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Bachelor Thesis

To what extent can the EU's supranational features be found in the Central American Integration System SICA?

A comparison of SICA and the EU with
references to MERCOSUR and the Andean Community

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1 Introduction

In the 1950s, almost simultaneously, there were started two integration processes, in two regions, geographically very distant to each other. One in Europe, where the mutual mistrust of two countries, France and Germany, combined with the will to eventually bring peace to a region marked by two world wars, led to the creation of the European Communities. The other in Central America, where five small countries recognised that they are only able to compete, when they can overcome their small but exhausting disputes and cooperate. However, whereas the European integration process gained considerable strength, the efforts in Central America time and again were interrupted by cruel conflicts caused by internal and external factors. When in the 1980's, Central America became a hot spot of the Cold War, with brutal civil wars going on in Guatemala, El Salvador and Nicaragua, the project seemed to have failed for good. But, the joint endeavours of two Presidents finally realised what had been thought to be impossible for a long time: a peace treaty for Central America. Four years after this historical *Esquipulas II Declaration*, the Presidents of Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and then also Panama, signed the *Tegucigalpa Protocol*, therewith creating the Central American Integration System (SICA).

SICA combines intergovernmental and supranational elements, following its model: The European Union (EU). There have been created organs similar to those in the EU, however, there can be found significant differences between the two frameworks.

Supranational organs are a particularity of *sui generis* integration systems like the EU and SICA. This bachelor thesis wants to examine the extent of SICA's supranationality. For this, there will be first compared the decision-making processes in the EU and SICA, in order to provide an overview of the functioning of each system. Which organs are involved and to what extent? The main part of the thesis will then be dedicated to a comparison of the principal organs of each system – their composition, their competences, their limitations – answering the main research question: To what extent can the supranational features known from the EU be found in SICA?

In order to put SICA not only in an international, but also in a regional context, i.e. in a context where political, social and economic circumstances are similar, there will, when examining the supranational organs in the EU and SICA, be made references to the two

probably best-known integration systems in Latin America: the MERCOSUR and the Andean Community. For a better understanding, and before starting the comparison, there will be given an overview of all three integration systems in Latin America; thereby, the Central American integration process and its integration system will be described in more detail. There will be renounced a description of the European integration process, as this is assumed to be known.

2 Methodology

The content of this bachelor thesis will be based mostly on the results of a comprehensive desk research, including academic literature as well as relevant treaties, Courts' judgements, newspaper articles and other primary literature. There will be used literature published in English, German and Spanish. In addition to this, there will be used the results of several interviews, 16 in total, which have been done during a field study trip to Guatemala City, the seat of the Central American Parliament (PARLACEN), from March till May 2007.

3 Integration Systems in Latin America

The idea of integration is not new in Latin America. Already in 1821, shortly after Latin America had gained independence from its European colonial powers, *El Libertador* Símon Bolívar founded *Gran Colombia*, a federation covering the territory of modern Panama, Colombia, Venezuela and Ecuador. Three years later, there were created the *United Provinces of Central America*, including what today are the states of Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica.

However, these and following integration attempts never were of long duration. It took until the late 1940's/ early 1950's, when the development strategy introduced by the newly-found *United Nations Economic Commission for Latin America* (ECLA) represented a break-through. The strategy, also known as the "ECLA doctrine" explains underdevelopment in Latin America as the result of an international system composed of a centre and a periphery. This structure is the cause as well as the result of an international division of labour, wherein the centre produces and exports manufactured goods while the periphery produces and exports raw materials and commodities. As prices of manufactured goods have risen faster than the prices of raw materials, this has created an unequal exchange between North and South, and is hence the main cause of Latin American underdevelopment. This can only be overcome by industrialisation based on import substitution. But as national markets are too small, only regional integration can provide the larger markets and the accompanying economies of scale necessary for industrialisation. Industrialisation will then take place in an economic environment constrained by state regulation, and when necessary, state intervention will lead to the modernisation of Latin American societies and, eventually, their inclusion in the First World (Mace; Bélanger 1999: 3).

Following this doctrine, in Latin America there were started several integration processes, substituting the hitherto prevailing political integration attempts by means which supported economic integration. The two best-known and currently valid frameworks are described now, followed by a detailed description of the Central American integration process and its integration system.

3.1 The Common Market of the South (*Mercado Común del Sur*, MERCOSUR)

On 26 March 1991, the Presidents of Argentina, Brazil, Paraguay and Uruguay signed the "Treaty for the Constitution of a Common Market". The so-called *Asunción Treaty* laid down the principles and goals of an integration process which led to the "first customs union of the continent" (Bernal-Meza 2001: 30). However, MERCOSUR cannot be reduced to its impact on the economic cooperation between the Member States:

> *"In the first place, rather than a commercial and economic, [MERCOSUR] is a political project"* (ibid.)[1]

MERCOSUR's political dimension was considerably strengthened wit the *Ouro Preto Protocol* signed on 17 December 1994. MERCOSUR was given juridical personality and received its institutional structure. The Member States now were to respect decisions adopted by regional organs. The extent of this commitment is limited though, as – until today – the organs created in Ouro Preto are purely intergovernmental (ibid.: 51). An organisation chart of MERCOSUR's institutional structure can be found in the annex. To individual organs there will be referred when comparing the EU and SICA.

The *Ouro Preto Protocol* fell into a period of about five years, when MERCOSUR could score successes. There was established a free-trade area and a customs union, and intra-regional trade increased by 200%. At the same time, the political coordination was improved: During the 10th Summit in San Luis, Argentina in 1996, it was decided that only democratic states could be members of MERCOSUR. This way, MERCOSUR effectively reacted on the repeating governmental crises in Paraguay. In fact, MERCOSUR was that successful, that in 1996, Chile and Bolivia signed Association Agreements.

At the end of the 1990's MERCOSUR entered into a crisis. The economic growth decreased and there arose several trade conflicts, in particular between Argentina and Brazil. The latter furthermore had to fight its immense financial crisis; by overcoming it, MERCOSUR passed its first serious acid test. However, and whereas Brazil could recover, Uruguay and

[1] Own translation from Spanish.

Argentina continued to suffer from the consequences the crisis had for the whole region. On the other hand, in political, cultural and military ambits there was made progress. There was created a MERCOSUR passport and there were developed first attempts towards a common foreign and security policy, as well as a cooperation in other policy areas (Gratius 2001: 41-43).

However, until today, MERCOSUR has never been able to overcome its fundamental problems. The traditional rivalries between Brazil and Argentina time and again cause conflicts. Besides disputes in economic ambits, the two countries also disagree with regard to the institutional structure of MERCOSUR. Brazil, as MERCOSUR's largest country, is opposed against the creation of supranational organs which would strengthen the integration process. In view of these disputes between the two biggest Member States, the smaller Member States fear not to be heard at all. With regard to Brazil and Uruguay, there has to be added, that the constitutions of these two countries do not contain any regulations which would allow the government to transfer competences to supranational institutions (Pena; Rozemberg 2005: 5-6). MERCOSUR's biggest problem, however, is the missing common strategy towards the USA, the conflicts having arisen from this will most probably be intensified, when Venezuela and Bolivia will become ordinary members of MERCOSUR. Uruguay, on the other hand, meanwhile questions its membership, as MERCOSUR does not allow its members to negotiate bilaterally with third countries (Ruiz-Dana et al. 2006: 17).

3.2 The Andean Community of Nations (*Comunidad Andina de Naciones*, CAN)

On 26 May 1969, the governments of Bolivia, Chile, Colombia, Ecuador and Peru signed the *Cartagena Agreement*, therewith founding the Andean Pact. This Pact was to promote the development of the Member States through economic and social integration. In 1973, Venezuela joined the Pact, whereas Chile – under Pinochet – left it in 1976 (Zimmek 2005: 13). Meanwhile, since September 2006, Chile is an associated member of the Andean

Community as the Pact is called since 1996[2], whereas Venezuela resigned from its membership in April 2006.

At a quick glance, the CAN is an exemplarily integration system for Latin America. In the *Sistema Andino de Integración* (SAI), established in 1996, there are combined intergovernmental and supranational organs. An organisation chart can be found in the annex. However, in SAI there has not been realised a real transfer of competences to supranational organs, the decision making process is exclusively dedicated to intergovernmental institutions (Cárdenas 2005: 17-18). The role of supranational organs in SAI will be examined in more detail when analysing the respective European and Central American organs.

However, the main problem of the Andean Community are not its institutional deficits, but the diverging economic interests of the Member States. Before leaving CAN, Venezuelan President Hugo Chávez had heavily criticised the negotiations for free trade agreements between several Member States of the Community and the USA. And also Bolivian President Evo Morales now seems to be more interested in joining MERCOSUR than intensifying integration in CAN. Furthermore, with Venezuela there has left one of only three countries – besides Venezuela also Colombia and Ecuador – which had already harmonised their customs. In view of these developments, a continuance of the Andean Community is not very likely (Zimmek 2005: 13).

3.3 The Central American Integration Process and its Integration System SICA

3.3.1 The Central American Integration Process

As already mentioned, the Central American integration process is not a new phenomenon. Already in 1824, shortly after the Central American countries had gained independence from

[2] On 10 March 1996, the Trujillo Agreement was signed, renaming the Andean Pact into Andean Community.

Spain, respectively from Mexico, there were founded the *United Provinces of Central America*[3]. But the wish to establish a strong union able to compete with its larger neighbouring countries soon became inferior to the interests of the local oligarchy, who did not want to lose certain privileges (Zimmek 2005: 4-5).

Furthermore, the newly-found republics had not yet gained stability, neither towards the outside nor with respect to their internal matters. Their financial situation was grave, social tensions arose and a mostly uneducated population feared and distrusted the ones they were ruled by (ibid.: 5). Post-independence history was characterised by "small wars, border conflicts and personal feuds between national political leaders" (Wynia 1970: 321).

In 1907, the governments of the USA and Mexico launched an initiative to end these skirmishes. In Washington, on 14 December, the governments of the five Central American "core countries" signed a "Convention to establish a Central American Court of Justice"[4]. Each of the Member States appointed one Judge and on 25 May 1908, the *Court of Cartago*, named after the Costa Rican town where it was located, started its work,. The Convention was to last ten years, with the possibility to prolong its period of validity. That this prolongation was not realised in the end, was mainly due to the fact, that at least one country was no longer willing to pay for the maintenance of a Court, whose judgements were not always respected. During the ten years of its existence, the Court decided about 16 sues of citizens against the State, and judged three disputes between governments. In retrospective, it had not been so much the work the Court had done, which had been remarkable. Rather, it had been the worldwide first creation of a permanent international tribunal which had made famous this *Court of Cartago* (Giammattei 2002: 509).

It took until the mid-20th century, when the next serious attempt towards integration was started. On 14 October 1951, following a Guatemalan initiative, there was signed the *Constitutive Charter of the Organisation of Central American States (ODECA)* in San Salvador. In ODECA, the Foreign Ministers of the region held a special position. They were supposed to

[3] With the Constitution of 1824 there were founded the "Provincias Unidas del Centro de América". This Constitution was replaced in 1842, when El Salvador, Honduras and Nicaragua founded the "Confederación Centroamericana". In 1898, the same countries formed the "Estados Unidos de Centroamérica". In 1921, Guatemala, El Salvador and Honduras adopted the Constitution of the "República de Centroamérica". However, none of these later integration attempts receives much attention in today's literature. The Constitutions mentioned here can be found on the official website of the "Instituto Cervantes": http://www.cervantesvirtual.com/portal/constituciones/Rep_Fed_Centroamerica/rep_fed_centroamerica.shtml

[4] In Spanish, this Court was called "Corte de Justicia Centroamericana", whereas the Court which today forms part of SICA is called "Corte Centroamericana de Justicia".

meet in order to advance political aspects of regional cooperation. But the Ministers from different countries were equipped differently with regard to their competences. Furthermore, ODECA was insufficiently institutionalised. Although there were created eight organs[5] in total, there was clearly missing an effective Secretariat General to coordinate the actions of these organs (Caldentey 2000: 127; 185).

These insufficiencies of ODECA were intensified by the introduction of the "ECLA doctrine". Originally created for the large Latin American countries, the strategy was soon adopted by Central American leaders, who regarded it as offering both an explanation for their economic difficulties as well as a signpost how to overcome them and how to initiate economic development. Almost consequently, it soon turned out, that political aspects would take second place after economic integration. (Wynia 1970: 322).

The Central American Common Market

On 13 December 1960, in the Nicaraguan capital Managua, there was firmed the General Treaty on Economic Integration (TGIE), which replaced the bilateral accords on free trade concluded by that time. Within five years, there was to be completed the Central American Common Market (MCCA), i.e. there was to be secured the free movement of production factors. Furthermore, there was strived for a customs union (Caldentey 2000: 128; 193).

There were established regional institutions to oversee the process of regional development. The Secretariat of Central American Economic Integration (SIECA) was founded to give technical and administrative support, and the Central American Bank for Economic Integration (BCIE) was entrusted to help the weaker Member States like Honduras and Nicaragua (Bulmer-Thomas 1998: 315).

During its first decade of existence the MCCA produced positive results. Supported by a boom on international level, the prices for the traditional export products increased and there was realised a modernisation of production structures, in particular through the development of an industrial sector. Interregional trade increased significantly; here, 90% of the goods traded were industrial (ibid.: 207).

[5] These organs were: Meeting of Heads of State, Conference of Ministers for Foreign Affairs, Executive Council (formed by the Ministers for Foreign Affairs), Legislative Council (each Member State appoints three members from its national legislative body), Central American Court of Justice (formed by the Presidents of the national Supreme Courts, this Court in practice never started its work), three portfolio Councils (economy, culture and education, defense).

Progress was basically due to "the quiet success of the ministers of economy or 'tecnicos' working through the Central American Committee for Economic Cooperation under ECLA tutelage in contrast to the more politicised and less successful foreign ministers who simultaneously attempted to structure an integration process through the Organisation of Central American States (ODECA)" (Wynia 1970: 323). Political and economic costs of integration were low; integration did "not threaten any powerful economic interests, and governments [had] not granted decision-making powers to supranational institutions […] Most of the costs of administering regional institutions [had] been paid by foreign sources like the United Nations, the United States Agency for International Development, and the Inter-American Bank" (ibid.: 329).

But then it turned out, that the Member States did not equally benefit from the "underdeveloped world's most successful regional integration effort" (ibid: 319). This was mainly due to the fact, that the MCCA produced net trade diversion, i.e. cheaper imports from the rest of the world were replaced by more expensive imports from a Central American partner country. Net trade diversion is not necessarily negative, in fact, it has welfare-enhancing effects, when it goes along with an increase in domestic production and intra-regional exports. Furthermore, benefits have to be distributed equally among the countries of the region (Bulmer-Thomas 1998: 313).

This was not the case with the MCCA. The country which was most affected by the negative consequences of net trade diversion, was Honduras. Whereas countries like Guatemala and El Salvador highly profited from the MCCA, Honduras with its small manufacturing sector was not able to compete (ibid.: 315).

The "soccer war" between El Salvador and Honduras

The tensions resulting from this reached their peak in 1969, when the "soccer war" between El Salvador and Honduras broke out. But the unrests arising after two football matches between Honduras and El Salvador during the qualification phase for the World Cup 1970 in Mexico were only the outward cause. Actually, the war was mainly the result of worsening conflicts over lands. As the Salvadoran oligarchy had been unwilling to support a domestic land redistribution, Salvadoran farmers had increasingly emigrated to Honduras, reaching a number of 300,000. Furthermore, cheap Salvadoran manufactures had been established in the

neighbouring country, which had acute negative impacts on the Honduran economy, traditionally already significantly weaker than the Salvadoran one. When the Salvadoran farmers were forced by the Honduran government to leave the country, this was the trigger to military conflict. Salvadoran President Sanchez Hernandez, who feared to be overthrown when not being able to solve the conflict in favour of El Salvador, let his army march into Honduras. The conflict caused about 6,000 deaths and ended with an arbitration by the Organisation of American States (OAS). Although it had lasted only 4 days, the "soccer war" had serious impacts on the MCCA, and hence on the integration process. In 1970, Honduras resigned, as the country no longer wanted to be part of an institution, in which also participated El Salvador. Although officially existing until 1993, the MCCA was practically dead after Honduras had left it (Sieder 1995: 111; Anderson 1981). The same was, by the way, true for the Court of ODECA, which then definitely became meaningless (Giammattei 2000: 511)

The "lost decade" of the 1970s and the "revival" of the integration process in the 1980's

The 1970s were a "lost decade"[6] for the Central American Integration Process. For the region, the decade was characterised by two major events: The oil crisis and the decline of the MCCA. The slightly increasing prices for traditional export products, due to the oil crisis, and the resulting profits could only partly compensate the costs resulting from the increasing prices for imported energy products. To save energy and also because of the decline of the MCCA, the industrial production was reduced to a minimum, which resulted in a return to an economic strategy based on exporting crops. But technical progress had not ignored the agricultural sector. The mechanisation of agricultural production processes led to a decrease in need of labour. Logical consequences of this development were migration of rural workers to the cities and a growing proletariat. The social crisis arising from this led to guerrilla upsurges and finally to civil wars in Guatemala, El Salvador and Nicaragua (Caldentey 2000: 130).

The economic problems of the 1970s were transferred to the 1980s. Drops in production, in particular in the industrial sector, high inflation rates resulting in decreasing real wages,

[6] Stated by Hector Ruano, deputy Secretary for Parliamentary Affairs in PARLACEN during an interview on 05-03-2007.

fiscal crises because of enormous external debts characterised the decade, which is also known as the "lost decade" for the whole of Latin America. In Guatemala, El Salvador and Nicaragua the civil wars reached their peak (ibid.: 141-142). The *Sandinistas* in Nicaragua were confronted with immense US intervention and, after initial sympathy had vanished, represented political dynamite for the region, which was, with the exception of Costa Rica, otherwise governed by rightist military regimes (ibid.: 158; 257-258).

But in contrast to the 1970s, the 1980s were not only characterised by economic decline and civil wars, but also – and for all that – by efforts of the Central and South American states to solve the conflicts in the region by themselves, without US American intervention. On 8 and 9 January 1983, following an invitation of Panama, governmental representatives from Mexico, Colombia, Venezuela and Panama met on the Panamanian island Contadora (Caldentey 2000: 258). By 1986, the *Contadora* Group, together with the Presidents of the five "core" Central American countries and the *Contadora* Support Group (Peru, Argentina, Brazil, Uruguay) had elaborated a draft treaty, stipulating the demilitarisation of the conflicts and their resolution through negotiation. But *Contadora* fell short of its objectives, mainly because the USA, in the middle of the Cold War, were opposed to it. (Lederach; Wehr 1991: 88-89). In 1984, under US American pressure, the Tegucigalpa Bloc, formed by El Salvador, Honduras and Costa Rica, had already refused to sign a former treaty. Officially, the reason was given, that the three countries did not feel sufficiently protected against Nicaraguan aggressions (Caldentey 2000: 259).

From Contadora to Esquipulas I

But although *Contadora* failed with the realisation of its objectives per se, it created the bases for the *Esquipulas* Process:

> *"[Contadora] provided a consultative history and framework, and a comprehensive and accurate diagnosis of the region's conflicts. Most important, perhaps, it was an example of Central American regional independence. Contadora happened not only without but in spite of US policy."* (Lederach; Wehr 1991: 89)

The Reagan administration in the USA was also opposed to a new peace initiative, pursued in 1986 by the newly elected Costa Rican President Oscar Arias Sanchez. In 1948, Costa Rica had abolished its military to become "an oasis of peace and democracy in the middle of the troubled region" (Oliver 1999: 153). But it had also offered its territory to the *Contra* bases, US supported military units fighting against the *Sandinistas*. When the Nicaraguan crisis started to threaten its neighbour Costa Rica, and heavy flows of immigrants put enormous pressure on the little country, it was time to re-think. In order to restore "Costa Rica's moral authority", Arias closed the *Contra* bases on the country's territory, and by doing this incurred Reagan's ill-humour. But this step "gave Costa Rica a better bargaining position vis-à-vis Nicaragua and the rest of the Central American states, demonstrating Costa Rica's and Arias' respect for international law" (ibid.).

It was favourable, that Reagan's popular support in the USA had vanished by that time, due to the 1986 Iran-Contra scandal. Several members of the Reagan administration had been accused of being involved in illegal arms sales to Iran. And as the *Contras* in Nicaragua had already been militarily defeated, which was equal to a defeat of the USA, the US Congress was not longer willing to grant further money for US interventions in Central America (cf. ibid.). Hence, Arias was provided with a greater scope, and as he concentrated on simplifying the negotiations by temporarily setting aside security issues, which had been highly controversial during *Contadora*, he finally got the support of the other Central American presidents (Lederach; Wehr 1991: 89).

The *Declaration of Esquipulas* of 25 May 1986, also known as *Esquipulas I*, was a first important step towards peace in the region. In fact, this meeting, realised on invitation of Vinicio Cerezo Arévalo, Guatemala's first democratically elected civilian President since the 1950s, was the first gathering of all Central American Heads of State in over ten years (Oliver 1999: 152).

Nicaragua first had been excluded from the *Esquipulas* Process, as Arias had intended to "build a united front among the democratically-oriented countries of the region" (ibid.: 154). He had then succeeded in convincing Daniel Ortega, that in return for initiating a democratisation process in Nicaragua, Ortega could demand the closure of *Contra* bases in Nicaragua's neighbouring countries, in particular in Honduras. A key event was the verdict

of the International Court of Justice (ICJ), in favour of Nicaragua and against the USA.[7] The verdict further legitimised the *Sandinista* regime and made the other Central American Presidents re-define their position on Nicaragua and respecting Ortega as an equal partner in later negotiations (Oliver 1999: 153).

By signing *Esquipulas I*, the Central American Presidents acknowledged the importance of the objectives set by the *Contadora* Process. It was decided to formalise the Presidential meetings in order to discuss the most urgent problems with regard to peace and regional development and to find solutions to them. The signatories committed themselves to promote pluralistic and participative democracy, which include social justice, the respect of human rights and the recognition of other states' sovereignty and territorial integrity. Furthermore, and most important, it was decided to found a Central American Parliament. Through this Parliament, it was provided, that there would be supported comprehension and cooperation between the Member States, these being necessary prerequisites to create dialogue, development, democracy and pluralism as fundamental elements of peace and regional integration (*Esquipulas I Declaration*, 25.05.1986).

Esquipulas II and the Tegucigalpa Protocol

With the "*Procedimiento para Establecer la Paz Firme y Duradera en Centroamerica*" (*Esquipulas II*) one year later, on 7 August 1987, there was created a framework for mediated negotiation, both among the signatory governments and between them and their respective insurgent opponents (Lederach; Wehr 1991: 89-90). By signing the *Esquipulas II* Agreement, the signatories committed themselves to promoting

(1) national reconciliation, including dialogue between all actors in politics and society, amnesty to political prisoners and the establishment of national reconciliation commissions;
(2) an end on hostilities through cease-fires;
(3) democratisation by realising the commitments of *Esquipulas I*;

[7] For their support of the Contras and their activities against the *Sandinistas*, the ICJ, in June 1986, found the United States guilty of having "violated several customary international law norms, including the obligations not to intervene in the internal affairs of another state, not to use force against another state, and not to violate the sovereignty of another state" (Oliver 1999: 153).

(4) free elections, in particular of the Central American Parliament, which were to be held simultaneously in all Central American countries in the first semester of 1988;
(5) an end on support of irregular and insurrectionist forces and to a reintegration of those people having belonged to them;
(6) the prevention of the use of their territory for attacks on other states;
(7) negotiations on security, verification and the control and limitation of weapons;
(8) support for refugees and replaced persons, with regard to health, education, work and security, and, when requested, resettlement;
(9) cooperation, democracy and liberty, with the realisation of social welfare and social and economic justice as necessary prerequisites for democracy;
(10) international verification and follow-up; and
(11) a timetable for the fulfilment of commitments.

(*Esquipulas II* Declaration, 07 August 1987)

With *Esquipulas II*, Arias had created his masterpiece, for which he was awarded with the 1987 Nobel Peace Prize (Caldentey 2000: 263). *Esquipulas II* recognised each of the five regimes as legitimate governments. This was essential not only for the *Sandinistas*, but also for El Salvador and Guatemala, where the civil wars had reached their peak. And *Esquipulas II* "found a nearly magical formula for dealing with the question of US military assistance in the region" (Oliver 1999: 155). Asking for an end on support of all irregular and insurrectionist forces, the Central American countries, in particular Honduras, were forced to close *Contra* camps on their territory. This commitment gained further strength and urgency through the ICJ verdict, and there could be fulfilled a fundamental Nicaraguan demand. But at the same time, foreign militaries were allowed to stay, as long as they were not using the territory of one state to attack another. This was especially important for Honduras and El Salvador, both heavily relying on US military aid (Oliver 1999: 155).

In December 1991, the 11th Presidential Meeting since *Esquipulas I* ended with the adoption of a protocol, which represented a new juridical framework for the integration process: The *Tegucigalpa Protocol on the ODECA Charta*. With the *Tegucigalpa Protocol* there was substituted the ODECA by the *Central American Integration System (SICA)*. Furthermore, As the sixth

country, Panama was integrated (Caldentey 2000: 285). With the introduction of SICA, it was also agreed on a reform of the TGIE. In October 1993, on their 14th Meeting, the Presidents adopted the *Guatemala Protocol*, hence replacing the Treaty from 1960. The integration framework was completed, for the time being, by the adoption of the *Treaty on Social Integration* and the *Treaty on Democratic Security*, both in 1995. They all completed the *Tegucigalpa Protocol*.

3.3.2 The Central American Integration System (SICA)

The "core" of SICA is formed by the regulations laid down in the Tegucigalpa Protocol. According to its Art. 1, "Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama constitute an economic and political community which seeks to promote the integration of Central America." Art. 2 and 3 name the purpose and goals of SICA: "The Central American Integration System shall provide the institutional framework for the regional integration of Central America. The fundamental objective of the Central American Integration System is to bring about the integration of Central America as a region of peace, freedom, democracy and development."

According to Art. 5, the accession to SICA is possible for all Central American states. Strictly speaking, only Belize, a Central American country which is part of the Commonwealth, would have the possibility to join.[8] But the term "Central America" is interpreted in a way, that meanwhile also the Dominican Republic, a Caribbean country, participates in SICA and has sent representatives to PARLACEN.[9]

Art. 12 lists the organs of SICA: The Meeting of Presidents, the Council of Ministers, the Executive Committee, the General Secretariat, the Meeting of Vice-Presidents, the Central American Parliament, the Central American Court of Justice and the Consultative Committee. The first four organs are the "core organs" of SICA, whereupon the Executive

[8] Meanwhile, Belize has a special position within SICA. It participates in the *pro témpore* presidencies, but is not integrated otherwise.

[9] The Dominican Republic is, apart from Cuba, the only Caribbean country, where Spanish is the official language. Cultural and historical aspects make the country feel closer to Central America than to the rest of the Caribbean. The country sees itself as a bridge between the two regions.

Committee and the General Secretariat are supranational organs.[10] Regulations concerning the functioning of the SICA organs are laid down in the Tegucigalpa Protocol, the Guatemala Protocol, the Treaty on Social Integration, the Constituent Treaty of PARLACEN, and the Statute of the CCJ. Furthermore, there have to be mentioned the ODECA Charter (1951) and the TGIE (1960), as Tegucigalpa and Guatemala are only Protocols to these and have not made them invalid. These Treaties and Protocols, together with the documents relating to them, form the Primary Law of the integration (Guerrero 2007; Caldentey 2003: 37).

The institutional design of SICA is completed through specialised technical Secretariats, regional institutions and ad-hoc intergovernmental Secretariats. The most important specialised technical Secretariats are the SIECA, the Secretariat of Social Integration (SIS), the General Secretariat of Education and Culture (SG-CECC) and the Executive Secretariat of the Central American Commission for Environment and Development (SE-CCAD). Among the regional institutions there can be found the BCIE as the best-known one. Besides, there are integrated numerous commissions, councils and institutes. An example for an ad hoc intergovernmental secretariat would be the Council of the Central American Isthmus for Sports and Recreation (CODICADER) (Caldentey 2000: 321).

This list could be continued almost infinitely. As all regional facilities ever created in the course of the Central American integration process are integrated in SICA, as long as they do not violate the Tegucigalpa Protocol and its related documents, there has been created a complex system, which is highly in danger to lose its effectiveness. Numerous institutions only exist for their own sake (ibid.: 340.341).

The incorporation of the institutions is made by assignment to the five sub-systems of SICA: the political, the economic, the social, the cultural and the ecological sub-system. This institutional design shall contribute to the new comprehensive model of Central American integration, staying in contrast to the purely economically oriented model of the past. However, the economic sub-system is still the best coordinated, followed by the social sub-system. Both have been assigned a framework, laid down in the Guatemala Protocol and the Treaty on Social Integration (Bollin 2000: 104; Caldentey 2000: 306).

[10] Due to practical reasons, the detailed analysis will be focused on these "core organs" plus the PARLACEN and the CCJ. The Meeting of the Vice-Presidents and the Consultative Committee will be mentioned when appropriate.

4 The EU and SICA in Comparison

4.1 Decision Making Processes and the Execution of Decisions

4.1.1 in the EU

EU legislation is issued in three binding forms and two non-binding forms, all laid down in Art. 249 EC Treaty:

> *"In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States. A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. A decision shall be binding in its entirety upon those to whom it is addressed. Recommendations and opinions shall have no binding force."*

The majority of administrative legislation – i.e. most regulations and decisions – is issued in the name of the Commission, acting on the basis of delegated rule-making powers. Most policy legislation – i.e. many directives and a few regulations and decisions – is issued in the name either of the Council (with the consultation and cooperation decision-making procedures applying) or of the EP and the Council (with the co-decision or assent procedures applying) (Nugent 2001: 235-236).

In the ambits of the EU's first pillar, the Commission has the exclusive power to formally propose and draft legislation. The EP and the Council each have the power to "request" that the Commission submit proposals on matters they deem to be appropriate, but they cannot insist upon it. Still, it cannot be said that EU legislation originates with the Commission, as it does not act wholly on the basis of its own ideas and preferences. The Commission has to

honour treaty or international obligations, it is adjusting or developing already established policies, or it is responding to suggestions and requests of others (ibid.).

In the ambits of the EU's second and third pillar, the Commission's powers are limited vis-á-vis the European Council and the Council of Ministers. Art. 27 and 36 TEU state that the Commission "shall be fully associated with the work" in these ambits, but the right of initiative has to be shared with the Member States, as it is stipulated in Art. 22 (1) and in Art. 34 (2).

The above mentioned four procedures refer to the powers of the EP in the legislation process. The consultation procedure is a single reading procedure in which the Council is the sole final decision-maker. However, it cannot take final decisions until it ahs received the opinion of the EP. The cooperation procedure is different from the consultation procedure, as there are two readings and it is much more difficult for the Council to ignore the opinion of the EP. If the EP rejects the Council's "common position", unanimity in the Council is required to still adopt the act as it is (Nugent 2001: 254-255).

The real breakthrough has been the introduction of the "procedure referred to in Art. 251", the so-called co-decision procedure. Here, the EP shares with the Council real legislative power (Mathijsen 2004: 59). In contrast to the cooperation procedure, where the Council can still adopt the text if it finds unanimity, under the co-decision a legislation falls if the Parliament rejects the common position by a majority of its members. If Parliament amends the common position, it returns to the Council, which can adopt it, when it agrees with each and every amendment. If this is not the case, the matter is referred automatically to a conciliation committee, formed by an equal number of members of the Council and the Parliament, and also attended by the Commission. This Committee is to negotiate a compromise text to be approved by the Council and the Parliament. If there cannot be reached an agreement, the text automatically falls and cannot become law (Corbett 2005: 207).

When first introduced under the TEU, co-decision applied to 15 legal areas of Community action, amounting to about one-quarter of the legislative texts that passed through the Parliament. Meanwhile, co-decision can be regarded as the normal legislative procedure, covering more than half of the Community's primary legislation (ibid.: 210).

> *"Both in quantitative and in qualitative terms, Parliament has made a significant difference to the shape of Community legislation, a difference that goes well beyond what could have been achieved under either the consultation or cooperation procedures. Co-decision has created a new dynamic within the legislative arena of the European Union."* (ibid.: 218)

However, like the Commission, the EP has only limited powers in the supranational pillars of the EU. There, the EP has only consultative functions, i.e. the Council is the sole decision-maker. The Council's decisions in these ambits usually require unanimity to be adopted (Art. 23 TEU). To prevent blockades, there exists the possibility of a qualified abstention, meaning that Member States may reject the implementation of a decision for themselves, without rejecting the implementation per se in the other Member States (Art. 23(1)). In some cases, there is also possible a decision by majority vote (Art. 23(2)).

The introduction of co-decision did not only change the EP's role in the EU's legislation process, but also the influence of the Commission. Moravcsik, one of the best-known intergovernmentalists, states, that the EP's empowerment has only become possible because there has not happen so much a shift of power away from the Council towards the EP, but rather a shift of power away from the Commission (Moravcsik 1999 in Burns 2002: 70). Burns examines this in her 2004 article *Codecision and the European Commission: A Study of Declining Influence?*:

Burns notes, that under the consultation procedure, legislation is negotiated between the Commission and the Council, leaving the Parliament out for the most part. But, as the Council has to decide by unanimity, the Commission's agenda-setting power is limited, as it has to secure the support of all member state governments. The Commission's position has been strengthened with the introduction of qualified majority voting, at the same time the EP's influence has increased with the cooperation procedure. Under cooperation, the Commission still plays a central role, as a positive opinion on the Parliament's amendments by the Commission requires unanimity from the Council to reject those amendments, but only a qualified majority to adopt them.

With the introduction of the co-decision, the Commission has now become formally excluded from the final stages of decision-making. Furthermore, its role as an informal interlocutor has been eroded: The absence of formal power excludes the Commission from the – under co-decision intensified – informal inter-institutional contacts between the EP and

the Council. Burns hence agrees, that there has been indeed a strengthening of the EP's role on the Commission's costs. However, Burns is opposed to widespread assumption, that the Commission has lost its agenda-setting power; this would underestimate the importance of the Commission's initial right of proposal. As it can be said with Nugent's (2001: 261) words:

> *"The Commission's influence over legislation is most obvious in the early stages of law-making, when decisions are made about which of the many policy ideas […] ought to be formulated into legislative proposals and when the initial drafting of proposals – over which the Commission has exclusive power – is undertaken. Once drafts have been approved by the College and become formal Commission proposals the Council and the EP become the main policy actors in so far as they are the formal decision-takers."*

Summarising it can be stated, that the supranational organs – the Commission and the EP – have substantial powers in the EU's first pillar legislation. In the ambits of CFSP and JHA, their influence is significantly limited. This is especially valid for the EP, which has only a consultative function. The dominant actor in the EU's legislation is the Council, an intergovernmental organ.

4.1.2 in SICA

The Tegucigalpa Protocol does not stipulate categories of juridical and administrative acts in SICA. However, posterior documents to the Tegucigalpa Protocol describe the differences which in practice have been established:

> *"The Meeting of Presidents expresses its will through three types of administrative acts: A resolution is an obligatory act, through which the Meeting of Presidents, by unanimity, adopts decisions referring to internal matters of SICA. A directive is an obligatory act, through which the Meeting of Presidents formulates specific instructions for SICA organs and institutions. A declaration is an act through which the Meeting of Presidents formulates its political will about general aspects of integration or international cooperation."* (SG-SICA document 1994 cited in Caldentey 2000: 325)

In contrast, the Guatemala Protocol and the Treaty on Social Integration explicitly distinguish between different administrative acts in the ambit of economic and social integration. For the economic integration, Art. 55 Guatemala Protocol states:

> *"The administrative acts of the sub-system of economic integration shall be expressed through resolutions, regulations, agreements and recommendations. The resolutions are obligatory acts through which the Council of Ministers for Economic Integration shall adopt decisions referring to internal matters of the sub-system, like the functioning of the organs and the follow-up of institutional politics of economic integration. The regulations shall have general character, obligatory in all their elements, and shall be directly applied in all Member States. The Consultative Committee shall be consulted. The agreements shall have specific or individual character and are obligatory for their addressees. The recommendations shall contain orientations which only shall be obligatory in their objectives and principles and which shall serve to prepare the emission of resolutions, regulations and agreements. […]"*

The legislation process in SICA basically has four stages. In the first stage, the different Councils of Ministers, the specialised technical Secretariats or other institutions of the sub-systems elaborate proposals which are then submitted to the SG-SICA. In a second step, these proposals are consolidated by the SG-SICA in collaboration with the competent specialised technical Secretariats. The consolidated initiatives are then analysed by the *pro tempore* Presidency with regard to their contribution to the priorities and general objectives of SICA and their adaptation to the current political circumstances. This analysis is realised in close cooperation with the SG-SICA. The initiatives are then included in the preliminary draft for the presidential summit agenda, elaborated by the *pro tempore* Presidency. This preliminary draft is discussed by the CRE, which then presents to the Presidents the final agenda, including their recommendations with regard to the initiatives. Finally, the initiatives are adopted by the Presidents, assisted by the CRE and the SG-SICA.

After the initiatives have been adopted, the process of executing the presidential decisions is started. Often, the Presidents explicitly instruct a particular organ to execute a initiative. The follow-up of the execution of intersectional decisions is the principal task of the CRE, which shall realise this together with the CE-SICA and the SG-SICA. The follow-up of the execution

of sectional decisions is realised through the respective competent Councils of Ministers and the specialised technical Secretariats, under the coordination of the SG-SICA and the overall supervision of the CE-SICA (Caldentey 2000: 322-324).

Summarising, it can be stated that the intergovernmental organs, the Meeting of Presidents and the Council of Ministers are the determinant actors in SICA legislation processes and the execution of the decisions. Of importance are also the SG-SICA and the CE-SICA. It is striking, that the PARLACEN is not mentioned at all, although one would have expected a parliament to play an active role in these processes.

4.2 The Role of the Heads of State and Government in the EU and in SICA

4.2.1 The European Council

As already stated, the European Council is not a Community organ, according to Art. 7 EC Treaty. It is, however, mentioned in the European Union Treaty (Art. 4), but separately from the other institutions (Art. 5).

The European Council plays a major role in European affairs. According to Art. 4 TEU,

> *"[t]he European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof. The European Council shall bring together the Heads of State or Government of the Member States and the President of the Commission. They shall be assisted by the Ministers for Foreign Affairs of the Member States and by a Member of the Commission. The European Council shall meet at least twice a year, under the chairmanship of the Head of State or Government of the Member State which holds the Presidency of the Council."*

Creating the European Council had been regarded necessary, when the EC, in the 1960s, had entered into a crisis. De Schoutheete (2002: 23-24) names the following reasons for why the European Council finally became formalised in 1974:

> *"Community institutions were felt not to be working as well as they should, especially since the Luxembourg compromise of 1965 was in practice blocking majority voting. The first enlargement of the Community was likely to make decision-making more ponderous. The creation of a regular (as opposed to an occasional) source of strategic direction and political impulse made sense in this context. Foreign ministers were (already!) finding it difficult to coordinate the activities of a growing number of Council formations. Moreover, European Political Cooperation posed a problem. Some member governments, France in particular, were insisting that Community institutions should have no authority whatsoever in this new activity. […] Introducing the heads of government as the ultimate source of authority, with foreign ministers at their side, was felt to be the only way, or the least controversial way, to ensure coordination and consistency."*

De Schoutheete (2002: 30) sees the European Council not as an institution, but as a "locus of power", which is highly ambivalent. The European Council's powers, procedures, decision-making processes are not determined by the Treaty, yet its role is fundamental to the life of the EU: "Nothing decisive can be proposed or undertaken without its authority" (Taulègne 1993 cited in de Schoutheete 2002: 34).

> *"However, in all cases, the input of the European Council, which takes the form of a political decision, only has legal force once it has been adopted by the Council according to the relevant legislative procedures. To this extent, the two levels are interdependent: without the preparatory and executive functions of the Council, the European Council would be unable to function."* (Heyes-Renshaw and Wallace 1997: 164)

The European Council's decisions are political, not legal. In one aspect, however, the European Council is in fact legislating: when it acts as a negotiator and modifies the Treaties. Here, de Schoutheete sees considerable danger:

"Negotiation at the highest level is risky: miscalculations or tactical errors occur and cannot, in most cases, be corrected."[11]

De Schoutheete contradicts Moravcsik for whom "the creation of the European Council was explicitly designed to narrow rather than to broaden the scope for autonomous action by supranational actors" (Moravcsik cited in de Schoutheete ibid.: 32). He states, that since 1974 there has been a considerable increase in the powers of supranational institutions. An important reason for this development he sees in the fact that

"for most of the time since 1974, France and Germany have been governed by leaders strongly committed to their mutual cooperation and to furthering European integration. They found enough support for this ambition in the Benelux, in Italy, sometimes in Spain and Portugal, more recently in Finland, to push the Union forward, even in the face of winds of scepticism blowing from Britain or Scandinavia. Monetary union is a typical example." (ibid.: 44).

4.2.2 The Meeting of Presidents (*Reunión de Presidentes*)

Art. 13-15 of the Tegucigalpa Protocol regulate composition, decision-making procedures and competences of the Meeting of Presidents. The Meeting of Presidents is the supreme organ of SICA (Art. 13). It consists "of the constitutional Presidents of the Member States and shall meet in ordinary sessions every six months and in extraordinary session by decision of the Presidents. Its decisions shall be adopted by consensus. The country hosting the Meeting of Presidents shall speak on behalf of Central America during the six months following the holding of the Meeting." (Art. 14).[12] The principal tasks of the Meeting of Presidents are to

[11] De Schoutheete (2000: 42) gives one – quite amusing – example: When the European Council met in Rome in October 1990, to negotiate the monetary union, there could not be reached an agreement, whether the future currency should be a common currency, i.e. a currency circulating in parallel with, but not supplanting, national currencies, or a single currency, i.e. a currency taking place of national currencies. The draft conclusions were based on the principle of a common currency. This was basically due to the fact, that the UK would not have accepted conclusions based on a single currency. However, when Margaret Thatcher declared that she found the conclusions altogether unacceptable and insisted on a separate paragraph for the UK, the conclusions were changed and now based on the principle of a single currency. The Italian Presidency gave the reason that, as the UK now had its own paragraph, it could hardly expect to influence the formulation preferred by the other member states. Meanwhile, the Euro is a single currency.

[12] Meanwhile, the term *pro témpore presidencia* has been established to formalise these six months.

"[d]efine and direct Central American policy by establishing guidelines for the integration of the region […]", to "[h]armonize the foreign policies of its States", to "[e]nsure fulfilment of the obligations contained in the [Tegucigalpa] Protocol and in other agreements, conventions and protocols which constitute the legal order of [SICA]", and to "[d]ecide on the admission of new members to [SICA]." (Art. 15).

Thus, the Meeting of Presidents is the most important institution in SICA and has, over the years, gained immensely in intensity. To be noted positively, is, that there have been overcome the initial problems of Meetings not having taken place regularly. Furthermore, the performance of the *pro témpore* Presidency is now assumed by all Member States.[13] But it has also turned out, that the growing importance of the Meeting has led to some kind of overeagerness. There is adopted such a numerousness of resolutions, that makes it even impossible to implement at least the important ones. Furthermore, the Meeting tends to make decisions, which actually should have been taken by lower levels (Bollin 1999: 35-36). According to Bollin (ibid.) these proceedings strengthen the intergovernmental character of the integration process, and hamper a more supranational orientation. Caldentey (2003: 50) remarks:

> *"The concentration of power in their [the Presidents'] decisions makes the process very much dependent on this organ. It is evident that the Meeting of Presidents has exercised its role as the major driver of the integration process in some occasions rather than in others. The personal inclination of those who govern influences the progresses in the process. This phenomenon is not exclusively Central American and occurs in one way or another in all integration processes with Community character."*

The strong position of the Meeting of Presidents is also due to the *presidencialismo* which prevails in most Latin American countries (ibid.). For Central America in particular the *personalismo*, a key element of Latin American political culture, causes that "the Heads of State […] have much more power than the President of the USA". People tend to trust certain individuals a lot more than they trust institutions like the state as such (Bollin 1999: 138-139).

[13] In 1997, Panama argued, that, by being the speaker of SICA, it would be too much involved in the integration process.

4.3 The Role of the Ministers

4.3.1 The Council of the European Union

> *"[W]hat kind of institution is the Council? It is the main source of EU legislation, though it shares legislative power with both the European Commission and the European Parliament. It exercises executive power under the treaties, yet the Commission is also in part an executive body. It is a more or less permanent negotiating forum and recurrent international conference, yet its primary members are ministers drawn from the member states, who are paid their salaries for their work in national governments."* (Hayes-Renshaw and Wallace 1997: 1)

The Council's main power is that of decision-making, which it does in cooperation with the European Commission and the EP. The Council is particularly strong in the second and third pillar of the EU, where the European Commission has to share its monopoly of the right of initiative with the Council and the EP has only a consultative function. In these ambits, the Council's decisions usually require unanimity, whereas in the ambit of Community policies there is increasingly practiced qualified majority voting (QMV). When issues are being debated on the basis of Art. 205 (2) EC Treaty, the number of votes allocated to each member state is not equal but is weighted in correspondence to the size of population.
When in Nice, the votes were re-weighted, in order to prepare the EU for the greatest enlargement in its history, there arose several conflicts. These conflicts almost led to a failure of the whole summit and showed once again the immense importance of this organ acting in the interests of the Member States. Giering (2001: 74-80) lists the most important disputes:

- The conflict between France and Germany: Germany demanded to have – at least symbolically – more votes than France, for that there will be valued its significantly bigger population. For France this would have meant the

abandonment of the historical basis of European integration, which regards France and Germany as equal

- The conflict between Belgium and the Netherlands: This conflict was similar to the one between Germany and France. Belgium did not want to accept less votes than the Netherlands, although the difference in number of inhabitants is comparable to the one between Germany and France. Belgium referred to France, which neither wanted to accept less votes than Germany.
- Spain wanted an equal share of votes like the big member states. When joining the EC, Spain had renounced more votes in the Council, in return it had gotten the right to nominate a second Commissioner. Now, the renunciation regarding a second Commissioner was to be compensated by more votes in the Council. Spain stated, if France was to get as many votes as Germany, Spain was to get as many votes as France, as the difference in number of inhabitants between Spain and France was equal to the difference between France and Germany.
- This made Poland arrive on the scene. It was planned to give Poland less votes than Spain, although Poland had only marginally less inhabitants than Spain. For Poland this would have meant a second class accession.

The two last mentioned conflicts resulted to be the most difficult ones. Finally, Spain and Poland asserted themselves; in relation to the other countries, the number of votes in the Council increased most for these two. Both got 27 votes, only two votes less than the big Member States (Germany, Great Britain, France and Italy) who all got 29 votes. The Netherlands received 13 votes, Belgium 12.

There is to be added, that with the simultaneous introduction of the "double majority" Germany's larger population compared with the other countries was eventually considered, at least with regard to the rejection of decisions. Whereas Germany may prevent a decision in cooperation with two of the four other big countries, for France this is only possible in cooperation with three other countries.

Disputes concerning the weighing of votes also occurred recently during the renewed negotiations regarding the European Constitution. Poland wanted to introduce the square root approach, as it regarded this as a fairer method. Once again a summit was in danger to fail because of disputes regarding the Council.

4.3.2 The Council of Ministers (*Consejo de Ministros*)

Art. 16-23 of the Tegucigalpa Protocol deal with the Council of Ministers. According to Art. 16, "[t]he Council of Ministers shall be composed of the ministers holding the relevant portfolios […]. The Council of Ministers shall be required to provide the necessary follow-up to ensure the effective implementation of the decisions adopted by the Meeting of Presidents in the sector in which it is competent, and to prepare the topics for possible discussion by the Meeting. Depending on the nature of the subjects to be considered, the Ministers may hold intersectoral meetings. The Council of Ministers for Foreign Affairs shall be the main coordinating body."

Art. 17 further explains the outstanding position of the Council of Ministers for Foreign Affairs (*Consejo de Ministros de Relaciones Exteriores, CRE*). It has the right to approve the budget of the "central organisation"[14]and all proposals of other Councils have to pass the CRE, before they are forwarded to the Meeting of Presidents. Furthermore, the CRE represents SICA "vis-à-vis the international community", gives recommendations with regard to the admission of new members and decides "on the admission of observes to the System." Together with the "Ministers responsible for economic integration and regional development" the CRE forms an intersectoral meeting of special importance, as this meeting "shall be responsible for analysing, discussing and proposing to the Presidents the regional strategy for the active participation of the region in the international economic system, and for implementing that strategy jointly" (Art. 20).

Art. 21 demands that "in order to be quorate, meetings of the Council of Ministers must be attended by all the respective ministers, or – exceptionally, by duly authorised vice-ministers". Furthermore, "[e]ach Member State [has] a single vote within the Council of Ministers. Decisions on matters of substance must be adopted by consensus, if there is doubt as to whether a decision concerns substance or procedure, the question shall be settled by a

[14] According to Hector Ruano, deputy Secretary for Parliamentary Affairs of PARLACEN, the term "central organisation" refers to the whole of SICA. It is assumed, that one day SICA will have one budget. At the moment, each institution has its own budget.

majority vote." Correspondingly to Art. 22, the Council's decisions are binding on the Member States, as long as they do not violate applicable law.
The Tegucigalpa Protocol provides the Council of Ministers with the possibility to advance integration, as it stipulates the use of majority voting. However, as Caldentey (2000: 315) states:

> *"The risk to adopt these proceedings, prone to progress and to the predominance of the regional interests over the national ones, can be explained by the marginal decision power of the Councils of Ministers vis-á-vis the Meeting of Presidents. The country which feels cheated by a decision of a Council has the option to veto it in the Meeting of Presidents."*

4.4 The Supranational Executive and Administrative Organs

4.4.1 The European Commission

> *"The European Commission may be the strangest executive bureaucracy ever created. […] Legally, the Commission is a single entity. In practice, however, it is a unique hybrid in two senses. First it is given direction by a political arm, or college, of Commissioners, but the college is unelected. Second, the college exists alongside a permanent, formally apolitical administration, or what is known as the Commission's services or Directorates-General, for whose work the college is held responsible."* (Peterson 2002: 72)

The Commission fulfils three important tasks in the EU: Because of the – in the first pillar – exclusive right of initiative, it acts as the "motor of integration"; as "guardian of the Treaties" the Commission supervises the application of community law; as the Community's executive organ, it carries out community law and the budget. The members of the college are appointed by the Member States, however its independence is explicitly stated:

> *"The Members of the Commission shall, in the general interest of the Community, be completely independent in the performance of their duties. In the performance of these duties,*

they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties. Each Member State undertakes to respect this principle and not to seek to influence the Members of the Commission in the performance of their tasks." (Art. 213 EC Treaty)

The Commission has the potential to play a leadership role within the EU. Under the first pillar of the European Union, it is the only body to have the responsibility for making policy proposals. It furthermore has, at various stages in the Community's history, been

"the most vociferous and committed proponent of supranational European integration. […] It has often been stated that the Commission plays the part of a sort of sixteenth[15] member state within the Union, as the only body holding and arguing for a general EU perspective. […] [T]he Commission thus acts as a sort of "conscience" of the Union." (Cini 2002: 51).

Past experiences have shown that strong Commission Presidents have the ability to extent the power and influence of the Commission, in particular vis-á-vis the EU's supranational organs. Surely, the best example is Jacques Delors (Commission President 1985-1995):

"With national political leaders, […] Delors enjoyed respect and was generally recognised as doing a good job. His enthusiasm, dynamism, forcefulness and intellect were all widely admired. Even Margaret Thatcher, who became very antagonistic towards him because of what she regarded as his over-enthusiasm for integration and his over-reaching interpretation of what she kept emphasising was an appointed and essentially administrative post, did not deny his capabilities. Rather, indeed, her objections to Delors were based precisely on his capabilities and the fact that he put them to full use in seeking to further the integration process." (Nugent 2001: 75)

Delors built the Commission presidency into a high-profile and potentially very powerful position both within the Commission system itself and also in the EU system as a whole. The Maastricht and Amsterdam Treaties, and in particular the Nice Treaty have further

[15] Now of course it would be the 28th Member State.

consolidated and institutionalised this elevation of the Commission presidency. However, as Nugent (ibid.: 80-81) furthermore states:

> *"But it should not be thought that these increased powers will necessarily enable […] his successors to impose themselves as much as Delors did in the early years of his presidency. Those years were the exception rather than the norm, made possible by the occupancy in office of a strong and visionary personality at a time when the contextual circumstances for integrationist advance were exceptionally favourable. The norm is that Commission Presidents do not have such strong personalities and do not enjoy such favourable operating environments […]."*

The importance of the Commission for the European integration process is undisputed. At the beginning of the integration process the creation of High Authorities which later became Commissions, was a central issue. When in 1950, Robert Schuman proposed that France and Germany pool their markets for coal and steel, and that this pool shall be managed by a High Authority with independent powers to act, he thought this to be a basis for a Franco-German reconciliation. And although the High Authority was in the end not given that much power as originally intended – the Benelux countries feared a Franco-German dominance and hence asserted the creation of a Council of Ministers as a supranational counterpart – the High Authority was still assigned significant powers (Nugent 2001: 19-20).

According to Giering (2001: 70-71), from the results of Nice there could be drawn the conclusion, that the Commission is regarded as not being that important any more. In order to prevent the Commission becoming too huge, after the accession of new Member States, the big countries had been willing to renounce a second Commissioner, respectively agreed to not being represented at all in some Commissions, if they are granted instead a higher representation in the Council. However, and this is important to Giering, this interpretation does not consider the still significant role of the Commission in the legislation process, and does not do justice to the immense importance, that the Commission, as an organ of initiative and implementation, has for the smaller Member States and the candidate countries.

4.4.2 The Executive Committee (*Comité Ejecutivo*) and the General Secretariat (*Secretaría General*)

According to Art. 23, the Executive Committee and the General Secretariat (SG-SICA) are the two permanent organs of SICA.

4.4.2.1 The Executive Committee

In Art. 24 there are laid down the composition and the tasks of the Executive Committee. This organ is formed by one representative from each Member State, appointed by the respective Presidents. Usually, the Committee shall meet once a week, but extraordinary meetings are possible. Its main tasks are to "ensure the effective implementation, through the General Secretariat, of the decisions adopted by the Meetings of Presidents" and to "ensure compliance with the provisions of the [Tegucigalpa] Protocol and instruments additional thereto or emanating therefrom". It also has right to propose – through the CRE – to the Meeting of Presidents the establishment of sectoral policies and the creation of the respective facilities and is responsible for submitting the draft budget of the central organisation to the CRE.

This description of competences allows two possible scenarios regarding the role of CE-SICA: The Committee could be a motor of Central American integration by pushing presidential instructions, interpreting them in favour of integration. But it could also hamper the whole process, when it only serves as a preserver of national interests (Caldentey 2000: 319). However, until today, there can only be made assumptions with regard to the Committee's role. Although its members have already been appointed and there have been 7 meetings in total (in 1995 and 1996), no significant work has been done so far (Bollin 2000: 93).

> *"An effectively working Executive Committee would limit the power of the Foreign Ministers. This is why it most probably will never be allowed to function."*

This statement by Hector Ruano[16] is definitely true when seen in connection with Art. 2 of the Temporary Provisions of the Tegucigalpa Protocol. This Article states, that, as long as there is not established an Executive Committee, its competences "shall be assumed directly by the Council of Ministers for Foreign Affairs." Without a CE-SICA, the CRE has a sole right of initiative vis-á-vis the Meeting of Presidents, has comprehensive power over SICA's budget, can supervise the SG-SICA and becomes a kind of "Guardian of the Treaties".
Bollin (2000: 93) states in this context:

> *"The reason for the fact, that this important Committee cannot do its work, is the differing importance that the six countries attach to it. This is expressed by the appointment of members from very different levels – from officials in charge to ministers. As it had not been possible to find a consensus, the Committee was finally given up."*

In their "Guidelines for a strengthening and rationalisation of the regional institutions", adopted during the 1997 Panama Summit, the Presidents decided to substitute the CE-SICA by a Connecting Committee (*Comité de Enlace*). This Connecting Committee

> *"shall represent the interests of the countries, guarantee a permanent communication between the regional and the national level, act as a facilitator between the governments and the SG-SICA, and report about the decisions in the area of Central American integration and cooperation. The Committee shall be dependent on the CRE, which shall analyse its reports and adopt its initiatives. Its members shall have the position of Ambassadors, appointed by the Presidents of each State. The Delegates shall depend and report directly to their respective Chancellors and their expenses shall be included in the budget of SICA."*[17]

At first glance, the Connecting Committee appears like an Executive Committee robbed of all its significant competences. A supranational organ, theoretically able to determine at least to a certain extent the direction of the integration process, is mutilated to a mere communication body. However, a Connecting Committee using the whole range of its – however limited – competences would still be better than an Executive Committee which

[16] During an interview on 05-03-2007.
[17] Own translation from Spanish.

would maybe never be allowed – or able – to unfold its power. As Caldentey (2003: 53) states:

> *"A Connecting Committee makes sense if it is an honour to its name and serves as the articulating element of the regional and the national conducts."*

He proposes to create an organ similar to the European COREPER and composed of high governmental functionaries:

> *"Maybe the most important aspect would not be so much the functions of the committee, but the profile of the persons who form it and their degree of representativeness and influence in the national governments."*

4.4.2.2 The General Secretariat

Art. 25-28 contain the regulations concerning the General Secretariat (SG-SICA), which is situated in San Salvador. It is headed by a Secretary General – appointed by the Meeting of Presidents – who is the "chief administrative officer of the Central American Integration System and the legal representative of the System" (Art. 25, 26). Hence, he has to be "a national of any Member State and shall have a demonstrated commitment to the integration process, a high degree of impartiality, independent judgment and integrity". He has the right to participate in meetings of all SICA institutions, including the Meeting of Presidents (Art. 26). The principal function of the SG-SICA is the coordination of the complex framework of organs and institutions, which it realises together with the CRE. It furthermore has to ensure the compliance of the intentions and principles of SICA, represents SICA in the international arena and coordinates the execution of the presidential instructions (Art. 26). The SG-SICA has a special position within the system, as it "shall not seek or receive instructions from any Government." All Member States are to respect its supranational character.

The SG-SICA, besides the CRE the second coordination body of SICA, could play a determinant role in the system. It is to question, whether the SG-SICA is indeed able to fulfil this important task. To effectively coordinate SICA, it would be crucial for the SG-SICA to

have a comprehensive overview about what is happening within the framework. However, the numerousness of specialised technical Secretariats, that meanwhile have been established, makes this overview difficult, if not impossible. These Secretariats are not explicitly subordinated to the General Secretariat. In particular, this is true with regard to the SIECA. The Ministers for Economic Integration have direct access to their Secretariat and can cooperate with it without having to make a detour over the General Secretariat. In itself, this is positive, as decision making processes are shortened. However, and although the SIECA is obliged to report to the SG-SICA (Art. 28 Tegucigalpa Protocol), there has been developed some kind of momentum, that meanwhile undermines the coordination function of the SG-SICA with regard to the most advanced element of Central American integration (Bollin 2000: 105; Zimmek 2005: 9).

Former Secretary General, Oscar Santamaría, during a speech in Brussels in March 2003, complained about the fact, that the Secretariats cannot utilise their full potential, technical as well as political, due to the complexity of the system. He referred to several proposals to create a single SG-SICA, that would have positive effects on the integration process as a whole, and in particular would strengthen the position of other supranational institutions like the Court and the Parliament:

> *"The figure of a Secretary General of the system, surrounded by a small team of specialised secretaries working towards common aims means that we can contemplate having a regional representation with the clout to ensure that the agreements are fulfilled and make progress along with the Court and the Central American Parliament."*

In this context, in order to strengthen the SG-SICA, Santamaría also mentioned the possibility to include the Secretariat in the *troika*, now formed by the country currently holding the *pro témpore* presidency plus its predecessor and successor. According to Santamaría, the county which held the previous presidency could be replaced by the SG-SICA. This way, the Secretariat would be further involved in important decision making processes and would be enabled to keep a comprehensive overview. It would also make the SG-SICA stronger vis-á-vis the CRE. As both organs are involved in the coordination of SICA, there often occur demarcation disputes (Bollin 2000: 94).

Caldentey (2003: 43-50) states, that there has already been made certain progress with regard to a unification of the Secretariats. Meanwhile, of the important Secretariats, the SIS and the SE-CCAD have been moved to San Salvador. However, this physical merger has not yet led to a fusion of competences and coordination mechanisms. Caldentey (2003: 45) assumes, that a radical change of institutions, that have already existed for more than 40 years, like in the case of SIECA, demands concessions, that some are not willing to make. In 1991, when the Tegucigalpa Protocol was negotiated, there would have been the chance to make such a change and create a single Secretariat. Meanwhile, the institutions are established in a way that it will be quite difficult to convince decision makers there to "unite under one roof" and hence to transfer some of their competences.

4.4.3 The CE-SICA and the SG-SICA in a Regional Context: Supranational Executive and Administrative Organs in MERCOSUR and CAN

In the case of MERCOSUR, there does not exist a supranational organ responsible for executive and administrative tasks. According to the Ouro Preto Protocol, the Common Market Group, composed of four officials per Member State, coming from the Ministries for Foreign Affairs and Economy and from the Central Banks is an intergovernmental body, as well as the Trade Commission and the Administrative Secretariat.

This is different in SAI. With the Cartagena Agreement there were created the Commission and the General Secretariat. Malamud (2002: 6) lists both organs together with the Parliament and the Court of Justice as supranational. And indeed, the General Secretariat is of explicit supranational character, as it "acts solely in accordance with the interests of the Subregion" (Art. 29). Furthermore, Cárdenas (2005: 18-19) is in doubt regarding its supranational character, as the Secretary General is elected by the Council of Ministers for Foreign Affairs and the Commission, which makes the person somehow dependent on intergovernmental organs.

Cárdenas hence disagrees that the Commission is a supranational organ, and is supported by Zimmek (2005: 12) who leaves out the Commission when discussing the weaknesses of

supranational organs in SAI. But he explicitly includes the Secretariat General, and criticises its mere administrative-technical nature. The Cartagena Agreement is rather vague with regard to the Commission, i.e. there do not occur any key words relating to a possible supranational character. And as the Commission's members are at the same time "plenipotentiary representatives from each Member Country's Government" (Art. 21) this might indeed indicate that the Commission has rather national interests in mind than acting as a regional body. Irrespective of these reflections it has to be said, that the Commission's executive rights are limited to the ambit of trade and investment. But it has important budgetary rights and may decide about proposals submitted to it for consideration by the Member States and the Secretariat General (Art. 22).

4.5 The Role of the Parliaments

4.5.1 The European Parliament

The European Parliament is the only directly legitimated EU organ. Currently, 732 parliamentarians form the EP, the number of representatives per country is not equal, but differs according to the size of the population. The EP's possibilities in the EU's legislation process has already been described. In fact, when looking at the development of the Parliament,

> *"[i]t is in this area that the SEA, and more so the EU, Amsterdam and the Nice Treaties, introduced the most far-reaching changes. The SEA increased the cases wherein Parliament must be consulted by the Council before the latter adopts and act, and introduced the 'co-operation procedure'. The EU Treaty, on the other hand, provided for the so-called 'co-decision procedure', which was extended by the Nice Treaty."* (Mathijsen 2004: 56)

But how does the EP fulfil the other classic parliamentary functions? According to Patzelt (2003: 360-373), parliamentary functions can be assigned to four groups: communication functions, legislation functions, control functions and election functions.

- **Does the EP elect a government?**

The right to elect a government is the most important of all election functions a parliament can have. In the case of Germany this is an explicit act of election, in the case of Italy it is an obligatory vote of confidence after the head of state has appointed the government (ibid.: 360).

Structures of national political systems are usually not transferred exactly to the international level. In the European Union's institutional framework the Commission serves as the executive. But her role is limited to the supranational first pillar of the Union, whereas in the second and third pillar, the Council of Ministers is decisive. The EU has a "dual executive" (Hix 2005:27). As the ministers come from the national governments, this leaves the Commission as the only possibility for the EP to elect at least a part of the EU's government.

Originally, the EP had been given no formal role in the EU appointments process, as each Member State had put forward its own nominees, with the countries accepting each other's candidates on a consensus basis. The EP always had the right to dismiss the Commission as a whole, but, until 1999, had been reluctant to use this powerful weapon (Corbett 2005: 259).

A first re-thinking started after 1979, when the EP became directly elected, and unilaterally introduced into its own procedures provisions for a debate and a vote of confidence on an incoming Commission when it presented itself to Parliament for the first time with its programme. This practice became soon established and was recognised by the national governments in their 1983 Stuttgart Solemn Declaration. All three Delors Commissions (1985, 1989,1993) waited until they had received the vote of confidence from the EP, before taking the oath of office at the ECJ. In Stuttgart, it was furthermore agreed that the EP's Enlarged Bureau was to be consulted with regard to the choice of the Commission's President (ibid.: 260-261).

The Maastricht Treaty built on these existing practices and strengthened them. There were formalised the consultation of the whole Parliament (instead of only the Enlarged Bureau) concerning the choice of President, as well as the vote of confidence in the Commission. Once again the Parliament sought to expand these rights, and introduced into its Rules of Procedure the confirmation hearings of Commissioners before the parliamentary committees

corresponding to their prospective fields of responsibility.[18] The proposed Commissioners of the Santer Commission finally agreed on this, not least because Santer, whose nomination had been controversial, wanted to show goodwill to the Parliament. Finally, the Maastricht Treaty provided for the Commission to have a five-year term of office, instead of four, linked to that of the Parliament. This way, parliamentary scrutiny was facilitated, as well as the feeling of Commissioners to be accountable to the EP (ibid.: 261-262). The Amsterdam Treaty introduced one further change, as it gave the Parliament the power not just to be consulted but to approve the nominee for the Commission President (ibid.: 260).

- **Does the EP control a government?**

The most common form of controlling a government is "to measure the behaviour of someone against standards designated for this, […] to criticise by means of these standards and demand correction or appropriate "punishment" for malpractice, and, if necessary, demand the resignation from office."[19] Equally important is another form of control through collaboration, as somebody whose support is needed by the governing inevitably controls the same. In presidential systems, both forms of control are realised by the whole legislative, in different constellations. In parliamentary systems control through collaboration is done by the factions supporting the government, whereas the opposition realises the first form, control through supervision (cf. Patzelt 2003: 362).

Besides control through election, the EP has other control mechanisms at its disposal. According to Art. 193 EC Treaty, it may, under certain limitations and at the request of a quarter of its members, set up a temporary Committee of Inquiry to investigate alleged contraventions or maladministration in the implementation of Community law. Furthermore, Art. 197 obliges the Commission to reply orally or in writing to questions put to it by the EP or by its members. The right to obtain answers constitutes an important aspect of the EP's supervisory powers and has been widely used. With regard to the Council, in 1958, the EP unilaterally adopted the decision to have the right to obtain answers also from this organ, a right which was later accepted by the Council. In 1973, the EP introduced the

[18] According to Mathijsen (2004: 65-66) this causes problems with regard to the Commission's independence.: "Portfolios are only officially attributed by the Commission itself, after it takes office. If this were to be decided beforehand, this would mean that the Member States decide in fact on this attribution. This would violate the principle of the independence of the Commission and its members so clearly provided for in the Treaty."

[19] Own translation from Patzelt (2003): 362.

Question Time, in which both the Council and the Commission agreed to participate. The answers from the Commission can then give rise to a debate. The Parliament has succeeded in including the Council in its work, far beyond what is provided for in the Treaty. Meanwhile, each incoming President of the Council presents at the beginning of his mandate a "Programme of the Presidency", and a survey of significant developments at the end of his six months' term. Similarly, a representative of the Council presents an oral report to Parliament twice a year, on the activities of the Council (Mathijsen 2004: 62-63).

According to Art. 201 EC Treaty, the EP has the power to dismiss the members of the Commission, as a body, by adopting a motion of censure in case it disagrees with activities of the Commission. Until now, no motion of censure has ever been carried. In 1999, the fear for such a motion of censure made the Santer Commission resign, six months before the expiration of their mandate (ibid.: 65).

The right to decide about the national budget is the oldest of all measures of parliamentarian control. It actually forms the basis for the power of modern parliaments. Without an approved budget, the government would not be able to realise its policies (cf. Patzelt 2003: 366). With regard to budgetary power, the EP became a decisive actor in 1970, when the national contributions as a means of financing Community policies were replaced with a system of "own resources", made up of customs duties, agricultural levies and a fraction of VAT receipts. These resources became collective Community property, collected on its behalf by the Member States. A debate began, about who should exercise control over the collected revenue and who should decide about its allocation. It was decided to leave the decision about the amount of available revenue for the Community with the Member States, whereas the decision about how to expend this revenue was to be given to the Parliament and the Council (Corbett 2005: 240).

The rules for establishing the budget are laid down in Art. 272 EC Treaty. According to this, the Commission creates a preliminary draft budget, containing the estimates of each Community institution, and submits this draft to the Council. The Council and the EP then share budgetary authority; how this power is divided depends on the nature of expenditure. When the expenditure is compulsory, the Council has the last word, when the expenditure is non-compulsory, the Parliament takes the final decision. Ultimately, the European Parliament adopts or rejects the budget as a whole.

As Corbett states, Art. 272 only gives a very incomplete picture of the budgetary procedure. Since 1988, the EP, the Council and the Commission have signed three inter-institutional agreements on budgetary discipline and the improvement of the budgetary procedure. These agreements have transformed the character of the budgetary procedure as laid down in the treaty:

> *"Article 272 has remained fixed but the Parliament's role has evolved and in a way that has reinforced the level of co-decision with the Council. The two institutions increasingly seek mutually acceptable outcomes based on a shared perception of each other's role, rather than Parliament attempting to use the treaty articles to impose its will on the Council. The combined effect of the financial perspective and the new rules and procedures has been to reinforce substantially the smooth running and predictability of the budgetary procedure."* (Corbett 2005: 242).

The EP hence "enjoys a substantial degree of equality with the Council in relation to the budget" (ibid.: 240).

- **Does the EP fulfil its communication function?**

Fulfilling their communication function means that the members of a parliament are satisfyingly accessible for the citizens they represent. Usually, parliamentarians are in contact with business people, representatives of civil society organisations, but also with individual "ordinary" citizens. Parliamentarians shall provide the population with information; on the other hand they are to be accessible for the citizens' ideas, worries and opinions, and are to introduce these into the political decision process (cf. Patzelt 2003: 371-372).
With regard to fulfil its function as a political forum and channel for communication, the EP "seeks to broaden the agenda of political discussion through debates, resolutions, hearings, activities in relation to human rights and in response to petitions; to enhance its network of contacts with other EU institutions, national governments and national parliaments; and to ensure a high level of openness and transparency in its work and to increase public awareness of its role in the EU" (Corbett 2005: 305).

The Parliament's meetings have become progressively more open to the public, the most regular visitors are lobbyists. Members of the press also attend but normally only for big hearings on controversial subjects rather than for routine meetings. Casual visitors are becoming more common as the number of visitors to the Parliament in Brussels grows. Furthermore, most of the EP's official documents are open to the public. And, there have been developed formal "parliament-to-parliament" contacts; i.e. instead of competing with each other, the EP and the national parliaments try to work together. Finally, the *"Eurobarometer"* opinion survey shows a relatively high and increasing level of trust in the Parliament, though with important national variations. However, turnouts in European elections are poor; in 2004, only 45% of the electorate went to the polls (Corbett 305-332).

This phenomenon can be explained by the concept of *second-order national elections*. This concept was developed in 1980 by Karl-Heinz Reif and Hermann Schmitt in their article *Nine second-order national elections. A conceptual framework for the analysis of European election results*. They assumed that national elections are of *first order*, as a government is elected which pursues certain policies. European elections, in contrast, are *second-order national* elections. From European elections there develops no government and they "have no institutionally binding consequences on government or opposition policies" (Reif; Schmitt 1980: 8). But they are fought by the same parties as first-order elections. Here, several surveys (e.g. *Eurobarometer*) observed, that election decisions in European elections are made with regard to the national agenda, rather than on European issues. As there is "less at stake", voters regard European elections as a low-cost opportunity to voice dissatisfaction with their national government. Furthermore they switch from tactical to sincere voting, i.e. they are more likely to vote for small parties, which they actually prefer, but which they regard as not having a chance to gain power on the national level. Third, "less at stake" also means, that interest and therefore turnouts are lower (Reif; Schmitt 1980: 9).

4.5.2 The Central American Parliament (*Parlamento Centroamericano*, PARLACEN)

According to Art. 1 of the Constituent Treaty, PARLACEN is "a regional organ providing approach, analysis and recommendation about political, economic, social and cultural issues

of common interest." The Parliament is composed of 20 representatives from each Member State, who are elected by universal, direct and secret vote for a time period of 5 years and may be re-elected (Art. 2). After having concluded their period of office, the Presidents and vice-Presidents of each Member State are to be integrated in PARLACEN (Art. 2). Participation is not obligatory, though, and these members conclude their function as representative when their successors in Presidency terminate their term in office and hence become the new representatives to be integrated (Art. 12 Internal Rules).

According to Art. 2, the parliamentarians are not bound to any mandatory instructions. In the countries, where they have been elected, they enjoy the same immunities and privileges as the members of the respective national legislative assemblies. In all other Member States, they enjoy the same rights as they are given to diplomats according to the Vienna Convention (Art. 27). According to Art. 12, the PARLACEN's Plenary Assembly adopts its decisions by approval of half of the parliamentarians plus one; the Plenary has a quorum when 64 of the members are present.

Currently, PARLACEN has 128 members, eight of these are former Presidents and Vice-Presidents. At the moment, only El Salvador has not made use of this possibility to send former Heads of State to PARLACEN. Anyway, this regulation is controversial; hitherto, the intended effect – the Presidents providing experience and contacts – has not appeared. On the contrary, the immunity given to Members of PARLACEN is regarded as the real reason for why former Presidents decide to become parliamentarians (Caldentey 2000: 311; Caldentey 2003: 38).

However, what is more important and what significantly weakens PARLACEN, is the fact, that until today, Costa Rica has sent no representatives to the regional parliament. Central America's only country with a stable democracy is afraid of experiencing a serious blow when participating in the political integration process (Zimmek 2005: 10).

Thus, PARLACEN is already significantly weakened by the non-participation of one of SICA's Member States. But can it still fulfil the functions, a parliament shall fulfil? It has already been stated, that PARLACEN does not play a role worth mentioning in SICA's legislation processes. But which role does it play then? Can PARLACEN fulfil parliamentary functions?

- **Does PARLACEN elect a government?**

As it has already been mentioned, executive power in SICA is carried out by three organs: the Council of Ministers for Foreign Affairs, the General Secretariat and the Executive Committee. As the Ministers for Foreign Affairs come from the national governments and the CE-SICA is practically dead, PARLACEN could only perform its electoral power, if it has such, by electing the members of the General Secretariat.

And indeed, the Constitutive Treaty provides a corresponding regulation. According to Art. 5 (c), PARLACEN has the right to "[e]lect, appoint or remove […] the most senior executive official of the existing or future bodies of Central American integration created by the Member States of this Treaty". This regulation is to come into force, after the fifth country has ratified the Treaty (Art. 4 of the First Protocol to the Constitutive Treaty). As Costa Rica does not participate in PARLACEN, this prerequisite had not been fulfilled until 1994, when Panama ratified the Treaty. But nevertheless, until today PARLACEN is denied the right of electing the "most senior executive official".

According to Art. 26 of the Tegucigalpa Protocol, the "chief administrative officer" of SICA is the Secretary General. For the sub-systems, these would be the Secretaries General of the respective specialised technical Secretariats. This would mean, that PARLACEN is entitled to elect the Secretary General of SG-SICA as well as the Secretaries General of the sub-systems. However, Art. 25 of the same Protocol stipulates, that the Secretary General is to be elected by the Meeting of Presidents. The Guatemala Protocol and the Treaty on Social Integration give this election function to the respectively competent Council of Ministers.

It can be argued, that the Presidents and the Council of Ministers do not have this right anymore, as the Constitutive Treaty has meanwhile been ratified by five SICA Member States, and hence the right to elect the Secretaries General is transferred to the PARLACEN. On the other hand, and as it is stated in Art. 35 of the Tegucigalpa Protocol:

> *"This Protocol and instruments additional thereto and emanating therefrom shall take precedence over any bilateral or multilateral agreement or protocol between Member States on matters relating to Central American integration. However, the provisions of such agreements or treaties shall remain in force between such States so long as they do not contravene this Protocol or hinder the pursuit of its purposes and aims. Any dispute*

concerning the implementation or interpretation of the provisions of this Protocol and other instruments referred to in the preceding paragraph shall be submitted to the Central American Court of Justice."

Accordingly, the CCJ attended to the case and passed its judgment on 14 February 2000. There, the Court first underlined its principal conviction to interpret the Treaties in favour of integration, i.e. in favour of the supranational elements of SICA. In this context, it then referred to the regulations of the Guatemala Protocol and the Treaty on Social Integration. The still practised election of the Secretaries General of the sub-systems through the respectively competent Council of Ministers was regarded as an involution. According to the Court, with the ratification of the Constituent Treaty through Panama, the PARLACEN had received the right to elect the Secretaries General. But, the election of the Secretary General of the SG-SICA was seen an entirely other matter. The Constituent and Fundamental Organs of SICA, of which SG-SICA and PARLACEN are part, are of special character and hence the regulations of the Tegucigalpa Protocol are unconditionally valid. Having considered all this, the Court finally declared

"that the functions and attributions of the Central American Parliament […] as Constitutive and Fundamental Organ of the System of Central American Integration (SICA) are those, which establish its Constitutive Treaty and valid Protocols, but those laid down in Art. 5c) and Art. 29[20] are not applicable to the Constitutive and Fundamental Organs established in […] Art. 12 of the […] Tegucigalpa Protocol."

Thus, PARLACEN has been given the right to elect the Secretaries General of the sub-systems. However, until today, PARLACEN does not execute this right. For the Member States, Art. 5c) and Art. 29 in practice do not exist any more, since they have taken these rights from PARLACEN in the course of an institutional reform in 1997 (Bollin 2000: 96). Why the Court's protest against this could be ignored will be examined later.

[20] Art. 29 refers to the right of PARLACEN to demand reports from the other bodies in SICA.

- **Does PARLACEN control a government?**

Besides Art. 5 (c) of the Constituent Treaty, which, if exercised, would represent some form of control, as electing a "government" is also a way to control it (Patzelt 2003: 360), only Art. 29 allows PARLACEN a control function. Art. 29 demands of the other bodies of integration to report to PARLACEN about their work. The plenary then comments on the reports and can give recommendations when considered necessary. The right to exercise control on the basis of Art. 29 has been confirmed by the CCJ for all bodies except the Constituent and Fundamental Organs listed in Art. 12 Tegucigalpa Protocol, as already described above. But, like in the abovementioned case, PARLACEN does not exercise its rights.

Another form of controlling a government is the assignment of budgetary power to a parliament. Art. 9 of the Constitutive Treaty assigns to the Parliamentary Assembly, as the highest organ, to adopt PARLACEN's budget. There can be found no other article, neither in the Constitutive Treaty nor in the Tegucigalpa Protocol, that would give PARLACEN the right to adopt the budget of SICA as a whole. On the contrary, Art. 17 of the Tegucigalpa Protocol gives the right to approve the budget of the "central organisation" to the CRE. This considerably weakens the Parliament's budgetary power. In addition to that, in the 1997 Panama II Declaration, the Presidents of the SICA Member States stated, that "in the course of the rationalisation process, we decide to integrate the budget [of PARLACEN] into that of SICA"[21]. If this proposal will one day become applicable law, it seems not that unlikely, that PARLACEN will then even loose control over its own budget. Of course, if PARLACEN would be given the right to become equal to the CRE and to adopt the SICA budget together with the Council, this would considerably strengthen PARLACEN's position.

- **Does PARLACEN have legislative power?**

In all representative democracies the parliament serves as the legislative, i.e. it has the power to adopt laws (cf. Patzelt 2003: 367). It has already been stated, that PARLACEN is not involved in SICA's legislation processes. But why is this the case?

According to Article 5 of the Constituent Treaty, the PARLACEN shall "serve as a deliberative forum for the analysis of common political, economic, social and cultural issues

[21] Own translation from Spanish.

and security matters". This definition already reveals the greatest weakness of PARLACEN: as a "deliberative forum" its decisions are not binding, neither for the Member States nor for the other organs of SICA.

Weak representative organs and a lack of democracy have a long tradition in Latin America. Centuries ago, in the whole of Latin America, Aztecs, Mayans and Incas established governing processes characterised by hierarchical and authoritarian rule. Later, during the colonial and early republican period, this manner of ruling was confirmed and strengthened by the model of authoritarian and often dictatorial governments on the Iberian Peninsula, which was then adopted by independence movement leaders (Prevost; Vanden 2006: 175-176). During all these times, above the municipal level, people had never experienced powerful representative bodies, enabling them to voice their opinion and to participate in the governing process. Although the new Latin American were formally declared as democracies, the lack of democratic experience made political actors unable to stimulate the framework from the start. In addition to this, as the centralist and emphatic presidential system as such only admits a very narrow exercise of democracy (Bollin 1999: 142), the parliaments are "clearly subservient, often acting as an advisory body to the executive or occasionally as a rubber stamp" (Prevost; Vanden 2006: 191-193). Usually they do not have the right to veto acts of the executive or initiate programs, the exception being Costa Rica, where the legislative could gain considerable strength (ibid.: 193).

Weak national parliaments made the creation of a strong regional parliament rather unlikely. As a result of this, PARLACEN has so far not been able to become a decisive actor in the Central American integration process. Throughout the years, PARLACEN has worked on numerous proposals, covering the creation of a Central American citizenship, the removal of the "democratic deficit" within SICA, the realisation of free movement of goods and people and a reform of the financing mechanisms (Sanahuja 1997). Current projects are for example the promotion of *cielos abiertos*, (i.e. the liberalisation of air transport) and the strengthening of consumer protection in view of the avian flu. But the implementation of these ideas is very much dependent on the political will of national actors. And, as Caldentey (2000: 312) states:

> *"Most of the achievements in the economic and political integration process are rather due to the influence of globalisation than to the success of this regional forum."*

However, during the last years two Member States have significantly strengthened the power of "their" PARLACEN representatives. In 2003, El Salvador was the first to make adjustments to its Constitution. Concretely, by adopting the *Decreto* No. 154, Article 133 of the Salvadoran Constitution was changed in a way that the right of legislative initiative was given not only to the members of the national parliament, the President and his ministers, the Supreme Court of Justice and the municipality councils, but also to the Salvadoran members of PARLACEN. This right was fixed in the Constitution as Art. 133 (5). Two years later, Nicaragua followed. In January 2005, the Legislative Assembly adopted the *Ley* No. 521, which gave Nicaraguan members of PARLACEN the right of legislative initiative. This way, at least in El Salvador and Nicaragua, the parliamentarians are able to put regional topics on the national agenda, something which, according to Caldentey (2003): 38) is not to be taken for granted usually:

> *"[The parliamentarians], during the last years, did not seem capable to introduce regional topics into the debates and programmes of their parties."*

- **Does the PARLACEN fulfil its communication function?**

Literature is rather divided with regard to PARLACEN's ability to manage this important task; there is a predominance of disputing PARLACEN this ability, though. Bollin (2000: 95-98) states, that despite PARLACEN is lacking most important competences, at least it fulfils its function as a contact for interested citizens. But she is also aware of the negative perception of PARLACEN among the Central American population and is supported in this view by other academics. Caldentey del Pozo (2000: 311) cites from a Guatemalan newspaper, describing the attitude of most Central Americans towards PARLACEN as follows:

> *"[…] PARLACEN is a "white elephant", not more than a political siding, without sense and intention, that only serves to guarantee privileges and advantages for its members, like for*

example the right of preliminary proceedings, the allocation of vehicles, the remuneration in hard currency[22], the diplomatic passports and number plates, etc."[23]

The parliamentarians' reputation among the Central American public is extremely bad. Among the representatives, there can be found former presidents, accused of corruption and other offences.[24] Other parliamentarians are suspected of being involved in drug trafficking.[25] Furthermore, the PARLACEN's limited competences led to an almost total disinterest of the population towards their regional parliament (Caldentey del Pozo 2000: 311).

When asked about this topic, parliamentarians often complain about the limited financial resources PARLACEN has at its disposal. The lack of money makes PARLACEN unable to launch a comprehensive information campaign to make people aware of the Parliament's contribution to improvements for the citizens in the course of the integration progress. Therefore, it is impossible for PARLACEN to get "well-educated young people with a clear conscience" interested in running for a seat in PARLACEN.[26]

The problem of a lack of communication between PARLACEN and the Central American public is further intensified by a general mistrust of the population towards political parties. The rootedness of political parties in society is very low (Achard; González 2005: 33). Only in El Salvador, the situation has improved. Although with 28% still low, confidence in political parties is higher in El Salvador than elsewhere in Central America (ibid.: 174). This might explain why Salvadoran representatives are more likely to praise the good communication between PARLACEN and the citizens than parliamentarians from other countries.[27] People in El Salvador might have gotten the impression, that it might actually be useful to contact their representatives.

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[22] The parliamentarians are paid in US $.

[23] *Siglo Veintiuno* cited in Caldentey del Pozo 2000: 311. Own translation from Spanish.

[24] This was for example the case with Arnoldo Alemán, ex-President of Nicaragua and Member of PARLACEN 2002-2006. Described amongst others in Guatemalan newspaper *Prensa libre* of 25-01-2004.

[25] On 19 February 2007, three representatives from El Salvador were murdered in Guatemala. It is assumed that this happened because of the parliamentarians' involvement in drug trafficking. Described amongst others in Guatemalan newspaper *Prensa libre* of 02-03-2007.

[26] Interview with Honduran representative Ramiro Licona Cáceres on 27-03-2007.

[27] There cannot be made a general statement about this, as the qualitative evaluation of 14 interviews with representatives from 6 countries cannot prove significant differences between the opinion of parliamentarians from one country compared with the one of representatives from another Member State. Nevertheless, 2 out of 3 Salvadoran parliamentarians interviewed praised the good communication between PARLACEN and the Salvadoran population. They were supported in their view by Hector Ruano, Guatemalan deputy Secretary for Parliamentary Affairs, who stated that Salvadoran parties are quite stable and rooted in society.

But it is not only PARLACEN, where communication with the Central American population is rather absent. Caldentey (2003: 37) criticises that the whole framework lacks contacts between the national governments and the integration institutions on the one, and civil society on the other side. One possibility of improving the communication between civil society and the Parliament would be an effectively working Consultative Committee. But, as Bollin (2000: 110-113) states, the Consultative Committee has serious deficits. It does not have its own budget[28], meaning that certain interest groups think twice about participating due to the costs they have to bear themselves. Members only meet sporadically and, due to the Committee's heterogeneous structure, common interests, which would be easier to communicate and carried through, are rare. Consequently, the possibilities which are theoretically given to the Consultative Committee cannot be used efficiently, hence eliminating an important source of feedback and new ideas for the framework.

- **Which are the strengths of PARLACEN?**

Having analysed for the case of PARLACEN the powers a parliament shall have, it has to be stated, that PARLACEN has not been given real competences. The parliamentarians do not practice whatever electoral function; they have only control over PARLACEN's own budget, but not over the one of the "central organisation"; on regional level they have no legislative power, only the representatives from two countries are allowed to make regional issues a topic for national parliaments; and communication between PARLACEN and the Central American population is rather bad. Furthermore, as said before, the absence of Costa Rica significantly weakens PARLACEN. In the past, several Presidents, in particular Guatemalan President Oscar Berger, thought about abolishing PARLACEN.[29]

It is hence to question: Does PARLACEN make sense at all? But there is indeed one important aspect of integration, to which maybe no other institution has contributed so well as PARLACEN: establishing mutual respect and providing a forum for all, in times when the civil war in Guatemala was officially still going on and the peace accords in El Salvador had just been signed.

[28] Meanwhile it has a very small one, which does still not eliminate the problems resulting from a lack of money. Stated by Hector Ruano, deputy Secretary for Parliamentary Affairs, during an interview on 05-03-2007.
[29] Described amongst others in Nicaraguan newspaper *La Prensa* of 27-01-2004.

The Central American countries are connected through a similar history, a similar culture, and similar problems. On the other hand, in some aspects they differ significantly from each other. Diverging experiences with democracy, tensions between stronger and weaker economies, and between leftist against rightist governments, have stirred up mistrust. To these interstate conflicts there are added the cleavages within the countries, between the political left and right, between the rural and the urban population, and between the *ladinos* and the *indígena*.[30] Domestic tensions have led to armed conflicts, especially cruel in Guatemala, El Salvador and Nicaragua.

It would be exaggerated to state, that only because of PARLACEN there was brought peace to the region. But PARLACEN had been able to benefit from the *détente* following the end of the Cold War. With the break-down of the Soviet Union, the left had been weakened, on the other hand, the right could not any more rely on US support:

> *"Former guerrilleros suddenly saw themselves dressed in suits, and for the first time they had to be paid respect by the political right."*[31]

According to parliamentarians currently elected to PARLACEN, this positive mood endures:

> *"PARLACEN has made possible a cooperation between parties that has not existed before, it has created a culture of integration, and it receives increasing attention from the outside. PARLACEN sends a message to the world, that Central America is bound to democracy and eager to follow the path of integration."*[32]

4.5.3 The PARLACEN in a Regional Context: Representative Bodies in MERCOSUR and CAN

The representative body of MERCOSUR received its status as a parliament not before 2005, when the Member States signed the Constituent Protocol of the MERCOSUR Parliament

[30] The last mentioned cleavage is significant especially in Guatemala, where the indigenous population represents 60% of the population. However, all power is with the *ladinos* (descendants of European immigrants).

[31] Statement by Dr. Ricardo Lagos Andino, representative of PARLACEN in Europe, during an interview on 15-02-2007.

[32] Interview with Carlos Gómez Chávarry, Member of PARLACEN, on 27-03-2007.

(PARLASUR). Before, there only existed a Joint Parliamentary Commission *(Comisión Parlamentaria Conjunta,* CPC), formed by an equal number of appointed parliamentarians from each Member State and with the main function of contributing to the transposition of Mercosur procedures into the national legislation of the member countries and giving recommendations MERCOSUR's superior organ, the Common Market Council (Art. 23-26 Ouro Preto Protocol). The Constituent Protocol did not change the Parliament's deliberative character, but it at least demanded of the MERCOSUR Presidency and from other MERCOSUR organs that they report to the PARLASUR, the "independent and autonomous" representative organ (Art. 1, Art. 4). However, as the new Parliament held its inaugural session in May of this year, it has to be awaited, if the Parliament will actually be allowed to execute this right. Currently, PARLASUR is composed by 18 representatives per Member State. However, the temporary provisions of the Constituent Protocol stipulate that there has to be developed a formula guaranteeing the representativeness, i.e. more parliamentarians for the large, less parliamentarians for the small countries. The parliamentarians are to meet at least once a month. In 2014 they shall be directly elected.

Like the PARLACEN and the PARLASUR, also the regional parliament of the Andean Community, the PARLANDINO, is only a deliberative forum. What further weakens the PARLANDINO is the fact, that its members (five per Member State) only meet twice per year. Vidal Cisneros, Venezuelan member of the PARLATINO[33] and observer of PARLACEN states in this context:

> *"The big advantage of PARLACEN is, that it is the only regional Latin American Parliament, whose members meet once a month, i.e. often enough to work reasonably. Parliamentarians who only meet once or twice a year can never be expected to exert whatever influence on an integration process."*

The 1997 Additional Protocol to the 1979 Constituent Treaty of PARLANDINO stipulates that the parliamentarians shall be directly elected. However, until today only Ecuador, Peru

[33] PARLATINO is short for "Parlamento Latinoamericano" and is composed of national delegations from currently 22 Member States from Latin America and the Carribbean. The parliamentarians meet once a year for one or two days.

and Venezuela – which is not a member of CAN any more – have carried out these elections (Zimmek 2005: 12)

4.6 Dispute Settlement in the EU and in SICA

4.6.1 The European Court of Justice (ECJ)

Together with the Court of First Instance the European Court of Justice forms the jurisdiction of the European Union. According to Art. 221 EC Treaty, the ECJ consists of one judge per Member State. These judges are assisted by eight Advocates-General (Art. 222).
As stated by Art. 220 EC Treaty, it is the principal function of the ECJ to "ensure that in the interpretation and application of this Treaty the law is observed". For this, the Court has three important means at its disposal: the infringement procedure against Member States, the action for annulment and the preliminary rulings procedure (Arnull 2006: 33).

- **Is the ECJ the only institution competent to decide?**

The Court's jurisdiction under the EC Treaty is the most significant one; in the ambits of CFSP and PJC, the Court's role is reduced (ibid.).
Under Title V TEU, which contains regulations concerning the CFSP, the Court has no competences. Under Title VI TEU, dealing with the regulations concerning the PJC, the Court has competences listed in Art. 35 TEU. The ECJ has the right of preliminary rulings, furthermore it has jurisdiction to rule on any dispute between Member States regarding the interpretation or the application of acts adopted to promote cooperation in the PJC. However, the Court can only become active, when the dispute could not be settled by the Council within six months of its being referred to the Council. Furthermore, it is explicitly stated in Art. 35 (5), that the ECJ does not have jurisdiction with regard to operations carried out by national institutions in the Member States in order to maintain "law and order and the safeguarding of internal security."

- **Can the Court assert its verdicts?**

There do not exist legal means against the ECJ's judgements, as it serves as the last instance. Even an *ultra vires* action of the Community which is covered by a miscarriage of the ECJ, is hence to be accepted by the Member States. However, there are ambits where the Member States respectively their Courts have maintained certain reservations and do not necessarily follow the ECJ's verdicts (Wolf-Niedermeier 1997: 66).

In 1974, in its so-called *Solange I* judgement, the German *Bundesverfassungsgericht (BVerfG)* declared that the Community lacked a democratically elected parliament to which its legislature was politically responsible. There was also absent a catalogue of fundamental rights adequate to those laid down in the German Constitution. Hence, the BVerfG declared that, *as long as* these deficits lasted, in case of a conflict between Community law and national constitutional law, in particular with the guarantees of fundamental rights laid down in the German Constitution, it was the latter which prevailed (Arnull 2006: 254).

The precedence of Community law was hence limited by the fundamental rights in the German *Grundgesetz*. Twelve years later, in 1986, the BVerfG revised its decision. In *Solange II* the BVerfG declared that meantime the legal protection by Community organs, in particular by the EJC, fulfilled the requirements of the German fundamental rights. Hence, the BVerfG would no longer exercise its jurisdiction to review the compatibility of Community legislation with those fundamental rights, *as long as* this legislation guarantees an effective protection of citizens vis-á-vis the authority of the Community (ibid.:254-255).

In 1993, the BVerfG decided about who has *Kompetenz-Kompetenz*, i.e. the competence to determine the limits of the Community's competences. In this context, the BVerfG declared that, if European institutions were to treat or develop the Union Treaty in a way that was no longer covered by the treaty which had been approved by the *Bundestag* and the *Bundesrat*, the resultant legislative instruments would not be binding within the sphere of German sovereignty. Accordingly, the BVerfG would review the legal instruments of European institutions to see whether they remain within the limits of the sovereign rights conferred on them (Arnull 2006: 256).

If the Member States do not want to accept a verdict, theoretically they would have the possibility to adopt in the Council a contradictory regulation or even an explicit alteration of the Treaties. But

"[c]orrections of obviously inappropriate verdicts through normative law are only conceivable in extremely exceptional circumstances" (Dauses cited in Wolf-Niedermeier 1997: 66).

In general, the verdicts of the ECJ are followed by the authorities as well as by the national Courts, albeit against sometimes persistent opposition; only in individual cases the Member States have ignored unpopular verdicts. Until the Maastricht Treaty came into force, the ECJ had no sanctions at its disposal; when a verdict was ignored, the Commission could only once again take legal proceedings which then led to a new conviction. With the TEU there was introduced the possibility for the Court to impose a fine (Wolf-Niedermeier 1997: 66-67). Wolf-Niedermeier (1997: 68-71) gives several explanations for why the Court is respected the way it is. First, she states, that in Western Europe there exists a tradition of strong Courts, and in some EU Member States the respect for Courts is even greater than the respect for parliaments. Courts are regarded as independent and neutral, and the composition of the ECJ guarantees a high quality of the verdicts. Furthermore, the Member States are in principle in favour of the integration process which they have initiated and want the agreements fulfilled. The ECJ guarantees legal security necessary for the Member States' involvement. However, Wolf-Niedermeier suggests a possibility of growing resistance, as meanwhile the majority voting procedure has been amplified, which for the single Member State means a reduced control of decisions. Finally, the national courts support the ECJ. Through the preliminary rulings procedure, the national courts have a strong connection to the ECJ, through their cooperation they share the responsibility for interpretation and application of the Community law.

4.6.2 The Central American Court of Justice (*Corte Centroamericana de Justicia*, CCJ)

Dispute settlement in SICA is exercised by the *Corte Centroamericana de Justicia.* According to Art. 1 of the Court's Statute, the CCJ is the "principal and permanent judicial organ" of SICA; its decisions are of binding character for the Member States, the organs and other bodies of SICA and for subjects to civil law (Art. 3). It is composed of "one or more Judges from each of the [Member] States" (Art. 8), and appointed by the respective national Supreme Courts

(Art. 10) for a time period of 10 years; re-appointment is possible (Art. 11). The Judges are to be "persons who enjoy highest moral respect and hold all required qualifications necessary to execute the highest judicial functions in their country" (Art. 9). The Judges are committed to integration and have to act independently of their respective home countries' interests (Art. 6).

Art. 22 lists the Court's competences. The Court's principal function is to guarantee that the Protocols and Agreements of integration and all other documents related to them are respected. On this basis, it is competent to settle disputes between Member States. Furthermore, it acts as a permanent consultation tribunal for the national Supreme Courts and for the organs and other bodies of SICA. According to Art. 25, the CCJ is not competent to settle disputes related to human rights, as this is exclusively reserved for the Inter-American Court of Human Rights.

Art. 30 enables the Court to determine its competences in each case by interpreting the treaties and conventions relevant for the case at issue and applying the principles of integration and international law. According to Art. 36 the Court adopts its decisions by absolute majority. Usually, the Judges meet in plenary sessions, but there is also the possibility to divide the competences and jurisdiction (Art. 7).

As already been stated, the Court's judgements are not necessarily followed, in spite of their binding character. In the following, it will be discussed why this is the case. There is to clarify the coverage of the Court's judgements.

- **Is the CCJ the only institution competent to decide?**

Art. 35, second paragraph, of the Tegucigalpa Protocol states that

> *"[a]ny dispute concerning the implementation or interpretation of the provisions of this Protocol and other instruments […] shall be submitted to the Central American Court of Justice."*

This regulation clearly indicates the exclusive right for the CCJ to decide in all cases, where community law might be violated. However, since the entry into force of Tegucigalpa, there have already been made several attempts to limit the Court's competences, in particular with

regard to the sub-system of economic integration. In the list of judgments the Court has passed since 1994, time and again there can be found resolutions, through which the CCJ has tried to defend itself against these attempts to establish alternative judicial bodies.

In May 1996, four years after Tegucigalpa had come into force, the Directors of Central American Integration, during a meeting in San Salvador, adopted a preliminary draft about resolution procedures with regard to intra-regional controversies. This draft stipulated the establishment of an Administrative Tribunal, which would act as a First Instance Court within SIECA. In its resolution No. 7 of 12-07-1996, the Court stated, that such a judicial authority would limit the competences of the CCJ and hence offend against Art. 35. The Court also referred to a judgement of the Central American Judicial Council[34], which, in 1993, had already rejected a similar project.

In 2001, the Court once again had to defend its exclusive jurisdiction, when it decided

> *"about the possibilities to sign a Convention between the Central American Court of Justice and the Secretariat of Central American Economic Integration (SIECA), by means of which there will be established a dispute resolution mechanism for commercial controversies […], administrated through mentioned Secretariat and defined through the Council of Ministers of Economic Integration."*[35]

In its resolution of 12-11-2001, the CCJ clearly stated that such a Convention would

> *"collide […] with the Court's competence established in […] Art. 35, second paragraph, of the Tegucigalpa Protocol […]."*

Nevertheless, in February 2002 the Presidents signed a Protocol of Amendment to Art. 35, which stated that

> *"disputes arising in the economic integration subsystem as a result of the intra-regional trade relations shall be subject to a dispute resolution mechanism established by the Council of Ministers of Economic Integration. This mechanism shall be an alternative method of*

[34] Until the Court's Statute had been ratified, the CCJ's tasks had been realised by this provisional intergovernmental body.

[35] Own translation from Resolution No. 44 of 12-11-2001.

resolving trade disputes, and includes arbitration. The decisions shall be binding on the Member States involved in the respective dispute. Failure to comply with the arbitral award shall give rise to the suspension of benefits of equivalent effect to those not received, as decided by the respective award."[36]

Caldentey (2003: 43) expressed his opinion concerning the modification of Art. 35 as follows:

"Commercial controversies are always a delicate matter. In a scenario dominated by intergovernmental elements, the solution opted for seems reasonable. In the near future, with a functioning customs union and other aspects of the regional agenda set going, it would be desirable to link this new resolution mechanism with the work of the Court […]."[37]

However the modification is to be judged, as a reasonable solution or as an attack against the institutionality of SICA[38], it can be stated, that the CCJ is not the only competent judicial body, but that there exists an alternative dispute solution mechanism in the area of economic integration. It is interesting to note, that this intergovernmental institution has sanctions at its disposal.

- **Are the CCJ's decisions of binding character?**

When they signed the Tegucigalpa Protocol in December 1991, the Presidents of the SICA Member States had not laid down any regulation with regard to the binding character of the CCJ's decisions. However, in Art. 12 there was pointed out that

"[t]he integration, functioning and attributions of the Central American Court of Justice shall be regulated in the Statute of the Court, which shall be negotiated and signed by the Member States within 90 days of the entry into force of this Protocol."

[36] Taken from the English translation of a speech of Oscar Santamaría, then Secretary General of SICA in Brussels on 3 March 2003. *The reform of the institutional framework. Lessons and challenges.*
[37] Own translation from Spanish.
[38] Stated by Rafael Chamorro Mora, then President of the CCJ during a speech in Brussels on 3 March 2003. *Central American economic integration and institutional reform.*

One year later, on their summit in Panama City, the Presidents adopted the aforementioned Statute. There it is stated in Art. 1:

> *"The Central American Court of Justice is the principal and permanent judicial organ of the Central American Integration System. Its regional jurisdiction and competence are of obligatory character for the [Member] States."*

Furthermore, it says in Art. 3:

> *"The Court shall have own competence and jurisdiction […] [I]ts judgement shall have binding effects for all [Member] States, organs and organisations that form part or participate in the Central American Integration System, and for subjects of civil law."*[39]

According to the Court's official website, the Statute came into force on 2 February 1994, after El Salvador, Honduras and Nicaragua had ratified it. 10 days later, the Court began its work with two Judges from each of the three countries plus their respective substitutes. Until today, none of the other SICA Member States has ratified the Court's Statute.

To the question whether the Statute is valid also for the countries which have not yet ratified it, the Court commented in its Resolution No. 9 of 13-12-1996. Then, it had to judge the competence of the Guatemalan Constitutional Court to decide about the constitutionality of a regulation laid down in a treaty related to Central American integration, in this case the Constitutive Treaty of PARLACEN. For that, the CCJ first had to decide, whether Guatemala is subject to the CCJ's jurisdiction, which it did as follows:

According to Art. 150 of its Constitution, Guatemala is "part of the Central American community" and has dedicated itself to the further development of this community. By ratifying the Tegucigalpa Protocol, Guatemala committed itself to the Protocol's goals and regulations. According to the internationally respected principle *pacta sunt servanda* ("pacts are to be respected"), Guatemala is obliged to comply to the contents of Tegucigalpa. These include Art. 12, which states that the CCJ "shall guarantee respect for the law in the interpretation and implementation of this Protocol and its supplementary instruments and acts pursuant to it", as well as Art. 35, already cited above. The Court concludes, that if

[39] Own translation from Spanish.

Guatemala acts in accordance to its own Constitution and in accordance to the treaties it has already ratified, the country is subject to the jurisdiction of the CCJ and has to oblige the Court's decisions, although it has never ratified the respective Statute.
Thus, it can be stated, that the Court's judgements are not only binding for the institutions of integration, and for the Member States which have ratified the Court's Statute. Following the Court's conclusions, mentioned Statute also obliges the other SICA Member States, in accordance with these States' commitment to strengthen the Central American integration process.

- **Can the Court assert its verdicts?**

That the Court's judgements are binding, does not necessarily mean that they are followed. However, the significance of a Court is fundamentally dependent on whether its decisions are followed or not:

> *"The theoretical power of the judge of constitutionality is awesome, yet in the end he has neither sword nor purse and must depend on others to give his decisions meaning."* (Cappelletti cited in Wolf-Niedermeyer 1997: 65)

In principle, the Court's decisions are to be followed. According to Art. 38, the judgments are "definitive and irrepealable". As it was already mentioned above, within the subsystem of economic integration, where the CCJ is not competent any more, there exists the possibility to take sanctions against those who do not comply. The Court itself does not have such means at its disposal. Neither in the Tegucigalpa Protocol nor in the Court's Statute can be found any regulation concerning an adequate "punishment". The Court has only the possibility to let the other Member States know about a non-compliance, these are then allowed to take the necessary means to make the refusing state comply (Bollin 2000: 99; Art. 39 Statute). Therefore, it is to question, whether the Court's decisions are followed at all. Caldentey (2003: 41) states in this context:

> *"The principal weakness of the Central American [integration] process is the lack of mechanisms to enforce regional interests and the frequent failure to fulfil the obligations of*

the integration agreements. The Court has an outstanding competence to correct these traditional obstacles […]. However, it needs that its decisions are respected and followed without the resistance […] the Member States practice vis-á-vis the verdicts."

The most famous dispute the Court had to settle so far, was the one between Honduras and Nicaragua in 1999. Already in 1986, Honduras and Colombia had signed the so called *Ramírez-López Treaty* regulating the division of sea areas. The treaty was ratified by Honduras in 1999, in spite of protests by its neighbour. Nicaragua felt ignored and claimed part of the area for itself. The country started to impose a 35% duty on imports from Honduras and Colombia. The conflict intensified even more, when, in May 2000, Nicaragua, El Salvador and Guatemala signed an agreement establishing a corridor connecting the harbours of the three countries, hereby excluding Honduras. Finally, the case was brought before the CCJ. The Court first decided in favour of Nicaragua, sentencing Honduras for having violated Community law. In particular, the Court accused Honduras for having offended basic goals and principles of integration, as it had not shown solidarity and had acted against regional interests. In a separate proceeding, the Court also condemned Nicaragua for having broken community law. However, both countries ignored the Court's judgements.[40] [41] Finally, the case Nicaragua vs. Honduras was given to the ICJ. Currently, the case is still pending. According to the Court's website, the public hearings were finished in March 2007, and the Court is now ready for deliberation.

4.6.3 The CCJ in a Regional Context: Dispute Settlement in MERCOSUR and CAN

Compared with MERCOSUR, the mere existence of the CCJ can already be regarded as a success. Dispute settlement procedures in MERCOSUR are laid down in the *Olivos Protocol*,

[40] Resolution No. 13: State of Nicaragua vs. State of Honduras of 27-11-2001. Resolution No. 14: State of Honduras vs. State of Nicaragua of 28-11-2001. See also: Minkner-Bünjer (2002): 133.

[41] In this context, it is interesting to note, that the 1997 Panama II Declaration stipulated the elimination of Art. 22 (f) of the Court's Statute and hence disputed the Court its right to settle conflicts between Member States. Whereas former President of the Court, Rafael Chamorro Mora, concluded that this – in connection with the Amendment to Art. 35 – would mean to reduce the Court to a "figurehead body without any real meaning", Caldentey (2003: 41), on the other hand, regards this modification as quite reasonable: "This competence converts the Court into a regional Supreme Court, embroiled into national problems without any relation to the integration process. This takes from the Court the legitimacy and the recognition which it needs to guarantee the compliance of the integration agreements."

signed on 18 February 2002 and into force since 1 January 2004. Before this date, the *Brasilia Protocol* of 17 December 1991 had been applied. According to this *Brasilia Protocol*, disputes which cannot be solved through negotiations are to be solved by ad hoc tribunals, composed of three arbitrators. Each of the parties designates one arbitrator; the third arbitrator who may not be a national of any of the parties, is to preside the tribunal. Decisions by the ad hoc tribunal are binding and cannot be appealed.

The *Olivos Protocol* brought an important novelty. There was established a Permanent Review Tribunal (*Tribunal Permanente de Revisión*, TPR), formed by five arbitrators. Four of them are appointed by the Member States (i.e. one per Member State) for a period of two years, and may be re-appointed once. The fifth arbitrator is to be elected by unanimity by all Member States for a period of three years, and cannot be re-elected. The parties involved in a conflict have the possibility to go directly to the TPR, which according to Pena and Rozemberg (2005: 11) is convenient in particular in cases of urgency, i.e. in case of controversies related to perishable or seasonal goods. Pena and Rozemberg (ibid.: 11-12) praise the Olivos Protocol as it offers the possibility of accelerated procedures and a greater stability of dispute settlement procedures. However, they are aware of the fact, that the standard ad hoc procedure in its principles has not been altered. This prevents the creation of a true communitary jurisprudence and the uniform interpretation of MERCOSUR regulations (ibid.: 10). Bouzas and Soltz (2001: 106) strongly agree to this. They also see a great problem with regard to the enforcement of judgements as

> *"the practical meaning of "binding" in each member state differs according to the domestic constitutional background. Since these verdicts do not have equivalent "supremacy" over domestic legislation in all member states, enforceability is subject to different practical (legal) requirements. The limit case is Argentina, where international agreements have supremacy over national law and can be directly enforced by private parties before the local courts."*

Here lies the great advantage of the Court of Justice of the Andean Community (CJAC). Its decisions are directly applicable in the Member States. The Court is composed of – since Venezuela left - four Judges, unanimously appointed by the Member States and is of an explicit supranational character. Its competences are similar to those of the CCJ. However, unlike the CCJ, the CJAC does exert a certain influence on the consequences of a non-

compliance of its verdicts, as it may "determine the limits within which the claimant or any other Member State may restrict or suspend, totally or partially, the benefits granted to the breaching state under the Cartagena Agreement" (Rodriguez 2002: 904-909). Furthermore, the CJAC obviously does not suffer from rejection by (part of) the Member States and there cannot be found regulations limiting the Court's jurisdiction within the ambits of integration. Alter (2006: 45) praises the development of the CJAC and in particular its access for private persons:

> *"The Andean Court is the third most active International Court in existence. Ninety-six percent of its cases involve intellectual property, but this is also perhaps the only area of Andean law that is truly harmonized. Once the new Andean intellectual property rules were in place, the largely unused Andean Court sprung to life."*

But Alter's statement also demonstrates the main problem of CAN: The Member States are willing to adopt decisions only in few areas; in most cases, in particular with regard to social integration, the CAN falls short of the goals established in the Cartagena Agreement (Cárdenas 2005: 17-21).

5 Conclusion

The EU and SICA both share that they combine intergovernmental and supranational elements. However, their respective shape is quite different.

The creation of supranational High Authorities, which later became one European Commission, had been a central issue when in the aftermath of the Second World War France and Germany had to rearrange their relationship. Continuing fear vis-á-vis a probable resurgence of an intimidating neighbouring country on the one, and the realisation of this being the only chance to escape from isolation on the other side made both countries agree on the Schuman Plan. In the course of 50 years of European integration, the supranational organs continuously gained influence. Especially in the ambits of the EU's first pillar, no legal action can be taken without significantly involving the Commission and the European

Parliament. In the area of dispute settlement the European Court of Justice is a highly respected institution. The European Constitution will further strengthen these organs.
However, and this became particularly obvious during the negotiations on the Nice Treaty and still to be ratified Constitution, the intergovernmental elements – the European Council and the Council of Ministers – are still regarded as the dominant actors in the integration process. In delicate matters like those laid down in the second and third pillar, they are decisive, the influence of supranational organs is limited.
SICA, on the other hand, is an excellent example for good intentions outrun by political realities. The mere creation of supranational organs and their equipment with – for some parts – considerable competences does not necessarily mean that these organs will then play a decisive role in the integration process.

5.1 The Intergovernmental Organs in Comparison

The strong position of Central American Presidents within national political systems has been transferred to the regional level. The Meeting of Presidents is the supreme organ in SICA, but it is not only concerned with the overall guiding of the integration process, but, and this is a strong contrast to the EU, it is also the final stage in SICA's legislation processes. The outstanding importance of the European Council in the EU is undisputable, but its legislating power is limited to treaty modifications. The day-to-day decisions are explicit competence of the Council of Ministers and – although limited in particular with regard to the EU's supranational ambits – the European Commission and the European Parliament.
Also in SICA the Council of Ministers is involved in decision-making. The different Councils have a right of initiative, their proposals have to pass the Council of Ministers for Foreign Affairs, that comments on them before submitting them to the Meeting of Presidents. The position of the Council of Ministers for Foreign Affairs is outstanding in SICA. It is the main coordination body and the only one to decide on SICA's – however limited – budget. The right to elaborate the draft budget it has taken from the Executive Committee, as well as the right to make proposals on new policy areas and establish the necessary technical secretariats.

5.2 The Supranational Organs in Comparison

5.2.1 The Executive and Administrative Organs

The Executive Committee could have been a decisive actor in Central American integration, but due to several reasons, including opposition by the Council of Ministers for Foreign Affairs as well as disputes between the Member States regarding the Committee's composition, prevented the Committee from functioning. With the abandonment of the Executive Committee there has been eliminated the supranational "guardian of the treaties"; now, the implementation of community law in the Member States is subject only to the good will of the Presidents and the Council of Ministers.

In the EU, the equivalent to the Executive Committee is the European Commission. In contrast to the first, the latter is allowed to function. In the EU's first pillar, it has the sole right of initiative, in the second and third pillar, it has to share this right with the Member States. Furthermore, it elaborates the EU's draft budget and acts as a "guardian of the treaties". The Commission President attends the meetings of the European Council, this right has in SICA been given to the Secretary General. With the General Secretariat and the specialised technical secretariats, the European Commission furthermore shares the exercise of administrative tasks and the explicit supranational and independent character. But whereas the apolitical, administrative Directorates-General form part of the Commission, the specialised technical secretariats act for the most part independent from the General Secretariat. This is especially true for the Secretariat of Economic Integration. The General Secretariat is increasingly losing control over the most advanced part of Central American integration. With regard to the overall coordination of SICA, the most important task of the General Secretariat, this is made increasingly difficult by the complex character of SICA's institutional framework and by demarcation disputes with the Council.

5.2.2 The Parliaments

The most striking differences can be made out when comparing the European Parliament with the Central American Parliament. Whereas the EP – apart from its still very limited role

in the supranational pillars – over the years has become an important actor in the EU's legislation process, has budgetary power, can to a certain extent influence the composition of the Commission, can dismiss the same and may demand reports from the Council and the European Council, the PARLACEN has none of these competences, with the exception of it being allowed to approve its own budget. It is a purely deliberative organ, from which the only real competences (election of executive bodies) have been taken. It is remarkable, that Costa Rica, the most stable democracy in the region, has so far refused to participate in PARLACEN. However, the Parliament's contribution to a dialogue between the former opponents of the civil wars and between the individual Central American countries may not be underestimated. Both parliaments share the fate of not receiving much interest from the population, although, at this is definitely the most striking similarity, they are the only parliaments of their type, whose members are directly elected. But whereas in Europe, this is just disinterest, in Central America the PARLACEN is downright refused. Its members are regularly involved in scandals and for the Central American population its existence makes no sense at all.

Here, there becomes obvious another difference between Europe and Central America. Supranational organs are not only dependent on the competences given to them in the treaties, but also, to a considerable extent, on its members. It has been shown, that Commission Presidents like Delors have highly influenced European policies. Likewise, the EP has several times forced an extension of its competences by continuously exerting pressure. In Central America, this motivation seems to be absent: "Regional institutions offer a possibility to get rid of politicians or bureaucrats, who are regarded of being too incompetent for exercising a task on national level."[42]

5.2.3 The Courts of Justice

The Central American Court of Justice has once been regarded as the only supranational organ able to act as a counterpart to the predominant intergovernmental organs in SICA. However, the Court suffers from the rejection of all but three Member States. Although it has made some important judgements, its influence on the integration process in still low, as it

[42] Werner Vargas, Secretary for Parliamentary Affairs in PARLACEN during an interview on 13-03-07.

has no means at its disposal to assert its verdicts. Furthermore, it has meanwhile been denied the jurisdiction in commercial matters.

The jurisdiction of the European Court of Justice is also limited in the ambits of the second and third pillar. But, its judgements in disputes concerning first pillar policies are highly respected and the Court has several times assured that Community law is directly applied on the national level.

5.3 To What Extent Can the EU's Supranational Features Be Found in SICA?

It hence has to be stated, that, compared with the EU, the supranational organs of SICA are extremely weak. And this is true, although also in the EU the intergovernmental organs are still the ones regarded as the most decisive ones. The supranational powers assigned to EU and once also to SICA organs have either been taken from the latter (in case of the PARLACEN and the Court) or they led to the fact that the organs are not allowed to function in the intended way (in case of the Executive Committee and the Court).

However, adding what has been said about the Andean Community and the MERCOSUR, this conclusion has to be reconsidered. In MERCOSUR, there do not exist supranational organs, only the newly-founded "independent and autonomous" PARLASUR will maybe have a – very limited – control function, but no legislative rights. The Andean Community certainly has the more stable institutional structure, but a lack of real competences in the case of the PARLANDINO, and a very reduced number of ambits in which integration has been realised so far and hence is subject to the Court's jurisdiction in the end do not lead to a greater influence of supranational organs. Furthermore, ongoing disputes between the Member States and rejections from membership make the continuance of this integration process quite unlikely.

It has to be awaited, if SICA's supranational organs, that exist in this form only since 1991, will in three or four decades have the same status as their European counterparts, which also needed considerable time to get the competences they have now. Or will it prove true, that it is just not possible to impose the institutional structures of a successful integration process in one region on that of another one, where some experiences are shared but others are extremely different?

6 Literature

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7 List of Abbreviations

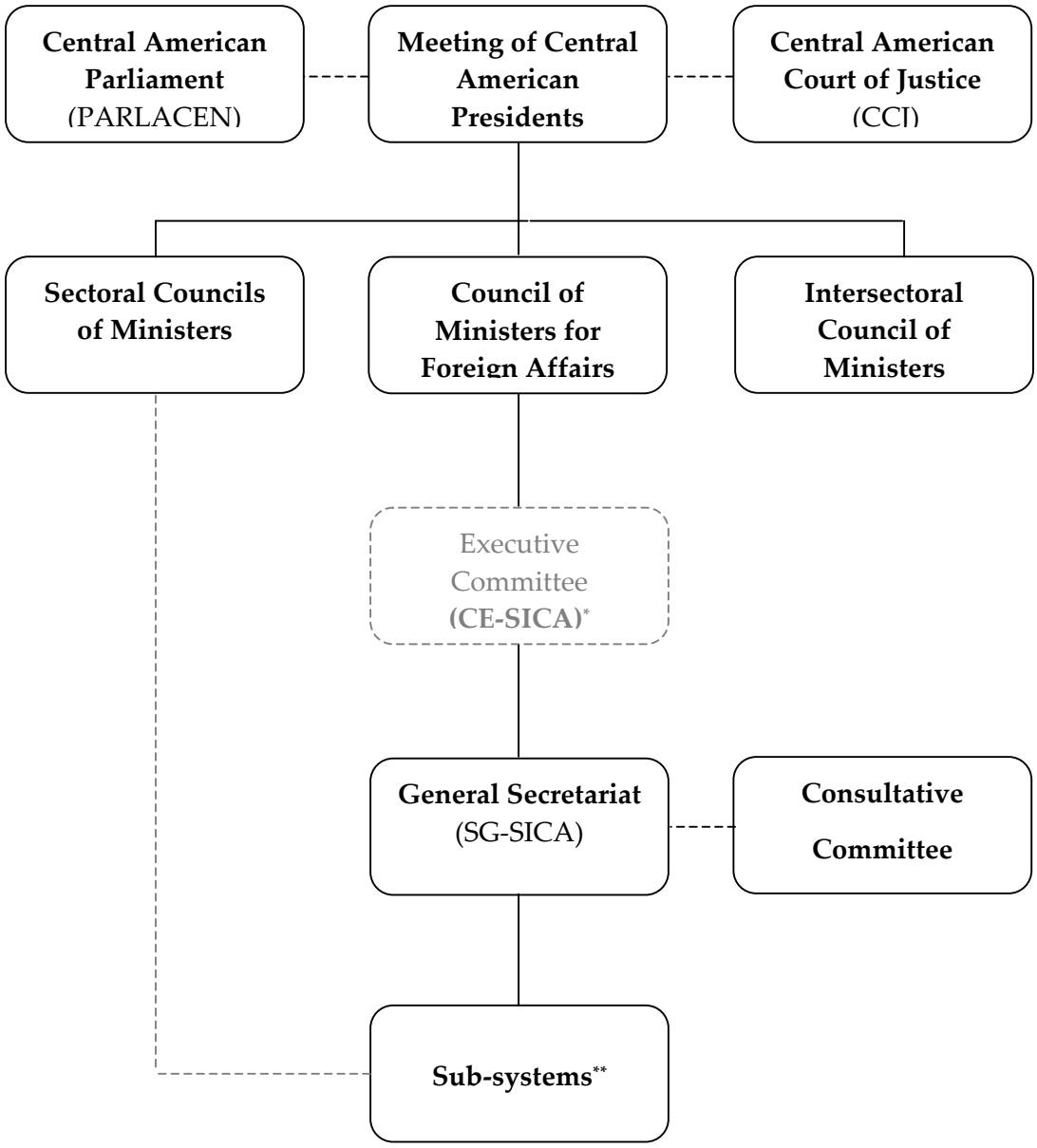
BCIE	*Banco Centroamericano de Integración Económica*/ Central American Bank for Economic Integration
BVerfG	*Bundesverfassungsgericht* (German Constitutional Court)
CCJ	*Corte Centroamericana de Justicia*/ Central American Court of Justice
CCM	*Comisión de Comercio*/ Trade Commission
CC-SICA	*Comité Consultivo de SICA*/ Consultative Committee of SICA
CE-SICA	*Comité Ejecutivo de SICA*/ Executive Committee of SICA
CFSP	Common Foreign and Security Policy
CJAC	Court of Justice of the Andean Community
CMC	*Consejo del Mercado Común*/ Common Market Council
CPC	*Comisión Parlamentaria Conjunta*/ Joint Parliamentary Commission
CRE	*Consejo de Ministros de Relaciones Exteriores*/ Council of Ministers for Foreign Affairs
EC	European Community
ECJ	European Court of Justice
ECLA	United Nations Economic Commission for Latin America
EP	European Parliament

EU	European Union
GMC	*Grupo del Mercado Común*/ Common Market Group
ICJ	International Court of Justice
JHA	Justice and Home Affairs
MCCA	*Mercado Centroamericano Común*/ Central American Common Market
MERCOSUR	*Mercado Común del Sur*/ Common Market of the South
OAS	Organisation of American States
ODECA	*Organización de Estados Centroamericanos*/ Organisation of Central American States
PARLACEN	*Parlamento Centroamericano*/ Central American Parliament
PARLANDINO	Parliament of the Andean Community
PARLASUR	Parliament of the MERCOSUR
PARLATINO	Latin American Parliament
PJC	Police and judicial cooperation in criminal matters
SAM	*Secretaría Administrativa del Mercosur*/ Administrative Secretariat of Mercosur
SEA	Single European Act
SG-SICA	*Secretaría General de SICA*/ General Secretariat of SICA
SICA	*Sistema de la Integración Centroamericana*/ Central American Integration System

TEU	Treaty on European Union
TGIE	*Tratado General de Integración Económica*/ General Treaty on Economic Integration

8 Annex

The Central American Integration System (SICA)

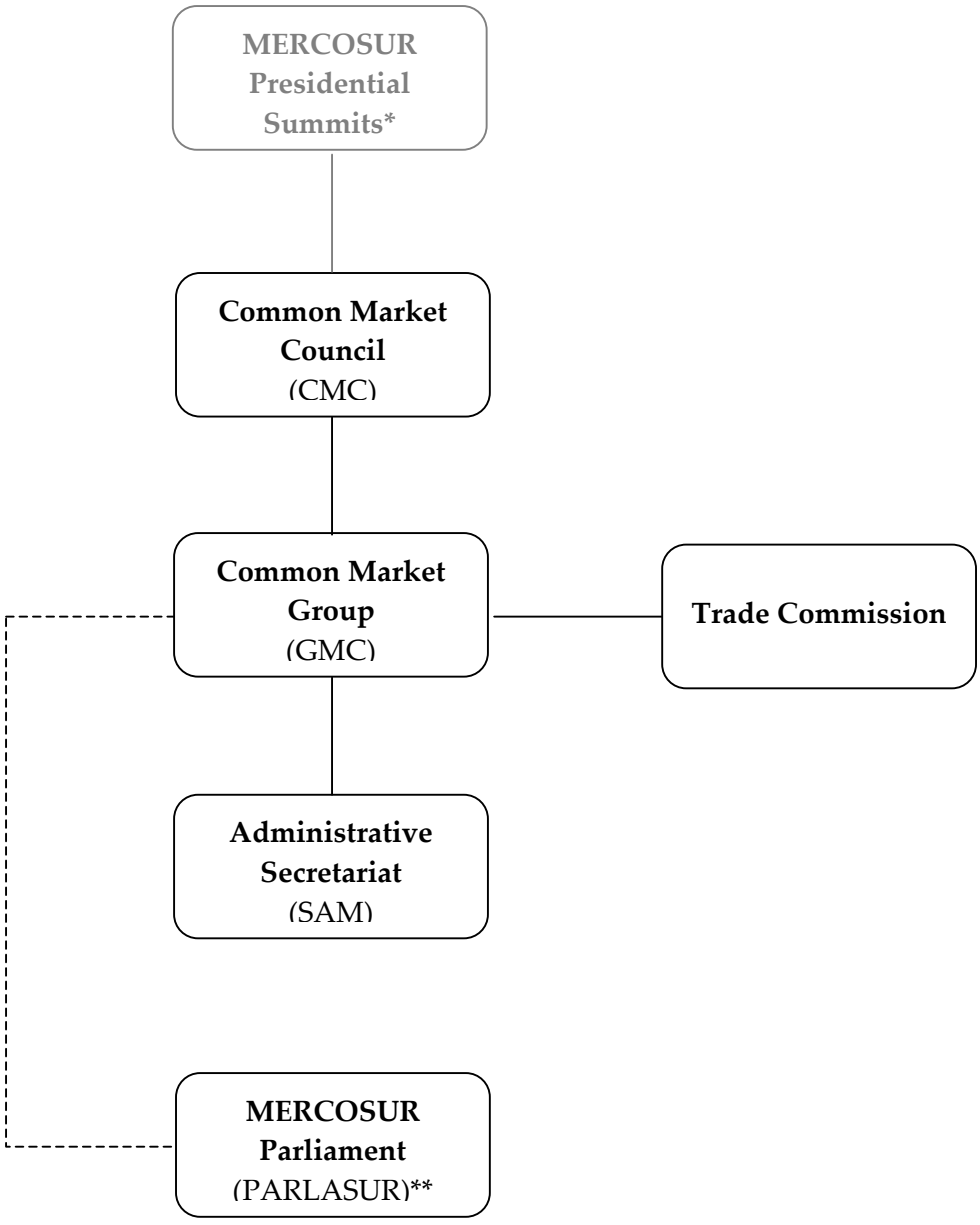


Source: www.sica.org.gt

* The CE-SICA is not any more part of the official scheme which can be found on the SICA homepage. Bollin (2000: 106) incorporated it as shown above. The Meeting of Vice-Presidents is incorporated in neither of the two.

** In the official scheme there is no direct connection between the subsystems and the Council of Ministers. However, according to what has been said in the thesis, it seems appropriate to establish this connection. Bollin (2000: 106) does likewise.

The institutional framework of MERCOSUR

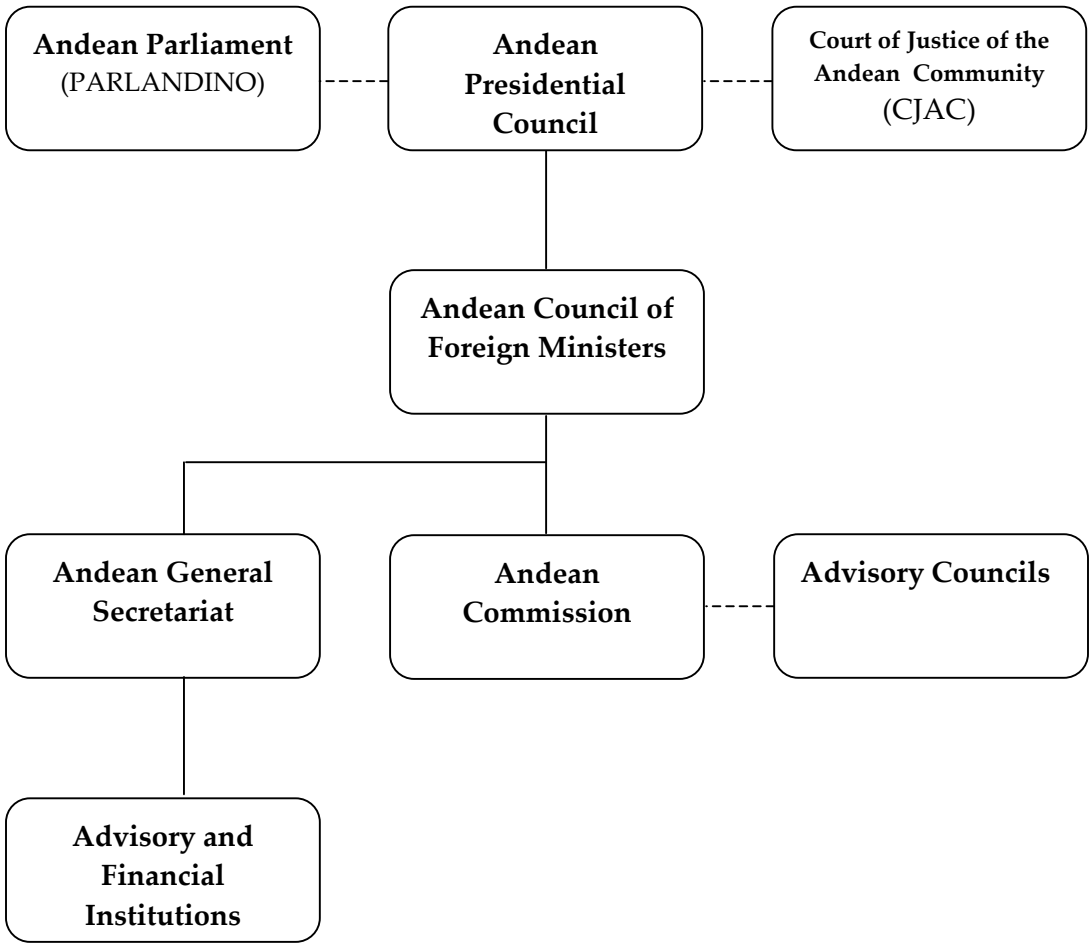


Source: Loschky (1998: 14)

* The Presidential Summit is not an official organ of the Ouro Preto Protocol. However, Loschky (ibid.: 13) sees it as an equivalent to the European Council and hence puts it at the top of MERCOSUR's institutional hierarchy.

** In Loschky this is of course still the Joint Parliamentary Commission

The Andean Integration System (SAI)



Source: own illustration