of reaction regarding the authoritarian regimes that featured in Latin America in the 1960s and 1970s is the most contradictory expression of this reality.“ (Herz 2011: 62)

Committing to representative democracy, in this context, makes sense as it reflects a liberal conception of governance advocated by the US position. Since the broad democratization in the Americas during the 1980s, the OAS has adopted a stance in favor of state modernization and good governance. In the case of anti-corruption, the OAS agenda again strongly reflects US interests, namely the internationalization of domestic US laws, and is in line with liberal ideas (Abbott/Snidal 2002; McCoy/Heckel 2001; Moroff 2005).

Turning to the question of the supply side, the United States have always been the biggest contributor to the OAS budget and active in orchestrating Inter-American summits and initiatives. The First Summit of the Americas in 1994 is a case in point: Although the goal of creating a Free Trade Area of the Americas ultimately failed, the OAS was revived as a by-product of attempts to intensify regional integration in the Americas. After a long time of paralysis and neglect by heads of state, not least out of discontent with the way the US had used the OAS to promote its

foreign policy goals, the summitry succeeded in creating attention and a range of new mandates for the organization (Mace et al. 2010; Mace/Migneault 2012). Similarly, the adoption of the Democratic Charter on September 11, 2001, was to a large extent driven by the last-minute commitment of US negotiators (Graham 2002). While the US government had not played a decisive role in drafting the document, civil society actors from the United States strongly supported the process and advocated for a more powerful treaty. Nonetheless, some observers are critical of the hegemon's stance. They argue that the US "serves as an ambiguous (or even hypocritical) advocate of democracy" and emphasizes foreign policy interests at the expense of principles (Cooper 2009: 163-165).

Moreover, it should be noted that the US government is not able to dictate OAS policy, but rather relies on building coalitions. Both in the case of pro-democratic standards and policies and the anti-corruption agenda, other OAS members provided crucial input. There is much room in the OAS for other states to shape outcomes – for example Canada as intermediary between the US and Latin American interests, or the large economies Argentina, Brazil and Mexico, or the very active negotiator Chile (Cooper/Legler 2000: 114-115; McCoy/Heckel 2001).

Conflicting Demands: Democratic Lock-in, Externalities, and Sovereignty

The regional commitments to democracy and human rights with their respective OAS instruments of governance transfer seem to be driven by the tension between two rationalities: On the one hand, there was the demand to curb negative externalities and to lock in democratic changes (or more generally: signal lawful and democratic behavior). On the other, there were demands to preserve sovereignty and the principle of non-intervention.

In the case of democracy protection via sanctions, it appears that the logic of avoiding negative externalities trumps normative concerns. Blatant coups that might lead to destabilization – in "a region where intra-state and inter-state violence have often been generated by domestic political instability" (Herz 2011: 73) – trigger a strong response: The OAS instruments are designed to deter external actors from overthrowing elected governments. Yet the OAS members seem to shy away from confronting more subtle forms of autocratic tendencies¹⁸, which impose fewer costs on outsiders (Boniface 2009). In other words, the system offers flexibility to the governments in the region instead of rule-based sanctions that might not always offer benefits or even risk destabilizing effects.

But why did the OAS system for the protection of democratic governments not come into existence earlier? The "lock-in" argument predicts that leaders of newly established democracies (NEDs) will seek to tie the hands of their domestic opposition as well as potential successors by committing to international institutions designed to protect democratic structures (Hawkins/Shaw 2008: 464; Moravcsik 2000). Indeed, as Hawkins and Shaw have shown, the increasing

¹⁸ Several scholars explore possible explanatory factors to account for the degree to which the OAS adopts policies for democracy protection and applies them from case to case (Boniface 2007: 40-62; Hawkins 2008: 373-403; Hawkins/Shaw 2008: 459-480; Levitt 2006: 93-123).

development and legalization of democratic norms in the OAS in the 1990s goes hand in hand with a growing share of new democracies in the region and their efforts to change the OAS setting, while the stalling of the process in the mid-2000s is consistent with a lack of NEDs. Yet the argument is less persuasive if one also considers earlier developments. In the 1950s, a proposal to strengthen the OAS stance on democracy failed, with some of the NEDs at the time opposing it (Hawkins/Shaw 2008: 472-474).

It seems that fear of unilateral intervention has played an important role in the calculation of costs and benefits. As Andrew Hurrell observed, “the dangers of abuse of hegemonic power have led, and will continue to lead, Latin American states to try to limit the scope for ‘democratic interventionism’ and to place continued emphasis on the principle of non-intervention” (quoted in Herz 2011: 74). Thus it makes sense to view the perception of sovereignty costs as an additional variable. According to Hawkins and Shaw (2008: 474), OAS members in the 1950s and 1960s “frequently cited sovereignty concerns when expressing their opposition” to legalization. This changed with the end of the Cold War:

“[S]tates rarely cited sovereignty concerns in the 1990s when dealing with the same issue and even with the same types of penalties: diplomatic isolation and suspension from the OAS. (...) Either states valued sovereignty less in the 1990s or they felt their sovereignty was less threatened in the 1990s. The first is possible, but the second is more likely. In fact, several states explicitly invoked the end of the Cold War as a reason to endorse legalisation [sic] since they had been freed from traditional security concerns.” (Hawkins/Shaw 2008: 475)

It seems, however, that this perception of the U.S. government as less threatening to Latin American sovereignty was revoked after the events of 9/11. This was driven by the unilateral intervention in Iraq, but also the United States’ stance towards Venezuela’s leftist government and in the 2004 Haitian crisis, when a compromise brokered by the OAS was overturned by U.S. actions (Hawkins/Shaw 2008: 475-476).

In contrast to the OAS efforts concerning the protection of democracy, the regional human rights regime contains a high degree of delegation, and the Inter-American Court has issued controversial and politically inconvenient rulings in the past. Why have member states agreed to this form of governance transfer? One possible explanation might be that normative concerns play a stronger role than in the area of democracy, due to the strong moral claims associated with human rights as well as the nature of the petition system, which tends to focus more on individual problems.

Arguably, rulings issued by an impartial court also impede less on the norms of sovereignty and nonintervention than sanctions issued by other states. In fact, legal tradition in Latin America strongly favored committing to international law, as it promised to uphold sovereignty; at the same time, legal scholars and policymakers in the 1940s “argued that the doctrine of nonintervention needed to be harmonized with other principles of international law, including human

rights” (Lutz/Sikkink 2000: 639). This helps understand why Latin American states, which were historically concerned with US attempts to intervene in their affairs (Mace/Migneault 2012: 162), have committed to the jurisdiction of the Court. This is consistent with the fact that the Caribbean member states of the OAS, which have a different legal tradition and no history of human rights abuse, and thus few reasons to commit to a Court, did not ratify the treaties (Helfer 2002; Lohaus 2012; Shaver 2010).

To sum up, the hegemon’s interest as well as other states’ desires to lock in democratic gains or mitigate negative externalities can be understood as the necessary conditions for a legalization of governance standards in the OAS. Yet they alone are not sufficient to override strong worries concerning sovereignty costs.

Beyond Member States: External Reference Models, Civil Society, Regional Actors

So far, the discussion of explanatory factors has focused on the interests of OAS member states. But what can be said about other sources of influence? One of them, for instance, is the United Nations system. To a certain extent, the developments of the OAS human rights regime have reflected trends on the international level. The 1994 treaty to fight violence against women, for example, took shape in connection with the UN’s Beijing conference. The timings of adoption and entry into force of OAS treaties often coincide with their UN counterparts (Lohaus 2012). Such relationships support the notion of supply-side factors, which could be seen as both functional and/or normative: International human rights treaties can help governments put an end to undesirable social practices, but commitment to them may also be driven by wishes to gain legitimacy or adapt to norms that are seen as legitimate. In a similar vein, the OAS initiative to adopt the anti-corruption convention coincided with similar developments elsewhere, in particular in the OECD (Jakobi 2010). Likewise, the model of using the instrument of follow-up mechanisms to monitor and exchange best practice examples, which has become increasingly popular in the OAS, was at least in the case of anti-corruption influenced by the experiences from the OECD and Council of Europe (Garcia-Gonzalez 2002; Lagos 2000).

While civil society and advocacy groups have traditionally relied on lobbying national governments to influence international politics, they have gained more leverage on the regional level in recent years:

“Following a trend present in other multilateral forums, the OAS has pursued stronger ties with nongovernmental organizations since the 1990s. (...) The relation was institutionalized and these organizations became part of the normal schedule of meetings. Today 308 nongovernmental organizations take part in OAS activities as registered entities, through invitation and through cooperation agreements, and a significant flow of information allows for input into the design of programs and strategies.” (Herz 2011: 20)

Finally, the OAS bodies themselves play a role in shaping governance transfer, to the extent that their bureaucracies enjoy a degree of autonomy from member states and are resourceful enough to develop their own initiatives. Most visibly, the OAS human rights bodies have shifted their priorities from transitional justice to new issue areas. This can be viewed as a reaction to requests that were made through the petition system, but also as an attempt by the regional officials to expand their tasks. The judges have taken an “activist approach”, suggesting that international law in general must be applied in a way that is consistent with human rights. Consequently, the criteria defined in human rights treaties have become relevant for cases that the signatories may not have considered (Lixinski 2010: 589-591).

The Court has, for instance, evaluated bilateral commercial treaties and addressed environmental and investors’ rights by interpreting the American Convention and considering other international law (Lixinski 2010). The rights of indigenous people concerning their land and resources are another focal point. Beginning in the 1980s, the OAS human rights bodies have been the driving force of a “judicial discourse that, as regards [sic] some crucial land issues, confirms and reinforces other recent international developments, while clearly going beyond them on crucial aspects” (Tramontana 2010: 260). Schönsteiger et al. (2011) conclude that Commission and Court have adapted to the needs of consolidating democracies, mainly by adding issues to their agenda such as the protection of marginalized groups, gender equality, and human rights violations connected to economic activities or policies.

Another important influence is the office of the Secretary General. In particular César Gaviria Trujillo, Secretary General from 1999 to 2004, is credited with playing an influential role, inter alia, by placing a new emphasis on substantial support for democratic governance by the OAS (Herz 2011: 18-19). Thus, factors other than the configuration of member states’ preferences have to be considered in order to explain the developments in the OAS more comprehensively.

5. Conclusion

Since its foundation in 1948, the Organization of American States has engaged in governance transfer to its member states. This began with the prescription of standards, in particular regarding human rights and democracy, which acquired more details through subsequent treaties. Endowed with a sizeable budget and staff, the organization has also developed a set of instruments over time. This section will conclude the report by summarizing the major findings of the mapping of governance transfer and then addressing explanations for these patterns, as well as the prospects for future developments.

5.1 Framework and Measures

In this section, the development of standards in OAS documents will be briefly summarized. In a second step, the development of the respective instruments will be discussed, together with a summary of which measures have been applied to what extent.

Development of Standards

Since its early days, the Organization of American States has been connected to the idea of a regional human rights regime. Its first manifestations were the treaties adopted at the 1948 Conference in conjunction with the OAS Charter, and the 1969 Convention, which broadened and deepened the set of standards. Between 1985 and 1999, several additional protocols and treaties added clauses on the protection of special aspects of human rights. Based on individual acts of ratification by member states, the system now protects citizens from being mistreated by their governments (e.g. ban of torture; ban of forced disappearances), but also prescribes civil and political rights (e.g. anti-discrimination treaties; economic and social rights). Additional standard-setting is conducted by the IACHR through declarations and principles.

Although it took longer for detailed standards to develop, the commitment to representative democracy has also been a part of the OAS since its foundation. With the Democratic Charter of 2001 and the following Program for Democratic Governance, the organization has now established a list of standards that specify what is meant by representative democracy. Next to the protection of democracy against irregular changes of power, the OAS thus prescribes rules to which democratic governments must adhere during their terms. Both these and the aforementioned standards on human rights also concern the rule of law.

Since the 1990s, the organization has also engaged in governance transfer aimed at good governance. The clearest case is the 1996 Inter-American Convention Against Corruption, which set standards for the conduct of national officials and cooperation between states, and was followed by additional mechanisms and programs. In addition, a number of declarations were added on modern, effective public management, and several provisions on human rights and democracy also concern good governance.

Instruments and Measures

Figure 11: Overview of instruments by category of governance transfer

Category	Instrument	HR	Dem.	GG
Coercion	Military force			
	Legal coercion / litigation	X		
Incentives	Strong: Sanctions + suspension		X	
	Weak: Monitoring evaluations	X	X	X
Assistance	Technical support		X	X
	Training	X	X	
	Advice, model laws etc.	X	X	X
Dialogue	Information exchange, best practice	X	X	X

The most rule-based and highly delegated instruments employed by the OAS are the system of human rights protection and the electoral observer missions. By contrast, the modus operandi in case of anti-democratic coups remains very much intergovernmental, driven by a diplomatic

rather than legal logic. As the assessment of the measures used by the OAS has shown, the organization relies on a broad range of instruments. At one end of the spectrum, there are legal coercion (human rights court) and strong negative incentives (sanctions and suspension clause when democratic norms are violated). The empirical record for these instruments shows that measures are applied regularly, yet with mixed results. Historically, the OAS human rights bodies have been credited with opposing autocratic regimes and following an activist approach when advocating new rights. In recent years, the number of petitions and cases increased, and the IACHR and Court continue to be active despite opposition by some member states. The protection of democracy has been a strong priority whenever there were clear-cut coups against elected leaders, but less stringent regarding subtle attempts at undermining democracy. OAS member seem reluctant to evoke the membership suspension clause and prefer to rely on diplomatic pressure.

Monitoring and reporting mechanisms are in active use, with several OAS bodies routinely generating reports. The longest standing examples are election observation, which takes place very regularly and has increasingly heeded to standardized rules, and the reports published on different aspects of human rights. More recent developments include the review of state performance through follow-up mechanisms concerning anti-corruption and gender equality. These instruments are mainly designed to provide assistance (through the feedback given to the member states), but also contain an element of (weak) incentives, since reports tend to identify leaders and laggards.

Dialogue, both between member states and with civil society actors and other international organizations, takes place frequently across all policy areas. Finally, the OAS uses several instruments of assistance, ranging from model laws and policy recommendations (human rights, democracy, good governance) to training for national officials (democracy, human rights) and technical assistance (democracy, good governance).

One final caveat regards the impact of governance transfer by the OAS: Problems of implementation are very common in the OAS (Mace/Migneault 2012: 168-169), also concerning compliance with judgments about human rights violations (cf. Basch et al. 2010; Hawkins/Jacoby 2010).

5.2 Explanatory Factors

This report has discussed demand and supply factors explaining the patterns of governance transfer by the OAS according to three broad themes: the interaction between the hegemon USA and other member states; the conflicting demands of locking in democratic regimes, curbing externalities, and preserving nonintervention; and the influence from sources other than OAS member states.

Overall, one can argue that leadership by the US in coalition with varying partners accounts for much of the OAS efforts in governance transfer. The outcomes of negotiations appear to reflect a balance of different demands. To protect democracy, the OAS member states rely on

the politically negotiated deterrence of coups rather than clear rules for sanctions, which would include measures against incumbents and require a substantial agreement on criteria for what exactly constitutes democratic behavior. Next to the overarching motive of curbing negative externalities, an explanation of how this system of pro-democratic standards has developed needs to include three factors that have varied over time: The preferences of the United States, the number of newly established democracies in the region, and the perception of sovereignty costs by Latin American countries.

In the case of human rights, there is a higher degree of delegated authority than for the protection of democracy, which seems to be a product of Latin American legal traditions mitigating concerns about sovereignty. An additional factor explaining the tolerance for more legalization might be that human rights treaties only bind those member states that explicitly ratify them. The standards being protected by the OAS reflect global trends as well as regional needs to prevent the crimes committed by military dictatorships.

Since the 1990s, external reference models as well as civil society influences increasingly seem to shape OAS standards and policies, as has become evident in the cases of human rights and good governance. In addition, the OAS human rights bodies and the General Secretariat have been able to influence the regional agenda, either by using their autonomy to expand their own mandate or by stimulating debate among member states.

5.3 Prospects

In conclusion, what can be said about the prospects of the OAS, and in particular the possibilities for further governance transfer? Two recent developments within the organization will be discussed, followed by a brief reflection on broader trends in the region.

Limiting the OAS Mandate?

Recent media reports suggest that the activist approach taken by the judges on the Inter-American Court of Human Rights, seeking to expand their reach (see section 3.2.1), is at odds with a number of member states. Venezuela, Ecuador and Bolivia, all members of the regional group *Alternativa Bolivariana de las Américas* (ALBA), have attracted much criticism by the Commission for Human Rights and in turn called for reforms of the OAS body. Joining them are Brazil and Peru, which requested changes at the 2012 General Assembly after having complained about IACHR decisions against them earlier (Economist 2012a, 2012b)¹⁹. A related report by the Special Working Group of Reflection on the Functioning of the Inter-American Commission on Human Rights, which was presented to the Permanent Council and at the General Assembly, contains several points that hint at a possible limitation of the IACHR's mandate. Among other things, the Commission is urged to focus more on friendly settlements as opposed to confrontational measures, improve consultations with the concerned states, and

¹⁹ In 2011, Brazil even withheld funds to the OAS over a disagreement with the IACHR (Meyer 2012).

give states more opportunities to comment on reports (OAS General Assembly 2012). While these recommendations are not binding and the discussion is ongoing, the document indicates strong disagreement among OAS members about the functioning of the Commission, which might translate into a different mandate for the Commission and, possibly, the Court.

Another point of concern for the OAS is the ongoing plan to trim its mandate as a whole, as Hillary Clinton (when she was US Secretary of State) and others have demanded (Voice of America 2010). At the end of 2011, Secretary General Insulza presented his “Strategic Vision of the OAS” to the Permanent Council. The text suggests a re-alignment of the organization’s mandates focused on its core tasks, namely the “protection and advancement of democracy, promotion and protection of human rights, partnership for development among its members, and regional security” (OAS Secretary General 2011a). In the document, the Secretary General sharply criticizes the recent developments to expand the OAS mandate:

“Over the years a series of other tasks has been added to these core activities, compelling the OAS to dilute its efforts and give its attention to a huge variety of issues, without a common perception as to what the priorities of the member states, as a group, might be. Inorganic growth of mandates and stagnation of budgetary resources have progressively eroded our capacity to respond efficiently to the demands arising from our core missions, leading to a sense of dissatisfaction—evident at the recent discussion on the budget—and renewed calls for a reduction in the number of mandates.” (OAS Secretary General 2011a)

Following this negative assessment, the Committee on Administrative and Budgetary Affairs (CAAP) has been tasked with evaluating all mandates. According to the current plan, this should lead to a considerable decrease in the number of tasks and programs run by the organization. The “draft procedure and schedule” states that the Permanent Council will base its decision on which mandates on two aspects. The first is their proximity to the core missions of the OAS. Second, the Council “will also analyze the comparative advantages and value-added of the mandates vis-à-vis similar mandates that other regional or global institutions may have” (OAS Permanent Council 2012).

Old Rivals and New Competitors

Two aspects in particular appear to be obstacles concerning closer OAS cooperation: The political conflict between the US and Latin American countries, and the looming shadow of other regional organizations or planned projects. Regarding the first point, the OAS and its senior staff seem to be caught in the middle of a conflict between a number of Latin American leaders perceived as leftist and the US position. When both parties accuse each other of abusing the OAS, this creates disadvantages for the organization:

“[Former Venezuelan president Hugo] Chavez has called the OAS a puppet of the United States; at the same time, in July 2011, the U.S. House Committee on Foreign

Affairs passed a Republican-sponsored bill to defund the OAS, on the charge that the organization supported anti-democracy regimes in Latin America.” (Council on Foreign Relations 2012)

The animosity between Venezuela and the US (and their respective allies) seems to have intensified over recent years. This can be traced back to a decline of US geopolitical clout and a number of diplomatic missteps on their part, but also to successful campaigning especially by the late Hugo Chávez, whose anti-hegemonic rhetoric resonated “not only at the mass level but also within the confines of the OAS club” (Cooper 2009: 173).

In 2009, one observer argued that the OAS was in danger of being paralyzed by the polarization among member states (Cooper 2009: 174-177). It is safe to say that the tension has not decreased since. Much of it is driven by the “diminishing consensus on what democracy entails” (Legler 2011: 115-121; Mace et al. 2010: 14). The US-favored model of market-friendly, representative democracies is disputed as basis of OAS standards and policies, given that a number of member states promote alternative concepts and appear increasingly assertive in comparison to the United States. “Participation”, for instance, has joined “representation” in recent documents about democracy (cf. OAS Permanent Council 2005), hinting at increasingly difficult discussions about OAS policies in the future. This will not necessarily be limited to the realm of democracy promotion.

Most likely, the financial situation of the OAS will influence future disputes about the organization’s direction. A large share of the regular funds budget is covered by a small number of countries (see section 2.3) and the OAS is growing more dependent on voluntary contributions to special funds. Thus, the United States in particular might increasingly try to steer the course of action by selectively funding individual programs while withholding support to others. A recent analysis by the US Congressional Research Service suggests this approach, albeit with the caveat that “the organization could lose some of its legitimacy in the region if other member states believe it is no longer addressing their concerns and is simply advancing U.S. policy” (Meyer 2012: 26-27). Another plausible scenario could be the retreat of the biggest contributor from a deadlocked OAS. Following what one author calls “flexible functionalism”, the United States government could seek different regional coalitions to tackle policy problems such as immigration or the fight against narcotics trafficking. To alleviate the risk of alienating outsiders, the US could opt for a hybrid model that would still include the OAS as a forum to grant “some umbrella legitimacy” (Feinberg 2009).

Closely connected to the questions about the future direction of the OAS is the issue of competing regional organizations, which has led to a “fragmented picture of overlapping acronyms, schemes, and interests” (Heine 2012: 215). In addition to the established attempts at economic integration on a sub-regional scale, such as MERCOSUR and the Andean Community, a number of broadly mandated organizations have been proposed and partially founded in recent years. The Union of South American Nations (UNASUR) dates back to a 2004 declaration. Twelve member states signed its 2008 constitutive treaty, and operations began in 2011. A more recent

endeavor called Community of Latin American and Caribbean States (CELAC) contains all OAS member states except the US and Canada. It was created at a summit in 2010 and is in the process of drafting documents. Both organizations are seen as counterweights to the OAS (Council on Foreign Relations 2012). Another competing forum is ALBA, the *Alternativa Bolivariana de las Américas* that was founded by Venezuela and Cuba in opposition to US foreign policy in 2004 and is – at least according to critics – “above all a tool to promote Venezuela’s influence by making oil available at discounted rates” (Heine 2012: 215).

It is beyond the scope of this analysis to evaluate these organizations’ developments and feasibility as competitors to the OAS, yet it seems that the groundwork is laid for Latin American integration excluding the North American countries. In further comparative studies of governance transfer by regional organization, the dynamics of competition as well as the division of labor between regional organizations should be taken into consideration.

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Research Framework

Governance has become a central theme in social science research. The Collaborative Research Center (SFB) 700 *Governance in Areas of Limited Statehood* investigates governance in areas of limited statehood, i.e. developing countries, failing and failed states, as well as, in historical perspective, different types of colonies. How and under what conditions can governance deliver legitimate authority, security, and welfare, and what problems are likely to emerge? Operating since 2006 and financed by the German Research Foundation (DFG), the Research Center involves the Freie Universität Berlin, the University of Potsdam, the European University Institute, the Hertie School of Governance, the German Institute for International and Security Affairs (SWP), and the Social Science Research Center Berlin (WZB).

Partner Organizations

Host University:
Freie Universität Berlin



University of Potsdam



German Institute for International and Security Affairs (SWP)



Social Science Research Center Berlin (WZB)



Hertie School of Governance

