



UNASUR: THE NEWEST “GLOBAL PLAYER” OR NEO-BOLIVERIAN FANTASY?

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Abstract

The Union of South American Nations (Unasur) presents the most recent vision for trade liberalization and political, economic, and social integration amongst South American countries. Unasur has set 2019 as the year by which it hopes to accomplish many of its goals, such as full regional integration and tariff elimination. But, as 2019 slowly approaches, it remains to be seen whether Unasur will in fact be able to reach these goals. While Unasur’s future is certainly compelling, before heralding Unasur as the long-awaited panacea for pure regional integration, important lessons can be drawn from previous attempts at and iterations of South American regional integration as well as from the model upon which Unasur is structured—the European Union. But what are these lessons, and how do they apply to Unasur? This article will explore the attempts and/or models of Regional Trade Agreements that led up to the creation of Unasur and will then turn to an assessment of Unasur’s successes, failures, the challenges it must face, and an analysis of potential lessons that Unasur may draw from other Regional Trade Agreements.

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INTRODUCTION

From Simon Bolivar's dream of unification to the consolidated Inkan Empire, aspirations for continental unity in South America and regional integration have long existed. Since gaining their independence at the dawn of the nineteenth century, South American countries have tested a panoply of schemes and institutions to encourage integration and trade liberalization in the region.¹ Following closely on the heels of the Southern Common Market (Mercosur) and the Andean Community (CAN), both of which are still in operation, the Union of South American Nations (Unasur) is the latest in the continent's movement in this direction. It is perhaps the continent's strongest possible move toward political and economic integration in history, and with Unasur's constitution taking effect in March of 2011, this is a critical time in the shaping of an institution that could quickly become a new global power. Already, Unasur has quietly come to represent the fifth largest economic bloc on earth, behind only the United States, the European Union, China, and Japan.² In fact, competing against powers like the United States was at the heart of the creation of Unasur, following an attempt by the United States to group all of South America into a free-trade zone with North America.³

As the last in a long line of integration attempts, Unasur is very fortunate to have the benefit of learning from the lessons of past organizations operating in the same region. Important lessons available to Unasur include: the significance of Regional Trade Agreements (RTAs) in creating a united front among South American nations, the prompt implementation of tariff reductions, the mitigation of asymmetrical trade relationships, a centralized mechanism for regulating adherence with RTA guidelines, and effective provisions for dispute resolution. Yet not all of these lessons have been implemented. While Unasur shows great potential, it may not be the panacea for which proponents of pure regional integration have waited. Before potentially becoming such a cure-all, Unasur must learn from prior regional efforts towards economic integration, and must learn how to go about social and economic integration in a way that adheres to Unasur's stated goal of decreasing inequality.⁴

1. Jackson Bennett, *The Union of South American Nations: The New(est) Regionalism in Latin America*, 32 SUFFOLK TRANSNAT'L L. REV. 103, 103 (2008).

2. *Gross Domestic Product 2010*, WORLD BANK (July 11, 2011), <http://siteresources.worldbank.org/DATASTATISTICS/Resources/GDP.pdf> (According to 2009 World Bank statistics, the Gross Domestic Product (GDP) of the United States was over 14 trillion dollars, whereas the combined GDPs of all Unasur nations would have been only about 2.86 trillion, not enough to double Brazil's solo contribution, but enough to overtake France as the world's sixth largest economy. And, if France and Germany are considered to be a part of the European Union in terms of their global prowess instead of being considered individually, Unasur now represents the world's fifth largest economic bloc behind only the European Union, the United States, China, and Japan).

3. Stanislaw Szukalski, *BRIC - Global Competitor of the Atlantic Community. BRIC Companies Investments in R&D*, in THE ATLANTIC COMMUNITY - THE TITANIC OF THE XXI CENTURY 275 (Antonięo Kuklińskięo & Krzysztofa Pawłowskięo, Nowy Sącz, Poland: Wyższa Szkoła Biznesu - National-Louis University Press, 2010.)

4. South American Union of Nations Constitutive Treaty, art. III, May 23, 2008, available at <http://www.comunidadandina.org/ingles/csn/treaty.htm> [hereinafter Constitutive Treaty].

Despite the international community’s skepticism that Unasur would ever come to fruition, on March 11, 2011 at a meeting of Foreign Ministers in Quito, Ecuador, Unasur was formally and legally brought into existence. Its Constitutive Treaty was officially brought into force⁵ and its body was officially recognized by the United Nations. Official statements calling for a quickening of the pace of integration were consistently made by the Presidents of South American nations throughout the rest of the year.⁶

While it remains to be seen whether or not Unasur will attain its goals, this paper will begin with an exploration of the formation, history, and future of Unasur in order to create a basis for analysis and comparison. This will involve a comparative examination of the model upon which Unasur is modeled—the European Union (EU)—and relevant lessons that may be derived. The future of Unasur will then be discussed. This will first involve assessing Unasur’s compliance with Article XXIV of the *General Agreement on Tariffs and Trade* (GATT)⁷ and the World Trade Organization’s (WTO) *Transparency Mechanism for Regional Trade Agreements*.⁸ Finally, the future potential of Unasur will then be considered through its present achievements and failures, the successes and failures of its predecessors and other RTAs in the region, and the selection of the European Union as a model.

I. WHAT IS UNASUR?

Unasur began in 2004 at the Third Summit of South American Presidents with the signing of the Cusco Declaration on the South American Community of Nations,⁹ which officially established the South American Community of Nations (CSN). CSN continued to take shape at two subsequent summits—one on September 30, 2005 in Brasília, Brazil, where the Declaration on the Convergence of Integration Processes in South America was signed,¹⁰ and one on December 9, 2006 in Cochabamba, Bolivia, where the signing of the Cochabamba Declaration

5. *Unasur Becomes Effective with a Ministerial Meeting in Quito*, MERCOPRESS (Mar. 11, 2011), <http://en.mercopress.com/2011/03/11/unasur-becomes-effective-with-a-ministerial-meeting-in-quito>.

6. *Presidential Declaration of Lima*, ANDEAN COMMUNITY (July 27, 2011), <http://www.comunidadandina.org/en/Documents.aspx?id=141&title=presidential-declaration-of-lima&accion=detalle&cat=3&tipo=DO>.

7. Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Apr. 15, 1994, 1867 U.N.T.S. 154, reprinted in WORLD TRADE ORG., THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 20 (1995) [hereinafter Marrakesh Agreement].

8. General Council Report, *Transparency Mechanism for Regional Trade Agreements*, WT/L/671 (Dec. 18, 2006) [hereinafter *Transparency Mechanism*].

9. Cusco Declaration on the South American Community of Nations, Dec. 8, 2004, available at *Documentos Internacionales*, COMUNIDAD ANDINA, <http://www.comunidadandina.org/ingles/documentos/documents/cusco8-12-04.htm> (last visited Sept. 8, 2014) [hereinafter Cusco Declaration].

10. Declaration on the Convergence of Integration Processes in South America, Sept. 30, 2005, available at *Documentos Internacionales*, COMUNIDAD ANDINA, http://www.comunidadandina.org/ingles/documentos/documents/casa_2005_1.htm (last visited Oct. 10, 2014) [hereinafter Declaration on Convergence].

occurred.¹¹ The CSN was christened with the new name of Unasur on May 23, 2008 in Brasilia, Brazil, with the signing of its Constitutive Treaty by the Presidents of the twelve involved South American countries.¹²

At its heart, Unasur is an inter-governmental union that seeks to politically and economically integrate its twelve member countries—Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay, and Venezuela¹³—through the gradual convergence of the region's two sub-regional bodies (Mercosur and CAN), while also including Chile, Guyana and Suriname¹⁴ alongside these states. As King's College Professor Marc Schelhase summarizes, “[t]he overall aim is to create an organization modeled along the lines of the EU and covering the whole of Latin America”¹⁵ The Constitutive Treaty, signed in May 2008, required ratification by nine of the twelve member nations before it could enter into force.¹⁶ After the April 2009 initial deadline for ratification passed with only one nation ratifying the agreement (Bolivia), by November 30, 2010, nine countries had officially ratified the agreement with the signing on of Uruguay.¹⁷ At this point, the nine required signatory nations were: Bolivia (March 11, 2009), Guyana (February 12, 2010), Venezuela (March 13, 2010), Peru (May 11, 2010), Ecuador (July 15, 2010), Argentina (August 2, 2010), Suriname (November 5, 2010), Chile (November 22, 2010), and finally, Uruguay (December 1, 2010). The Constitutive Treaty officially entered into force in March 2011, and the Treaty became officially registered at the United Nations on May 3, 2011, which allowed the organization to gain international legal status.¹⁸ Unasur does not currently have a Secretary General after the October 27, 2010 abdication of the position by former President of Argentina Néstor Carlos Kirchner following a heart attack, and while it technically can function without a Secretary General, this lengthy vacancy betrays other internal difficulties present within the organization.

Officially, Unasur states that its purpose is to establish decentralized development as well as participative and consensual cultural, social, economic, and political integration and unification.¹⁹ It is hoped this will be accomplished through the following: political dialogue, greater standardization in education, integrated energy, common social and environmental policies, better infrastructure

11. Declaration of Cochabamba, July 4, 2013, *available at Documentos Internacionales, COMUNIDAD ANDINA*, http://www.comunidadandina.org/documentos/dec_int/declaracion-cochabamba.htm; Bennett, *supra* note 1, at 114.

12. Constitutive Treaty, *supra* note 4.

13. AID FOR TRADE AT A GLANCE 2009: MAINTAINING MOMENTUM 106 (Frans Lammerson, ed., Organization for Economic Co-Operation and Development & the World Trade Organization, 2009), *available at* http://www.wto.org/english/res_e/booksp_e/aid4trade09_e.pdf.

14. Cusco Declaration, *supra* note 9.

15. MARC SCHELHASE, GLOBALIZATION, REGIONALIZATION AND BUSINESS: CONFLICT, CONVERGENCE AND INFLUENCE 150 (2008).

16. Constitutive Treaty, *supra* note 4, at art. 26.

17. *Senado aprobó Tratado Constitutivo de la Unasur*, ESPECTADOR.COM (Nov. 30, 2010), http://www.espectador.com/lv4_contenido.php?id=199725&sts=1.

18. Statement by the Honourable Samuel A Hind, Prime Minister of the Republic of Guyana, Regular Meeting of the Council of Heads of State and Government of the Union of South American Nations (UNASUR) (Oct. 29, 2011), *available at* <http://www.unasursg.org/uploads/69/46/69464dd57439c224794bdd3260d9e27f/Speech-by-HonPm-Paraguay-Oct-2011.pdf>.

19. Constitutive Treaty, *supra* note 4.

development; as well as financing that has the intention of reducing socioeconomic inequality, achieving social inclusion, advancing citizen participation, and strengthening democracy in the region.²⁰

II. UNASUR’S REGIONAL INTEGRATION PRECEDENTS

In order to determine where the evolution towards economic integration currently stands in Latin America, it is useful to view Unasur through the lens of its predecessors. It is through this lens that we can see what unique issues a supranational organization faces in South America, and what instruments are already in place to help Unasur succeed in addressing them. As Unasur is a relatively new organization in a region with a long history of prior attempts at social and economic unification, it is also crucial to see Unasur as situated within a rich historical context.

A. Simón Bolívar

The desire for regional unification in South America is certainly nothing new. The reasons for Unasur’s creation are intimately linked with the history of regional integration in South America. It is therefore useful to review the history of these efforts, beginning with Bolívar, although attempts at regional consolidation stretch much further back—beyond the conquistadores and the Inkan Empire they conquered. But Bolívar’s push for regional unity is usually identified by historians as “the first official step in the long march towards regional integration in Latin America.”²¹ Bolívar’s desire for regional unity and a permanent system of mutual cooperation can be attributed to his belief that such regional interdependence was required in order to ensure the future of Latin America and to maintain its recently acquired independence.²²

Over time, Bolívar’s aspirations turned from “broad continental unity to a type of integration more limited geographically ... ” but ultimately, his hopes were never realized.²³ The failure of his plans can be attributed to political instability created by separatist movements, the internal fragility of the nations involved, the socioeconomic and cultural composition of those newly created nations that were to form the alliance, and harbored resentment towards Bolívar’s own autocratic leadership methods.²⁴ However rooted in the past Bolívar’s efforts may be, important information can be gleaned from his failed attempt at regional integration, as well as many others who have come after his time and before the creation of Unasur. Many of the reasons for the failure of Bolívar’s plans are still present today—political instability, economic asymmetry between countries, and

20. Constitutive Treaty, *supra* note 4, art. 2-3; *Uruguay’s Ratification Gives Unasur Legal Status (Nine out of Twelve)*, MERCOPRESS (Dec. 2, 2010), <http://en.mercopress.com/2010/12/02/uruguay-s-ratification-gives-unasur-legal-status-nine-out-of-twelve>.

21. Gordon Mace, *Regional Integration in Latin America: A Long and Winding Road*, 43 INT’L J. 404, 404 (1988).

22. *Id.* at 404-05.

23. DAVID BUSHNELL, SIMÓN BOLÍVAR: LIBERATION AND DISAPPOINTMENT 163 (Peter N. Stearns, ed., 2004).

24. *Id.* at 153, 160.

differing political and cultural values, to name a few. With Unasur still in its infancy, there is great utility in identifying the pitfalls that must be avoided in addition to focusing on the activity of Unasur to this date, which in certain cases is rather limited.

B. The Latin American Free Trade Association (LAFTA)

The LAFTA Treaty, the first regionalized trade arrangement in South America, included provisions for gradual tariff reductions in order to liberalize trade and promote the expansion of reciprocal trade.²⁵ The tragic events of the Great Depression and two World Wars renewed the desire for regional integration in post-Columbus South America. While the LAFTA nations had already structured their economies to take advantage of the laissez-faire economic policies of the time before signing the agreement, the reliance on export economies of their agricultural and mining industries ensured that the Great Depression caused great economic instability.²⁶ This led to the creation of import substitution and the notion that restrictive barriers would protect fragile industries and allow for their internal development.²⁷ Though it also became clear that there were benefits to lowering regional barriers and promoting regional economic integration, prompting the eventual creation of the LAFTA in 1960.²⁸

LAFTA eventually failed due to exacerbated trade asymmetry between members and its inability to stimulate economic growth.²⁹ These outcomes were a result of LAFTA's focus on governing trade between its members instead of the creation of trade opportunities, as well as a misplaced focus on creating a framework for future tariff reductions rather than focusing on the present.³⁰ LAFTA's membership also ultimately split into conflicting groups with more specifically aligned interests, leading to a paralysis of the larger body.³¹ Unasur must create an infrastructure to overcome potential paralysis within its own organization.

C. The Latin American Integration Association (ALADI)

ALADI followed LAFTA in the 1980s and sought to avoid the difficulties encountered by LAFTA.³² To this day, it remains an important foundation for regional integration for Unasur, especially Resolution 59, which formed the basis

25. Robert J. Radway, *The Next Decade in Latin America: Anticipating the Future from the Past*, 3 CASE W. RES. J. INT'L L. 3, 8 (1981); Bennett, *supra* note 1, at 108 n.22 (pursuant to GATT Article XXIV).

26. Radway, *supra* note 25, at 4-6.

27. *Id.* at 6-7.

28. *Id.* at 7; Bennett, *supra* note 1, at 107-08 n.20; Treaty Establishing a Free-Trade Area and Instituting the Latin American Free-Trade Association, Feb. 1960, 1987 U.N.T.S. 262.

29. Bennett, *supra* note 1, at 109-10.

30. *Id.* at 110-11; JACQUELINE ANNE BRAVEBOY-WAGNER, INSTITUTIONS OF THE GLOBAL SOUTH 117 (2009).

31. Rafael A. Porrata-Doria, Jr., *MERCOSUR: The Common Market of the Twenty-First Century?* 32 GA. J. INT'L & COMP. L. 1, 69 (2004).

32. Bennett, *supra* note 1, at 112.

of the free-trade area sought after by Unasur.³³ The problematic exacerbation of asymmetrical relationships in LAFTA were taken into account as ALADI recognized the need of less developed countries for the economic support of more developed countries.³⁴ ALADI functioned more as an association for countries that focused on promoting and creating trade preferences through sub-regional integration instead of one sole free trade area.³⁵ While ALADI can and does remain a functioning entity today, it is generally regarded as a loose preferential trading arrangement that will not likely evolve any further beyond its current state.³⁶

D. The Andean Community (CAN)

CAN (formerly the Andean Group) was created in 1969 by the Cartagena Agreement in response to LAFTA’s failures, including issues such as the asymmetrical imbalances present in LAFTA.³⁷ The Andean countries (Bolivia, Colombia, Ecuador, and Peru—Venezuela joined later) thought that integration could be more efficiently achieved as a group than through LAFTA provisions.³⁸ Reminiscent of CAN’s acknowledgment of troubling asymmetrical imbalances, Unasur’s longstanding concern with avoiding asymmetrical imbalances is demonstrated through the adoption of the ALADI Resolution 59, where Article 16 deals with “Support to the Relatively Less Economically Developed Countries.”³⁹ As mentioned previously, LAFTA provided a framework for future tariff reduction, while CAN sought to achieve automatic national tariff reductions, a common external tariff, and in order to expedite the process, the immediate creation of a common external tariff—all by 1980.⁴⁰ Direct participation of the region’s Presidents through the President’s Council allowed CAN to achieve many of its goals. But direct participation in this manner proved to be a double-edged sword—often a dearth of will among the Presidents caused a failure to ensure expedient implementation and CAN consistently demonstrated its inability to meet deadlines.⁴¹ Essentially, high levels of cooperation were required for CAN to function effectively, and since cooperation had been problematic, it became

33. Asociación Latinoamericana de Integración [ALADI], *Basis of a Programme for the Progressive Constitution of a Free-Trade Area within the ALADI with the Prospect of Achieving the Aim of the 1980 Montevideo Treaty*, Res. 59 (XIII), ALADI/CM/RESOLUTION 59 (XIII) (Oct. 18, 2004) [hereinafter ALADI Res. 59 (XIII)].

34. Bennett, *supra* note 1, at 112; ALADI, *¿Quiénes Somos?* http://www.aladi.org/nsfaladi/arquitec.nsf/VSITIOWEB/quienes_somos (last visited Sept. 18, 2014); BRAVEBOY-WAGNER, *supra* note 30, at 119-22.

35. BRAVEBOY-WAGNER, *supra* note 30, at 119-22.

36. *Id.* at 122.

37. See, e.g., Andrés Malamud, *Latin American Regionalism and EU Studies*, 32 J. OF EUR. INTEGRATION 637, 640-41 (2010).

38. *Id.* at 127.

39. ALADI Res. 59 (XIII), *supra* note 33, para. 16.

40. Bennett, *supra* note 1, at 113; Mace, *supra* note 21, at 416.

41. LIEUTENANT COLONEL OMAR CORDERO, UNASUR AND ITS FUTURE IMPACT ON THE AMERICAS 7, (2009); Mauricio Baquero-Herrera, *The Andean Community: Finding Her Feet Within Changing and Challenging Multidimensional Conditions*, 10 LAW & BUS. REV. AM. 577, 585, 589 (2004).

difficult for member states to present a united front.⁴² In addition, a significant problem for CAN was that members formed other trade agreements with non-member states. For example, both Peru and Colombia, countries with strong bilateral agreements, were seen to resist implementing future Latin American integration into their foreign policy.⁴³ This further frustrates the need for a single united voice and the ability for CAN to effectively negotiate on a large-scale basis.⁴⁴

E. The Southern Common Market (Mercosur)

The creation of Mercosur in 1991 through the Treaty of Asunción was intended to unite Argentina, Brazil, Paraguay, and Uruguay in a common market by the end of 1994.⁴⁵ This agreement included the gradual end to all tariffs and trade restrictions between the members by this date, as well as the adoption of a common external tariff and the harmonization of the members' economic policies.⁴⁶ Although Mercosur has been the dominant trade arrangement in the region and has demonstrated great economic success so far, it is still not large enough to effectively compete with larger economies such as that of the United States.⁴⁷ Another central flaw was a lack of enforcement from a centralized authority, coupled with the lack of a system set up to deal with dispute resolution.⁴⁸ These criticisms center on the idea that without enforcement, established norms and agreements can be powerless and ineffective at the points where they are most important.⁴⁹

Further analysis of the triumphs and tribulations of Mercosur reveals that, similar to LAFTA and in opposition to CAN, the asymmetrical relationships between members has posed problems. For example, Mercosur's survival "has been challenged several times by trade disputes between Argentina and Brazil; whereas the sub-regional grouping has become a necessity for Paraguay and Uruguay, given their limited domestic markets and their trade dependence on their giant neighbours."⁵⁰ In the same sense that the recent inclusion of Venezuela into Mercosur may have mitigated its status as dominated by Brazil and Argentina, so too would the inclusion of a greater number of countries as proposed by Unasur.⁵¹ Not only would the advantages of Mercosur's economic status be carried over, but the increase in membership of less dominant countries would lessen the asymmetry created by Brazil and Argentina.

42. Baquero-Herrera, *supra* note 41, at 588; Bennett, *supra* note 1, at 116.

43. Oscar Ugarteche, *South American Countries Sign Articles of Agreement of BANCOSUR, AMERICA LATINA EN MOVIMIENTO* (Oct. 12, 2009), <http://alainet.org/active/33588>.

44. Baquero-Herrera, *supra* note 41, at 601, 606-08; Bennett, *supra* note 1, at 117.

45. Porrata-Doria, *supra* note 31, at 1; Bennett, *supra* note 1, at 117.

46. Bennett, *supra* note 1, at 117-18.

47. CORDERO, *supra* note 41, at 6.

48. Bennett, *supra* note 1, at 118; *see also* Porrata-Doria, *supra* note 31, at 71-72.

49. Porrata-Doria, *supra* note 31, at 61-62.

50. MARIO ESTEBAN CARRANZA, *SOUTH AMERICA FREE TRADE AREA OR FREE TRADE AREA OF THE AMERICAS?* 79 (2000).

51. *See id.* at 79-80.

Unasur will also create the Bank of the South, which will aid in mitigating existing asymmetrical relationships between members, since it will be used to fund development projects, equalize the distribution of investments, and provide a framework for developing a common currency, which many see as the key to maintaining economic competitiveness in the region as time passes.⁵² The bank will lend only to South American nations, though the potential of non-Unasur nations receiving bank loans is unclear. This is important due to the fact that the Bank of the South was not able to gain the support of all Unasur member nations upon its creation in September of 2009.⁵³ While Argentina, Brazil, Paraguay, Uruguay, Ecuador, Bolivia and Venezuela became founder nations, Peru, Colombia, and Chile declined to join in forming the bank.⁵⁴

Mercosur’s size has been cited as one of its downfalls—the group of nations involved is not considered enough to compete effectively with the United States, the largest economy in the Americas.⁵⁵ Since Unasur will incorporate Mercosur’s member countries, CAN’s countries, as well as Chile, Guyana, and Suriname, it is safe to assume that the problem of insufficient size and economy will be rectified by Unasur. Brazil has anticipated this increase in size and has been a major proponent of Unasur, since it finally enables a trading block large enough to command greater leverage in economic and trade dealings with the United States.⁵⁶ While realistically Unasur would not be able to compete with the United States on the world stage, its combined interests could represent an economic power equal to the size and strength of global powers like France or Germany.⁵⁷

Notwithstanding its drawbacks, Mercosur, as opposed to CAN and LAFTA, has been able to present a united front despite internal conflicts and has been able to preserve a universal negotiating position amongst its members.⁵⁸ This presents an excellent base for Unasur’s future development and provides a good example of how a united front is important for the success of a regional agreement. However, there have been recent examples of Unasur’s ability to draw consensus from among its members. On February 12, 2010, Unasur was able to, as a group, pledge \$300 million to Haiti after the earthquake of January 2010⁵⁹—more than twice the amount pledged by Canada or the United States and three times the amount pledged by the World Bank.⁶⁰ Only the European Union pledged more.⁶¹ Unasur

52. *Id.* at 99; Santiago Ojea Quintana, *The Bank of the South*, 14 LAW & BUS. REV. AM. 737 (2008).

53. *See e.g.*, *South American Leaders Sign Agreement Creating South Bank*, MERCOPRESS (Sept. 27, 2009), <http://en.mercopress.com/2009/09/27/south-american-leaders-sign-agreement-creating-south-bank>.

54. *Regional Development Bank Banco del Sur Created*, BANK INFO. CTR. (Nov. 25, 2009), <http://web.archive.org/web/20111106211838/http://bicusa.org/en/Article.11655.aspx>.

55. CORDERO, *supra* note 41, at 6.

56. *Id.*

57. *Gross Domestic Product 2010*, *supra* note 2.

58. SCHELHASE, *supra* note 15, at 26.

59. *Bank of the South*, BANK INFO. CTR. (Nov. 18, 2008), <http://web.archive.org/web/20100227230100/http://www.bicusa.org/EN/Institution.21.aspx>.

60. *Foreign Quake Aid for Haiti*, TORONTO STAR (Jan. 22, 2010), http://www.thestar.com/news/world/2010/01/22/foreign_earthquake_aid_for_haiti.html.

61. *Id.*

was also able to establish foreign policy consensuses on their relations with the Middle East in 2005 and Africa in 2006.⁶²

III. UNASUR AND THE EUROPEAN UNION

Now that we have looked at what Unasur can glean from past regional organizations in South America, we must look at the second integrative goal of Unasur: to create a region with less inequality. One of the key mechanisms Unasur plans to use in reducing inequality is citizen participation, something the organization states several times throughout its Constitution.⁶³ The clearest form of mass citizen participation is, of course, democracy, which is an element that other supranational governing bodies have struggled with in the past—the key example here being the EU. Examining the state of democracy in the EU will help determine how Unasur can actually go about reducing inequality through citizen participation and the obstacles that stand in its way.

It is also helpful to compare the EU to Unasur since “[t]he overall aim is to create an organization modelled along the lines of the EU and covering the whole of Latin America”⁶⁴ Also keep in mind that while the regional specifics are perhaps best addressed by looking at Unasur’s regional precedents, there are lessons that only a more mature organization can provide. For example, prior incarnations of economic integration efforts did little to enable freer intra-regional travel, but Unasur has already waived visa and passport requirements within Unasur nations by citizens of those nations for up to ninety days of travel,⁶⁵ the same length provided to EU citizens travelling to other EU nations. Additionally, Unasur has stated that its primary objectives have to do with “inclusive and equitable social and human development,”⁶⁶ so models that deal with more than just economic integration are required, and Unasur’s regional predecessors do not truly provide such examples. Unasur is also trying to establish a “South American Defense Council” (CSD) for military cooperation between member states.⁶⁷ While it is unclear what the final product would look like, possibilities range from tacit military agreements to NATO-like cooperation and integrated military operations.⁶⁸

62. THOMAS ANDREW O’KEEFE, *LATIN AMERICAN AND CARIBBEAN TRADE AGREEMENTS: KEYS TO A PROSPEROUS COMMUNITY OF THE AMERICAS* 449 (2009).

63. Constitutive Treaty, *supra* note 4, arts. 2, 3, 9, 14, 18.

64. SCHELHASE, *supra* note 15, at 150.

65. *UNASUR*, GUYANA TIMES INT’L (Dec. 9, 2010), <http://www.guyanatimesinternational.com/?p=1157>.

66. Constitutive Treaty, *supra* note 4, art. 3(cc).

67. *The South American Defense Council, UNASUR, the Latin American Military and the Region’s Political Process*, COUNCIL ON HEMISPHERIC AFFAIRS (Oct. 1, 2008), <http://www.coha.org/the-south-american-defense-council-unasur-the-latin-american-military-and-the-region%E2%80%99s-political-process/>.

68. The Constitutive Treaty only states that one of the goals of Unasur is “[t]he exchange of information and experiences in matters of defence,” (Constitutive Treaty, *supra* note 4, art. 3(tt)); “Cooperation for the strengthening of citizen security” (*id.*, art. 3(uu)). See also Reunión Extraordinaria de Ministros de Relaciones Exteriores y Defensa de la UNASUR Res. Sep. 15-Nov. 27 2009, UNASUR. However, at a meeting held between Unasur Ministers of Defence and Foreign Ministers on September 15, 2009, a resolution was approved that included the following pledges:

- a. To create a network for the exchange of information regarding defense policies.

Given these parallels with the more involved integration of the EU, it is essential to understand that “many of the early problems of the regional project in Latin America are similar to the challenges posed by the processes of European integration in the 1950s and early 1960s.”⁶⁹ Like Unasur in its current developmental stage, “it is important to note that the EU started essentially as a politically driven project . . .” focused on overcoming divisiveness and conflict after World War II.⁷⁰ It was not until later that the business aspects of the relationship became a focus.⁷¹

Yet the EU commission and its extensive bureaucracy, charged with identifying, implementing, and enforcing norms and agendas, directly contrasts Unasur.⁷² This will likely prove to be problematic based on the previous analysis of

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- b. Information regarding the organization, functions and procedures of the ministries of defense.
 - c. Information on military forces: troops, weapons and equipment.
 - d. To set up an Information Bank of the countries of UNASUR regarding the registration of the transfer and procurement of equipment and Conventional Weapons, in addition to the information that should be forwarded to the UN and the OAS.
 - e. To develop a mechanism of notification and registration before UNASUR of the full text of the intraregional and extra-regional cooperation agreements in matters of defense and security once these are approved, including the general objectives, scope and validity thereof, as well as the registration of procurement and transfers of weapons and equipment. Said mechanism, as per request of the notifying party, shall abide by the principle of confidentiality.
 - f. To respond to requests from other Member States and to make consultations regarding defense issues they may deem relevant.

The resolution also offered the following “guarantees:”

- a. It is forbidden among the Member States of UNASUR, the use or threat of the use of force, as well as any kind of military aggression or threats to the territorial stability, sovereignty and integrity of the rest of the Member States.
- b. To guarantee that South America is conserved as a zone free of nuclear weapons and ensure that nuclear technology is to be used solely for peaceful purposes, in accordance with the Treaty of Tlatelolco and further international conventions on the matter.
- c. Cooperation agreements in defense matters entered by the member states of UNASUR shall include an express clause ensuring the respect for the principles of sovereign equality of the States, territorial integrity and inviolability and non interference into the internal affairs of other States.
- d. The member States of UNASUR formally guarantee that the cooperation agreements in matters of defense to which they are Parties and which may entail some degree of presence of military or civil personnel and/or of armaments and equipment within their territories, coming from the States of the region or extra-regional States, shall not be used in a way that may attempt against the territorial sovereignty, security, stability and integrity of the South American States. They shall ensure that the activities emerged from said agreements shall not have effects of any nature over the territory and the sovereign space of another State of UNASUR.

Policies related to crime, narcotics, “compliance and verification,” financial crimes, and terrorism were also agreed upon.

69. SCHELHASE, *supra* note 15, at 27.

70. *Id.* at 26-7

71. *Id.*

72. Porrata-Doria, *supra* note 31, at 62.

Mercosur's current system, which, like Unasur, lacks a similar central mechanism. This is the kind of mechanism that prevents the paralysis encountered by LAFTA and the internal fracturing experienced by CAN. There are other problems that the European Union has had trouble with, however, that Unasur may be able to overcome by focusing on them early on. Importantly, there is one key element holding the EU back from even greater integration that Unasur can learn a lot from—the issue of how to deal with multiple diverse cultures with differing visions of the future. There are, of course, enough parallels between Unasur and the EU to fill a book, but for the purpose of this analysis, we will rely on a more focused, narrow comparison.

Scholar Abdou Diouf once stated: “Language is inseparable from democracy. The Union will not move forward without its people. The people of the Union will not move forward without their cultures, that is, without their identities.”⁷³ With the rise of supranational entities like the EU and Unasur, new structures of governance give rise to novel concerns. As the values of democracy are internalized within these structures on an international scale, the subject of a “democratic deficit” rises to the surface. In order to guarantee a Unasur that works for the majority of South Americans and not just those at the top, a solution to the EU's problem with this is essential.

The term “democratic deficit”⁷⁴ carries no single meaning and has become an increasingly popular catch-all phrase to refer to aspects of the EU that are viewed as democratically lacking in a general way.⁷⁵ The arguments relating to the democratic deficit in the EU can be arranged into five categories: (1) lack of legitimacy, (2) lack of transparency, (3) lack of consensus, (4) lack of accountability, and (5) lack of protection.⁷⁶ “Democracy” itself—the preferred format for Unasur as well—is comprised of a variety of different conceptions and arrangements that are important to highlight, as they have significant repercussions on expectations of legitimacy.⁷⁷ Legitimacy as a concept, like democracy, is difficult to define. As Deborah Stone asserts, “we know it exists as a force that holds societies together, but we cannot give very satisfactory explanations of how

73. Diouf: ‘Language is Inseparable from Democracy,’ EURACTIV (Feb. 10, 2007, 10:00 AM), <http://www.euractiv.com/culture/diouf-language-inseparable-democracy/article-167255>.

74. See generally DAVID MARQUAND, PARLIAMENT FOR EUROPE (Jonathan Cape Ltd. 1979), for where the term itself is usually attributed to, which was released as the first elected European Parliament was about to convene. See also Stephen C. Sieberson, *The Proposed European Union Constitution – Will it Eliminate the EU's Democratic Deficit?*, 10 COLUM. J. EUR. L. 173, 174 (2003).

75. See John Coultrap, *From Parliamentarism to Pluralism: Models of Democracy and the European Union's 'Democratic Deficit'*, 11 J. THEORETICAL POL. 107, 107 (1999); THOMAS D. ZWEIFEL, DEMOCRATIC DEFICIT?: INSTITUTIONS AND REGULATIONS IN THE EUROPEAN UNION, SWITZERLAND, AND THE UNITED STATES IN COMPARATIVE PERSPECTIVE 12 (2003). The proposed solutions to the democratic deficit are equally wide-ranging. See, e.g., Andreas Follesdal & Simon Hix, *Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik*, EUR. GOVERNANCE PAPERS 4 (2005).

76. For a detailed discussion of these categories, see ZWEIFEL, *supra* note 75, at 12-44.

77. Victor Bekkers et al., *Governance and the Democratic Deficit: Introduction*, in GOVERNANCE AND THE DEMOCRATIC DEFICIT: ASSESSING THE DEMOCRATIC LEGITIMACY OF GOVERNANCE PRACTICES 3, 6-7 (Victor Bekkers, et al. eds., 2007) (highlighting six primary forms of democracy: representative, pluralist, deliberative, associative, and consumer).

to create it or why it is sometimes very strong and sometimes seems to disappear.⁷⁸

Democracy is just as important to Unasur as it is to the EU. The Constitutive Treaty of Unasur states that:

Full citizen participation in the process of South American integration and union will be promoted by means of dialogue and interaction in a broad, democratic, transparent, pluralistic, diverse and independent manner with the various social actors, establishing effective channels of information, consultation and supervision in the different bodies of UNASUR. The Member States and organs of UNASUR will promote innovative mechanisms and spaces to encourage discussion of various issues ensuring that the proposals submitted by civil society receive adequate consideration and response.⁷⁹

Therefore it is important to view the success of democracy within this predecessor of Unasur.

Democratic legitimacy can be broken up for analysis in a variety of ways. Victor Bekkers et al, for example, focused on three aspects: input-, throughput-, and output-oriented legitimacy.⁸⁰ While these deserve greater explanation, provided in detail by Bekkers et al., these three normative approaches to democracy distinguish amongst ideas of “government *by* the people,” a focus on the quality of decision-making processes including citizen participation and checks-and-balances, and the idea of “government *for* the people.”⁸¹

When criticizing the EU for its democratic deficit, it is important to recognize that this criticism relies on an assumption that the EU *should* be democratic.⁸² Recall that the EU, as a treaty-based creation, was not brought into being as a democratic institution and was instead envisioned as an intergovernmental structure.⁸³ The result being that, since intergovernmental structures do not habitually focus on direct democracy as part of their decision-making configuration, democracy is not necessarily the primary goal.⁸⁴ But regardless of the initial intent behind this structure in guarding essential sovereignty of EU member states,⁸⁵ subsequent developments have transformed democracy into a relevant concern. The transfer of political decision-making power from the national level to the European level with the Single European Act (SEA) and the subsequent

78. DEBORAH STONE, POLICY PARADOX: THE ART OF POLITICAL DECISION MAKING 285 (W.W. Norton & Co. 3rd ed. 2002); *see also* Bekkers et al., *supra* note 77, at 6.

79. Constitutive Treaty, *supra* note 4.

80. Bekkers et al., *supra* note 77, at 6; *see also* DAMIAN CHALMERS ET AL., EUROPEAN UNION LAW: TEXT AND MATERIALS 167-72 (2006) (the authors express these same approaches to analyzing democratic legitimacy through the tripartite quality concerns with the representative, participatory and deliberative aspects of democracy).

81. *Id.*

82. Sieberson, *supra* note 74, at 175.

83. *Id.* at 180.

84. *Id.* at 180-88; *see also* Daniel Halberstam, *The Bride of Messina: Constitutionalism and Democracy in Europe*, 30 EUR. L. REV. 775 (2005).

85. Sieberson, *supra* note 74, at 181.

Treaty on European Union (TEU), resulted in a decline in democratic control at the national level. This decline is seen by many as not having been adequately addressed with comparable democratic facilities at the European level.⁸⁶ The concern that the push for greater integration has led to a vertical delegation of decisions to the international level—moving citizens an additional step away from important political decisions—is a comparatively recent development since the state of democracy itself is a relatively new question within the EU.⁸⁷ This is, of course, one of the places where Unasur and the EU diverge, as democratic values were written directly into Article 18 of Unasur's Constitutive Treaty.⁸⁸

One of the key aspects causing the democratic deficit and lying in the way of democracy is the lack of a pan-European *demos*. The literature on this topic proposes numerous attributions and solutions for this popular topic, but one aspect in particular is worth highlighting. The multiplicity of languages spoken within the EU member states is an area where the EU faces one of the greatest challenges, and potential for possible development, if an EU-based *demos* is to be created with the intention of lessening the democratic deficit. Unasur must contend itself with four official languages—Spanish, Dutch, English, and Portuguese—and dozens of indigenous languages that have already proven difficult for nations to deal with on an individual basis.

As the EU (the European Commission in particular) pushes forward in its objective of a pan-European supranational style and structure of governance,⁸⁹ the term “European citizen”⁹⁰ becomes increasingly problematic with the marked lack of a common culture or identity across member states.⁹¹ In order to create a sense of belonging to the supranational EU “state” (a *demos*), there must be a shared sense of experience among members, the binding ties of a built community, and shared language.⁹² And as Weiler wisely states, “[b]elongingness is inherent in nationhood, nationhood is a form of belonging. Nationhood is not an instrument to obtain belongingness, it is it.”⁹³ It is difficult for a feeling of belonging to develop when there is such cultural diversity amongst the member states, and it is within this context that language poses an especially challenging problem in developing a European *demos*. Similar to the notion of the “European citizen,” Unasur has also stated that it wishes to move towards the “consolidation of a South American

86. Marcus Höreth, Discussion Paper, *The Trilemma of Legitimacy: Multilevel Governance in the EU and the Problem of Democracy*, C11 ZEIDISCUSSION PAPER 1, 4 (1998).

87. Frans van Nispen & Johan Posseth, *Democratic Legitimacy of Economic Governance: The Case of the European and Monetary Union*, in GOVERNANCE AND THE DEMOCRATIC DEFICIT: ASSESSING THE DEMOCRATIC LEGITIMACY OF GOVERNANCE PRACTICES, *supra* note 77, at 223, 223.

88. Constitutive Treaty, *supra* note 4, at art. 18.

89. Cris Shore, ‘Government Without Statehood’? *Anthropological Perspectives on Governance and Sovereignty in the European Union*, 12 EUR. L. J. 709, 709 (2006).

90. See Joseph H. H. Weiler, *To Be a European Citizen – Eros and Civilization*, 4 J. EUR. PUB. POL. 495, 496 (1997) (this term first came into view with the Maastricht treaty).

91. Shore, *supra* note 89.

92. DAVID WARD, THE EUROPEAN UNION DEMOCRATIC DEFICIT AND THE PUBLIC SPHERE: AN EVALUATION OF EU MEDIA POLICY 9 (2002); see generally JOHN E. JOSEPH, LANGUAGE AND IDENTITY: NATIONAL, ETHNIC, RELIGIOUS (2004) for an in-depth discussion of language and identity; see Leslie Green, *Freedom of Expression and Choice of Language*, in FREE EXPRESSION: ESSAYS IN LAW AND PHILOSOPHY 135, 149 (1994), for a discussion on how language can function as a boundary.

93. Weiler, *supra* note 90, at 504.

identity through the progressive recognition of the rights of nationals of a Member State resident in any of the other Member States, with the aim of attaining a *South American citizenship*.⁹⁴

One of the most important principles of democracy is the inclusion and participation of citizens,⁹⁵ and the lack of *demos* presents a significant barrier to the development of a sense of inclusion—resulting in harmful outcomes like low voter turnout for EU-related elections.⁹⁶ The citizens of EU member states must *want* to participate, and this requires an understanding of EU-level projects and institutions, which can be difficult with so many languages at play. While EU language policy fundamentally favours the equality of the languages of the member states,⁹⁷ this works better in theory than it does in practice. Internally, the working languages of the EU are limited—English, German, and French, with English playing a dominant role.⁹⁸ And while citizens are intended to interact with the EU in the language of their choice, reality dictates that much of this interaction occurs online where equal representation of all the official languages is not often available.⁹⁹ Already, this severely hinders the EU’s accessibility to the average European citizen who does not speak one of the dominant EU languages.

The limitations on participation and the practical barriers imposed by language are readily seen when considering the employment opportunities within the EU itself—one of the key places where the regular citizen interacts with the economy. For the sake of effectiveness and efficiency, daily work carried out by employees primarily occurs in one of the EU’s working languages; this means that in reality, those who do not speak one of the working languages are at a severe disadvantage in being chosen or recruited as employees.¹⁰⁰ Nonetheless, the link between language, accessibility, and equal citizen participation between all member states, not to mention additional concerns with transparency, accountability, and legitimacy, is a glaring example of why a democratic deficit is said to exist.¹⁰¹

One perceived benefit of supranational structures like the EU is that they may provide another venue for the individual, or perhaps more specifically, a marginalized group within a nation-state, to find recourse at a level outside of their national borders. This is relevant for South America, with its myriad of underprivileged minority groups, and specifically in the context of Article 2 of Unasur’s Constitutive Treaty, which refers to the Unasur goal to execute its projects “with a view to eliminating socioeconomic inequality.”¹⁰² But the ability of the EU to reach beyond borders and deal with national minorities in a way that

94. Constitutive Treaty, *supra* note 4, art. 3 (jj) (emphasis added).

95. Brigitte Boyce, *The Democratic Deficit of the European Community*, 46 PARLIAMENTARY AFF. J. COMP. POL. 458, 459 (1993).

96. Myrto Tsakatika, *Governance vs. Politics: The European Union’s Constitutive ‘Democratic Deficit’*, 14 J. EUR. PUB. POL’Y. 867, 870 (2007).

97. See Treaty Establishing the European Community, arts. 21, 314, Mar. 25, 1957, 325 O.J. EUR. COMMUNITIES 45, 154.

98. Jacqueline Mowbray, *Language in the UN and EU: Linguistic Diversity as a Challenge for Multilateralism*, 8 N.Z. J. PUB. INT’L L. 91, 97 (2010).

99. *Id.*

100. *Id.* at 101.

101. *Id.* at 102.

102. Constitutive Treaty, *supra* note 4.

national governments have not is hindered by the practical obstacle of accessibility resulting from linguistic barriers that exist between member states.¹⁰³ The reality is that minority or marginalized groups or individuals who seek to take advantage of available EU aid would run up against inaccessibility due to these language barriers.¹⁰⁴ Furthermore, while minority or marginalized groups that speak official state languages may be marginalized within the EU structure if they do not speak one of the main EU working languages, other languages such as Catalan and Basque are not even recognized as official languages, which makes the likelihood of their use even less possible.¹⁰⁵

A solution for the lack of a pan-continental *demos* and the democratic deficit must create greater desire for participation and a greater understanding and connection to what is occurring at the supranational level. Most suggested remedies for the democratic deficit in the EU involve re-evaluating which conception of democracy should be applied to the EU itself and suggestions for restructuring EU institutions.¹⁰⁶ But it is worthwhile to consider alternate solutions since it may be possible to, arguably, fix structural and institutional EU flaws. But this will not necessarily make the “European citizen” (or the “South American citizen”) *want* to participate. It is necessary to create within the EU citizen an invested connection and understanding of the EU and its endeavours.

Feelings of belonging are key to developing a desire for participation through the establishment of a pan-continental *demos* and, as explored previously, this is related to language. A possible option worth exploring lies in the realms of media and mass media in particular. While language forms a key part of identity and makes *demos* very difficult to achieve within the EU context of a multiplicity of languages specifically, language is also the key to communication. Communication breeds understanding, and understanding can lead to a greater desire to participate and become engaged.¹⁰⁷

Mass media and pan-continental television and news could create a burgeoning sense of identity and belonging through a genre of shared experience in the attempt to create a pan-continental *demos*. Increased media output and dissemination on a pan-continental level would necessarily result in greater efforts at EU or Unasur generated communication, which could have the inevitable result of increased transparency for those affected by the democratic deficit. More importantly though, citizen participation would also benefit from mass media developments.¹⁰⁸ Mass media—broadcasting structures in particular and communications structures in general - provides an important platform for a European or future South American citizen to participate in debates, and promotes understanding and awareness, which

103. Mowbray, *supra* note 98, at 103-07.

104. *Id.* at 105-06.

105. *Id.* at 113.

106. One interesting development is the Open Method of Coordination (OMC). It is a soft law mechanism of experimental governance that may be a helpful tool in addressing the difficulties of coordinating transnational policy, thus, it is hoped, increasing democratic legitimacy and lessening the democratic deficit. See Patty Zandstra, *The OMC and the Quest for Democratic Legitimization: The Case of the European Employment Strategy*, in GOVERNANCE AND THE DEMOCRATIC DEFICIT: ASSESSING THE DEMOCRATIC LEGITIMACY OF GOVERNANCE PRACTICES, *supra* note 77, at 251.

107. WARD, *supra* note 92, at xi-1.

108. *Id.* at 26.

are all key components in developing a pan-continental *demos*.¹⁰⁹ This is also something that could fall into the category of Article 18 of the Unasur Constitutive Treaty, which demands the creation of state institutions that promote “citizen participation.”¹¹⁰

In the EU context, the multiplicity of languages, and the difficulty that it creates, is also addressed by media. Ideally, citizens would have a choice of the language of the media they wished to access. But even if their language option was not available, the wealth of accessible media in a variety of other languages would provide a slow exposure to other languages and cultures. While developments in mass media are by no means a panacea for the democratic deficit related difficulties, they carry significant democratic potential.

There also exists the additional concern that creating a pan-European *demos* in particular, would fundamentally destroy one of the values at the heart of the European unification process: a heterogeneity of cultures. Unasur states that it has the same value at its core in the Constitutive Treaty.¹¹¹ Regardless of the EU’s democratic flaws, possible solutions must be considered in relation to the possibility they may have of crushing the original desire to avoid the homogenization of both culture and language. In the end, there appears to be an inevitable choice between two disparate options.¹¹² On the one hand, there is the option involving greater democratic legitimacy, greater citizen participation, less of a democratic deficit, but a homogenization of different groups, cultures and nations across the EU.¹¹³ On the other hand, there is the option of complacency with the democratic deficit, low voter turnout, and citizen disinterest in EU processes, but with the corresponding maintenance of the unique concept of a community comprised of unique and varied groups of people.¹¹⁴

One additional solution, proposed by Weiler, bears mentioning. This alternative would be to forego the attempt at creating a *demos* altogether, and instead focus on creating multiple and co-existing *demoi*, where individuals would belong to more than one *demos*.¹¹⁵ This, however, brings us back to our overarching concern with language, as it does not address the problems posed by language barriers. It is possible to see this proposition as a viable option for those who belong to the major EU language groups, cultural groups, and populous states, but it is important to note that belonging to the European *demos* would not likely become more attractive for minority-language speakers or minority groups in general. Multiple *demoi* may make overt exclusion less likely and aid in developing a pan-continental *demos*, but on a symbolic level, it is difficult to see how individuals would begin to feel more adequately represented by an organization that remains inaccessible to them linguistically.¹¹⁶

109. *Id.*
 110. Constitutive Treaty, *supra* note 4, at art. 18.
 111. *Id.* at art. 2.
 112. Weiler, *supra* note 90, at 503.
 113. *Id.*
 114. *Id.*
 115. *Id.* at 508-11.
 116. Mowbray, *supra* note 98, at 105-06.

Ultimately the “community of communication, of experience, and of memory”¹¹⁷ that is required for *demos*, without which democracy will not likely flourish, cannot be created without the ability to ascend beyond the language barriers within a structure such as the EU. Whether or not this is possible remains to be seen, but options like encouraging EU-wide mass media and greater communication strategies at the supranational level present great democratic potential in the hopes of remedying the democratic deficit. This lesson is one that should be taken to heart by Unasur in drawing upon the EU as a guiding framework, especially where the EU does not appear to have considered such future problems early enough on in its evolution.

Considering the comparative lack of linguistic barriers between South American countries, a *demos* may fundamentally be easier to develop in South America. As Unasur progresses beyond its nascent stage, the opportunity is present for the communications and information infrastructure of the continent to be developed cooperatively. In fact, the “Initiative for the Integration of the Regional Infrastructure of South America” (IIRSA) is already one of Unasur’s main projects, the goal of which is to improve the infrastructural integration of Unasur member states, including their communications networks.

This might in fact prove to be one of the most important steps towards the ultimate success of Unasur, by providing the means of developing a grassroots *demos* through the spread of pan-continental information systems. However, this would require IIRSA from the beginning to take into account the cultural impact of such a project alongside its ultimate economic impact from the beginning. Another IIRSA initiative that addresses a regional problem not faced to the same extent by the EU is the lack of transportation corridors linking up the different nations of the continent. To this end, Unasur sponsored the Interoceanic Highway project that took years to complete and now reaches from the Pacific coast of Peru to Rio de Janeiro.¹¹⁸ The South American Energy Ring is another Unasur initiative also being built to interconnect Unasur member states to several natural gas sources, in an effort to link all member nations to key economic building blocks and foster a transcontinental economic framework.¹¹⁹ While the potential exists for these key elements to jumpstart the pan-continental economy, a firm plan for integrating culture and communications for South America is both available to Unasur and vital in order to surpass the successes of the EU.

As for democracy itself, Unasur’s support of its principles can be observed in a moment early on in Unasur’s history. The presidents of the South American countries that were, at the time in September 2008 gathered at an Unasur summit,

117. ZWEIFEL, *supra* note 75, at 13.

118. *Southern Interoceanic Highway (Peru-Brazil)*, BANK INFO. CTR. (Nov. 8, 2014, 10:13 AM), <http://web.archive.org/web/20100212185340/http://www.bicusa.org/en/Project.10312.aspx>; *see also* Stephen G. Perz et al., *Political Ecology and Land Change Science in the Study of Infrastructure Impacts: The Case of the Southwestern Amazon*, in LAND CHANGE SCIENCE, POLITICAL ECOLOGY, AND SUSTAINABILITY 150, 158 (Christian Brannstrom & Jacqueline M Vadjunec, eds., 2013).

119. ENCYCLOPEDIA OF BUSINESS IN TODAY’S WORLD 338 (Charles Wankel ed., 2009); Gabriela Aguilera Lizarazu, *Gas Integration in South America and Liquefied Natural Gas* 4 REVISTA DE HUMANIDADES Y CIENCIAS SOCIALES (SANTA CRUZ DE LA SIERRA) 1 (2008); His Excellency Bharrat Jagdeo, Speech delivered at the Fourth Summit of the Union of South American Nations Opening Ceremony (2010) (transcript available online: <http://www.unasursg.org>).

vocally announced their support of the democratically elected Bolivian President Evo Morales, who faced opposition from the traditionally dominant Bolivian elite class that opposed democracy and social justice.¹²⁰ Facing down the traditionally politically dominant of the region, Unasur’s unified stance behind its goals for participative and consensual cultural, social, economic, and political integration and unification bodes well for its success and longevity.¹²¹

IV. THE FUTURE OF UNASUR

Though an untested future congregation of societies may be in the cards, economic integration is the most important aspect of Unasur’s presently desired and planned development. It is difficult to center this analysis on items beyond economic integration at this point, because economic integration and joint economic projects are the only tangible fruits of Unasur’s evolution thus far. For example, while Unasur has stated it intends to create a South American Parliament in Bolivia, details of the institution did not appear in the ratified Constitution of Unasur—only the place of its creation.¹²² In addition, other projects of Unasur, like the CSD, do not look as if they can take many more significant steps in the near future without substantial improvements in economic and infrastructure integration across the continent.¹²³

A. Unasur and the World Trade Organization

While Unasur is not yet officially listed as an RTA with the WTO, it will fit well under GATT Article XXIV:8(b) as a free-trade area.¹²⁴ Currently, it meets the requirements for an interim agreement leading to the formation of a free-trade area under GATT Article XXIV:5(b).¹²⁵ In terms of GATT Article XXIV:5(c), the schedule for the formation of the free-trade area involves eliminating tariffs for non-sensitive products by 2014 and tariffs for sensitive products by 2019.¹²⁶ Furthermore, GATT Article XXIV:5(c) stipulates that “a plan and schedule for the formation of . . . such a free-trade area within a reasonable length of time.”¹²⁷ The Understanding on the Interpretation of Article XXIV clarifies that a “reasonable length of time” should only exceed ten years in exceptional cases.¹²⁸ Considering the schedule outlined by Unasur for eventual elimination of tariffs, it appears that this ten-year period will be surpassed. In terms of the Transparency Mechanism,

120. NOAM CHOMSKY, HOPES AND PROSPECTS 114-15 (2010).

121. *Id.*

122. Constitutive Treaty, *supra* note 4, at art. 17.

123. John E. Griffiths, *Procesos de integración regional en defensa: ¿Consejo Sudamericano de Defensa -UNASUR- Un nuevo intento?* 3 GCG GEORGETOWN UNIVERSITY – UNIVERSIA 105, 116-18 (2009).

124. Marrakesh Agreement, *supra* note 7, at art. XXIV:8(b).

125. *Id.* at art. XXIV:5(b).

126. *Id.* at art. XXIV:5(c); JAN-ERIK LANE, COMPARATIVE POLITICS: THE PRINCIPLE-AGENT PERSPECTIVE 269 (2008).

127. Marrakesh Agreement, *supra* note 7, at art. XXIV:5(c).

128. Understanding on the Interpretation of Art. XXIV of the General Agreement on Tariffs and Trade, Apr. 14, 1994, Marrakesh Agreement Establishing the World Trade Organization, Analytical Index, 1867 U.N.T.S. 154.

Unasur has outlined a schedule for both ratification of its Constitutive Treaty, as well as for the elimination of tariffs, which should comply with 1(b). Yet, this information has not yet been posted on the WTO website.¹²⁹

B. Perspectives and Analysis

Certainly Unasur may be critiqued for its leisurely implementation schedule and the persisting uncertainty as to whether the ambitions expressed by member states will be factually put into practice.¹³⁰ These critiques have extended on occasion to the accusation that Unasur is a “phony” organization that exists on paper only, and whose plans come only in the form of future projections and ambitions, even where they have been endorsed by other trade pacts.¹³¹ But regardless of whether this is in fact the case with Unasur, South America’s past experience with LAFTA has demonstrated the importance of focusing on immediate tariff reduction goals rather than creating frameworks for future reductions.¹³² For future success, Unasur must retain the attention of its members by offering them salient and prompt trade advantages. Otherwise, there is the risk that Unasur’s members will turn their trade preferences to other countries and RTAs, resulting in either the dissolution of Unasur or a weakening of its regional privilege.

Turning to the counterpoint of some of these critiques, Unasur possesses significant advantages in comparison to its predecessors. Not only does Unasur have the benefit of pre-existing steps towards regional integration provided by ALADI, but it can also capitalize on the currently functioning sub-regional trade agreements of CAN and Mercosur. Hopefully, Unasur’s multi-faceted approach to regional integration will also enable it to address the political and social aspects of integration that, if left unaddressed, can hamper economic progress. As Chairman of Unasur and President of Guyana Bharrat Jagdeo stated after leaving one of the first negotiations to occur after the Constitution of Unasur was officially ratified, “We have just emerged from a situation where we had to negotiate an agreement with the European Union that is based upon full reciprocity. How can a country with 35,000 people, like St. Kitts and Nevis, trade with the European Union and the USA?”¹³³

In addition to increasing the bargaining power of South America on the world stage, creating greater control and stability for the region’s interests, Unasur stands to reduce the multi-polar political stage of present day Latin America.¹³⁴

129. *Transparency Mechanism*, *supra* note 8.

130. LANE, *supra* note 126, at 269.

131. *Id.*

132. Bennett, *supra* note 1, at 110-11; BRAVEBOY-WAGNER, *supra* note 30, at 117.

133. UNASUR Chairman Champions CARICOM/South American Union, GUYANA CHRONICLE (Sept. 8, 2014), http://www.guyanachronicleonline.com/site/index.php?option=com_content&view=article&id=22457:unasur-chairman-champions-caricom-south-american-union&catid=4:top-story&Itemid=8.

134. Andrés Serbin, *América del Sur en un mundo multipolar: ¿es la Unasur la alternativa?* 219 *Nueva Sociedad* 145, 148-50 (2009), http://www.nuso.org/upload/articulos/3588_1.pdf.

Competing interests between rival nations like Colombia and Venezuela¹³⁵ create regional instability—and this, in turn, creates a potential hotbed for inequality. By reducing the competition between interests in South America, economic stability can take root. This would allow for a more stable job market, increased business opportunities, business planning, less fear of violence, greater comfort when it comes to long term planning, and a sense of security that would promote freedom of expression. The effects of unified economic interests, and a specialization of spheres of influence, on regional rivalries has already been seen in the close relations between Venezuela and Brazil.¹³⁶ Another example is that of Mercosur, which is partially credited for eliminating the prospect of war between Argentina and Brazil.¹³⁷

While Unasur’s predecessors have highlighted many problems that Unasur can address, it is up to Unasur to actually confront and overcome these problems in order to successfully arrive at South American regional integration. Even early success, such as Mercosur’s in the 1990s, can be easily tainted through oversights such as unbalanced trade asymmetries—Mercosur continues to recover from the effects of the economic losses sustained by Brazil and Argentina through their most recent recessions.¹³⁸

Unasur demonstrates positive signs of broad cooperation in the region, which is important in order to develop effective regional integration. Nevertheless, CAN continues to deal with ever-present conflicts between its members over land and issues such as negotiating Bolivia’s access to the Pacific, which necessarily also affects Unasur.¹³⁹ Key integration of major nations into projects like the Bank of the South has also been hampered by the personal politics and vendettas of heads of state within the region.¹⁴⁰ As demonstrated previously, conflict among members is detrimental to the need for a united front. While disagreements and differing economic policies may be overcome by broad ideological similarities, these similarities may not be enough as external influences gain further ground in the region through inevitable forces such as globalization.¹⁴¹ The need for unity is also

135. *Mercosur and Unasur “More Effective” for South America than OAS*, MERCOPRESS (Sept. 11, 2010), <http://en.mercopress.com/2010/09/11/mercosur-and-unasur-more-effective-for-south-america-than-oas>.

136. Henner Fürtig & Susanne Gratius, *Iran and Venezuela: Ideology-driven Foreign Policies in Comparison*, in *REGIONAL LEADERSHIP IN THE GLOBAL SYSTEM: IDEAS, INTERESTS AND STRATEGIES OF REGIONAL POWERS* 180 (Daniel Fletes ed., 2010).

137. CHARLES A. KUPCHAN, *HOW ENEMIES BECOME FRIENDS: THE SOURCES OF STABLE PEACE* 129-31 (2010).

138. Bennett, *supra* note 1, at 130.

139. *Id.*

140. Oscar Ugarteche, *South American Countries Sign Articles of Agreement of BANCOSUR*, AMERICA LATINA EN MOVIMIENTO (Oct. 12 2009), <http://alainet.org/active/33588> (Oscar Ugarteche, former advisor to the central banks of Nicaragua and Bolivia, stated of Peru’s refusal to join the Bank of the South by writing that: “Peru is the only South American country that is impervious to the idea, though possibly with the next government it will join in. The reason is understandable given the importance of Venezuela in the bank and the close relationship of Peruvian president Alan García with the now ousted Venezuela’s Democratic Action Party and more specifically with former president Carlos Andrés Pérez, a personal friend of the Peruvian president. In other words, the absence of Peru reflects the absence of institutional operation of the country’s foreign policy”).

141. CORDERO, *supra* note 41, at 17.

threatened by other and better trade arrangements that Mercosur and CAN members continue to seek and find outside of the Unasur group.¹⁴² And while globalization increased the opportunities for and the scope of RTAs, it has also made the reality of a purely South American regional agreement increasingly less likely.

Another fundamental flaw for Unasur, which the history of South American regional integration highlights, is the need for a strong central governing entity that can create binding rules.¹⁴³ Related to this is the pressing need for Unasur to develop some sort of a mechanism to deal with a failure to adhere to its policies as well as an effective mechanism for dispute resolution.¹⁴⁴ Settling disputes within Unasur, as allowed by Article 21 of the Constitutive Treaty, relies on the feasibility of a brokered negotiation, which might not be possible, considering the current unrest amongst Unasur's members.¹⁴⁵ Ultimately, while Unasur exhibits many positive indications that regional integration is possible, in order to achieve the regional integration desired, it is essential that Unasur have the ability to exercise authority in settling disputes and enforcing trade or economic policies.

CONCLUSION

Unasur demonstrates great potential as a mechanism for regional integration. While it may represent one of the next major economic global players, if it can succeed where other attempts at regional integration have failed, there are many unsettling oversights within Unasur. An analysis of the history of RTAs in South America, as well as previous efforts at regional integration, reveal many important lessons. Unasur incorporates many of these lessons, such as sensitivity to differences in economic development between member countries. However, it has overlooked other crucial aspects such as an effective mechanism for dispute resolution and disciplinary action. Only time will tell whether Unasur meets its stated goal of full regional trade integration and tariff elimination by 2019. While Unasur shows much promise, this is ultimately dampened by numerous fatal flaws that hold South America back from a Bolivarian panacea of pure regional integration.

142. Bennett, *supra* note 1, at 115; BRAVEBOY-WAGNER, *supra* note 30, at 145.

143. Bennett, *supra* note 1, at 132-33.

144. *Id.* at 118.

145. *Id.* at 131.