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# Human Rights in Latin American integration: comparative analysis between the Ecuadorian proposal in the UNASUR and the Inter American System on Human Rights

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*DEDICATION*

*To my parents with infinite  
love and admiration.*

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## **Abstract**

This graduation work states that human rights, more than being legal claims, respond to socio-political processes strongly linked to the foundation of the Nation State and the structure of the modern world. From this perspective, firstly it makes a journey through the contemporary history, ranging from the creation of democratic societies and the monarchy abolition, until the emerging world order. Secondly, it analyzes how human right influenced the formation of Latin-American countries and their regional organizations. Finally, and taking into account the discourse about human rights, it revises the current political situation of Latin America in order to determine the factors that influence the regional integration as well as the formation of politic blocks and platforms in a multipolar world.

## INTRODUCTION

*“The study of history offers no manual of instructions that can be applied automatically; history teaches by analogy, shedding light on the likely consequences of comparable situations.”*

*H. Kissinger. Diplomacy*

In his book, *Diplomacy*, Henry Kissinger studies the historical factors and the dynamics of international relations which have led to the emerging world order, and, based on them, he explains what this new scenario will be like. Kissinger, like most current authors, indicates that this new world order will be truly global and interconnected and it will feature some factors such as interdependence and fragmentation at the same time; an interconnected global economy, universally accepted values and principles, and problems, such as terrorism, drug trafficking, environmental pollution, overpopulation, among others, that will be attacked only if we all work together.

It was probably the time he wrote this book -1996- or the lack of a strategic vision on the role of Latin America in the future of international relations which made Kissinger ignore the subcontinent. Anyway, in the last decade of the 20<sup>th</sup> century, it was quite difficult to guess that one Latin American country, not to mention the whole region, could -in the following year- be something else than the “backyard” of the United States.

At the beginning of the 21<sup>st</sup> century, Latin America, or at least South America, was not only unwilling to follow instructions issued by foreign powers to the letter, but it even attempted to generate windows to enable it to serve as an important actor in the new global order. The central ones are as follows: the 2008 U.S. economic crisis which affected most of the world, surprisingly avoided relatively by Latin American countries; the subsequent industrial development of these countries and their economies; the amazing economic rise of Brazil, which came to be positioned as one of the strongest emerging economies of the century; and the emergence of progressive governments in

Latin America, which -despite their differences- have aroused an integrationist sentiment of independence from extra-regional actors.

As part of this “macro” objective, progressive governments -grounded in leftist tendencies, although with some differences between them- aim to establish a system of common values and principles which will define the role of the region in the new international scene. Therefore, these countries have placed an emphasis on building more equitable and just societies, with a better distribution of wealth to reduce the huge gap between rich and poor, where the role of the states, and by extension, the international relations, will not work exclusively in favor of the interests of an economic or political elite, but they will focus on solving fundamental social problems like education, health, nutrition, and access to decent living conditions to ensure equal opportunities.

The importance of establishing these principles lies on one of the factors identified in the new world order: the existence of universal values and principles. The end of World War II brought about the establishment of the largest supranational body up to now, the United Nations, which in addition to safeguarding peace, enforces the international law and promotes respect for human rights worldwide. This issue, which was first addressed in England in 1689, has now managed to build one of the most important axes of international relations; it has even managed to motivate -justifiably or not- the violation of two equally strong international principles: non-intervention and non-use of force.

In this emerging new world order where human rights play a fundamental role in the dynamics of national and international policies, in which different regional integration organizations as well as leftist governments in Latin America appear, the Union of South American Nations (UNASUR) emerges as one of the largest integration projects with future projections. And in this context in mid-2012 Ecuador proposed the creation of a Working Group on Human Rights in the framework of UNASUR in order to develop public policies and legislative initiatives to more efficiently promote respect for human rights in the region.



Regardless of political interests that may exist behind it, the proposal did not involve in any way the dissolution of the Inter-American System of Human Rights since it did not intend the establishment of a judicial body opposed to the Inter-American Commission on Human Rights or the Inter-American Court of Human Rights. This proposal was a sort of challenge to find better bodies which can protect human rights in line with the changing global and regional geopolitics. It certainly meant a debate on the political agendas of Pan-American organizations because -from the current perspective of the Ecuadorian Foreign Ministry- national interests in the region were subject to the interests of other nations (Ricardo Patiño, 2013: 10).

These were the guidelines to design this graduation paper. The overall objective was to analyze the Ecuadorian proposal to establish a Coordination Committee on Human Rights in UNASUR in light of the study of the development of human rights and their implementation in Latin American integration organizations. However, while this proposal was being considered, the Ecuadorian proposal lost support and it is now in a kind of limbo, hoping to be included in the regional agenda again.

As a result, this thesis necessarily had to take a new direction. The decision was based on the assumption that human rights and their protection correspond to moments in history and politics of states and their societies. Therefore, an analysis of what the world and Latin America were like at the time of the establishment of the Inter-American Human Rights System (IAHRS) could help identify what South America is like now, which has proposed the creation of new mechanisms for protection of human rights - regardless of whether these proposals come to be implemented or not.-

Thus, far from pretending to carry out a legal analysis of the convenience of dealing with this issue within UNASUR by minimizing the role of the IAHRS, this paper is actually a study on the political situation in Latin and South America today.

The first chapter presents a discussion of the historical and theoretical background of human rights since the first Bill of Rights of the modern era -the English *Bill of Rights* in the seventeenth century- to the late twentieth century, when a persistent debate arose over the political conceptions which shaped a unipolar world led by western liberalism.

Two hypotheses are used to support research in this chapter and throughout the thesis: the first one states that the history of human rights is one of the elements of the shaping of the modern world. The second one states that all social processes take place amid confrontations: in the origins of theory and political vindication of human rights, the confrontation between the absolute power of the monarchy and the vindication of the rights of people occurs, that is to say individual rights against the state.

In the beginning, the first chapter was to analyze the history and main doctrinal concepts of human rights and their evolution in Latin America; however, upon the completion of this thesis, it was developed not in one but in two chapters in order to achieve the goals. Therefore, the first chapter examines the concept of human rights and its evolution in the modern world; the second chapter extensively discusses the political history of Latin America and refers to the advances toward the triumph of human rights in the region.

Additionally, the volatility of international relations and South American policies caused this thesis to suffer constant changes of structure and objectives, including issues that were not expected in the original version. For example, last year a new process of regional integration was all the more important: the Pacific Alliance composed of three members of UNASUR (Chile, Peru, and Colombia). This weakened the South American organization, and the discussion on Latin American integration was set up again in terms of the Pan-Americanism and the liberal tradition of individual rights at the expense of the new trends which were the original core of the Ecuadorian initial proposal. Finally, the current international policy of Ecuador regarding human rights in the region preferred to deal with the conflict with the media, while it focused on the goal of achieving the change of the headquarters of the American System of Human Rights. In spite of all this, the Ecuadorian proposal of an alternative sub-regional body to IAHRs has not been formulated or formally presented up to now.

These circumstances caused the contents of the third and fourth chapters to be impractical because such chapters were to analyze the Ecuadorian proposal on the IAHRs before UNASUR and the establishment of a matrix to debate the issue of human rights transversely in all of the councils of this South American organization. The dynamics of international relations in the region and the country was forced to take an

unexpected turn in the development of the discussion of the topics of the thesis. Thus, the economic liberalism came under the spotlight as well as its close relation to the United States as a real option to guide international politics and the vindication of human rights.

Although this project to recover *Pan-Americanism* within the restrictions created by a multipolar world is ongoing, *Latin American regionalism* is still there as the alternative which challenges the U.S. hegemony on the continent; this project focuses on two different political tendencies: on the one hand, the construction of *Bolivarianism*, mainly encouraged by the current governments in Brazil, Argentina, Ecuador, Venezuela, and Bolivia; on the other hand, a more radical trend of Latin America's left which supports the detractors of those governments. This is the issue which oriented the reformulation of the contents of the third and fourth chapters given the impossibility of examining the topics suggested in the first outline.

# **CHAPTER 1**

## **HISTORIC AND THEORETICAL BACKGROUND OF HUMAN RIGHTS**

### **1.1. Introduction**

The most universal notion of human rights is referred to as the set of freedoms, capabilities, or basic values that correspond to every person, without considering his/her condition or character, ethnic group, religion, social condition, sexual orientation, etc., due to his/her nature and human condition in order to guarantee a decent life (Licenciatura en Género y Desarrollo 2012). This notion, which is focused on the natural right, has another counterpart that highlights its historical social characteristics: the human rights are social recognitions that have been obtained through the history of humankind (Galeano M, 2006).

One of the fundamental ideas to develop this work is that history of human rights is one of the components of the modern world structure in the sense that it always looks for a new kind of relationship between the human and the other. From this perspective, it is intended to demonstrate that all declarations and proposals that are linked to human rights have been a response to the political moment. Since the first Declaration of Rights of the modern time, the Bill of Rights in England in the XVII century, up to the recognition of the so-called rights of the fourth and fifth generation in the present time, the human rights are the result of specific historical periods when the political situation gives rise to a favorable environment for social vindication through the recognition of new rights.

Another idea that leads this work is that every social recognition process is not exempt from severe confrontations. In the genesis of modern States, the right was focused mainly to preserve and guarantee the existence of the State itself: most of the initial regulations of international law had as aim to regulate the right of war and to safeguard the territorial and economic rights of the States by regulating the commercial relations,

the free mobility in the oceans, among others. In fact, the confrontation to the absolute power of monarchies was closely linked to the vindication of the people's rights. For this reason, in the origin of human rights there was opposition of the individual rights to the power of the State: the need to protect the individual liberties and the development of the tutelage of people faced to the arbitrariness of the power.

Man's defensive hostility towards the State ceded space to collaboration between the two through the conformation of the representative State. Originally it was directed to the creation of a new human condition based on social wealth and individuals' emancipation (Echeverría, 2006). However, the historical development appeared to be perverse, according to Echeverría, which became a more aggressive version than the old form that was designed to submit the other. So, the controversy between the person's rights and the citizen's rights became evident, rights that are also called individual rights and group rights respectively (Knowles, 2009).

This confrontation can be tackled in terms of the fight of classes as seen by the classic Marxism, or it can be regarded as the history of modernity in the western world – the history of the achievement of an idea of progress that concentrates on the individual economic – mercantile level while the collective rights are postponed. Also it can be seen as a kind of exchange along different historical cycles: periods when the rights of property and freedom of opinion spread, while others, like social equity, are put off, and periods when more equity in the distribution of the wealth is achieved by sacrificing the so-called individual freedom.

Finally, another line that this revision of the human rights history leads to refers to the instruments that were created as protection within the States, which were, as time passed, more focused on ensuring the human rights. In this context, probably the United Nations Charter and the Universal Declaration of Human Rights constitute a clear *before and after* regarding the protection of the individuals and of the groups as a fundamental part of the international law. Consequently, one of the central characteristics of the contemporary human rights is universality, which means that if one person has those rights, everyone must have them, according to Dudley Knowles.

However, during the last years since the appearance of the *moral relativism*, the universality of rights has been questioned in order to defend the idea that there are no values which are shared by the entire humankind; on the contrary, there is a multipolar world which is divided not only by political ideologies but by cultural and social values that are more strongly rooted than any government system or economic model.

Concerning the exposition of this first chapter, in the first place an analysis of the historical development of the conquest of human rights in the Western World is presented; then, the conceptual point of view of the main doctrinaire conceptions on human rights as well as the Western thought are debated.

## **1.2. The modern origin of human rights**

It is not difficult to justify the initial statement that the history of human rights is part of the history of the implementation of modernity in the west. In the first societies, people's coexistence and community life rules were regulated by the subjection of politics to religion without considering the human being as an individual with rights, with particular characteristics and needs. The modern world starts "with the first twinkles of a new technique that came not only to refine the archaic technique by prolonging the same design, but to completely substitute it, which inaugurated a new kind of relation between the human and the other. Thanks to this technique, Man's hostility towards Nature could give a space for collaboration between the two in order to introduce new forms in the world" (Echeverría, 2006: 12-13).

The quotation of this Ecuadorian philosopher opens a door to the analysis of the outcomes and failures of the modern capitalist society, the achievement of the human being's rights, and their deceitful rhetoric. The genesis of the human rights goes back to the XVII century in England, when the British parliament supported prince William of Orange to invade England under the condition that he accepted the 1689 Bill of Rights, first document that questions the Kingdom due to the tax collection to its citizens and to the exaggerated prerogatives of the English aristocracy in detriment of the common people.

The above mentioned document recognized the freedom and rights of its citizens, limited the power of the King and recovered a large part of the functions that the Parliament lost during the reign of the Stuarts. Most part of the bill refers to this last point, which constitutes a fundamental guideline for the modern democracy. Among these guidelines, we can find the illegal suspension of laws without the parliament's authorization, the citizens' right to free parliamentarians' elections, and the right to freedom of speech, discussion and performance in the parliament (Couthbert, 1689). Also, it includes crucial aspects related to basic citizen rights, such as the illegal imprisonment or processing of an individual for claiming his rights, the prohibition of the application of cruel or unusual punishments, the right to worship and several rights referred to a fair trial. Even though they are basic, later on they were the guidelines for the Declaration of the Independence of the United States in 1777, the Declaration of the Rights of Man in 1789, and the Universal Declaration of Human Rights in 1948 (Spielvogel, 2010; and Galeano, 2006).

### **1.3. Civil and political rights: first-generation rights**

On July 4, 1776, the Congress of the newly-formed republic of the United States of America approved the text that will represent their official dissociation from the Kingdom of Great Britain. Further to the political implications that the Declaration of the Independence of the United States of America had in the world context of that time, it established an important referent in relation to the fight and defense of human rights worldwide. For the first time in modern history, the principle of equality among men is defended, certain inalienable rights as life and freedom are recognized, and the right of the citizens to elect their authorities is established (Government of the United States of America, 1776).

These principles will be reflected again in the first ten amendments, also called the Bill of Rights of the United States. These amendments, which entered in force in 1791 after being ratified by three-fourths of the states, limit the powers of the federal government and protect the rights of the citizens, residents and visitors to the United States of

America. Among the liberties and rights that the Bill of Rights guarantees, there is freedom of expression and press, freedom of religion, freedom of assembly, the right to not be subjected to unreasonable seizures, or to cruel and unusual punishment, besides the right to due process and to fair speedy trials by an impartial jury (Government of the United States of America, 1787).

In the same manner, another document with major relevance for the history of the human rights is the Declaration of the Rights of Man and Citizen which was promulgated in 1789 in France. This declaration begins defending equality and freedom of every man, lists freedom, property, security and resistance to oppression as natural rights, and declares that the purpose of every political association is to preserve these rights. Along the text and in the framework of liberty, the rights of opinion, press, religion and conscience are included. Additionally, it supports that freedom shall be only limited by law, and that this will be enforced with the purpose of avoiding prejudicial acts to society or with the intention of guaranteeing the freedom of all citizens. In this context, it declares that no person shall be accused, arrested and held in confinement, without a previous trial, and that this person will be judged under the conditions established by law, and law will not be applied retroactively (National Assembly of France, 1789).

Although these declarations are quite innovative in defending the human rights, there is a common fact to all of them, including the English Bill of Rights, and it is that in spite of guaranteeing equality to all human beings, none of them truly included the totality of people, but they established certain restrictions on who was considered subject to these rights. For instance, in Great Britain, the low social classes and the women were excluded; neither of the two declarations of the United States included the Afro-American who maintained their condition of slaves; and in France, when it came up to talk of equality of rights, women were excluded as well. In order to overcome these limitations, each country looked for different solutions, that in the case of the United States, it had to face a violent civil protest between 1955 and 1968; also in France, an additional declaration named Rights of Woman and the Female Citizen was created.



The rights that were recognized in the declaration of man and citizen are named as *first generation* rights. Whenever the term “generations” is mentioned, it refers to the time when it is acknowledged by relevant institutions<sup>1</sup>. The first generation refers to the *civil and political rights* which are associated to the principles of tutelage of individual freedom. The first generation rights can be classified as civil and political rights. The civil rights are based on equality before the law and these are: individual freedom, security, freedom of thinking and conscience, freedom of speech, freedom of gathering and association; nobody will be submitted to slavery or servitude; nobody will be subject to torture and other cruel, inhuman or degrading treatment; everybody has the freedom of movement and to choose residence; every person has the right to a nationality. The political rights refer to the regulations that entitle the people to participate in the exercise of the political power and they are: liberty for political association and the right to vote (Atilio Alessio, quoted by Licenciatura en Género y Desarrollo 2012).

From the perspective of the political thought as part of the academic history, the history of human rights is considered to be a very recent chapter within the history of ideas<sup>2</sup>. It is linked, as it has been mentioned for several times, to the origins of modernity when the human being starts to be considered as an individual with rights and with the possibility to decide about himself or herself and his or her condition. The declarations that are issued by the American (US) and French revolutions are key texts to define people as subjects to rights.

The traditional notion of natural and human rights is centered on the individuals as bearer of rights. This corresponds also to the contemporary liberalism as far as it defends the assumption that the individuals hold the rights in front of other individuals and supranational institutions, mainly, the State. The idea of *person*, as the minimum moral

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<sup>1</sup> The division of human rights in three generations was carried out by Karel Vasak in 1979, by the first time. Each one is associated to one of the great values that were proclaimed by the French Revolution: liberty, equality and fraternity. For several generations up to now, this classification is still debated; even though there is an important awareness to recognize the first generation of these rights, the following generations have turned into a critical point. Moreover, there are people who prefer to regard them as a unitary system (Licenciatura en Género y Desarrollo, quote)

<sup>2</sup> When it is intended to look back to the past, it is possible to find very remote predecessors, such as Cyrus Cylinder (539 B.C). The Iranian Shirin Ebadi, Nobel Peace Prize 2003, in her speech of acceptance in front of the Sweden Academy stated that this piece of work should be considered as the first declaration of human rights.

state that modern individuals aspire or must aspire, becomes the defining characteristic of this conception (Knowles D, 2009). The *person* designates the bearer of the fundamental political rights, while the State is a mere guarantor of the social organization.

This idea of separation between society and State is important in order to understand the origin of the modern theories of rights. From this perspective, the origin of the concept of human rights in philosophical terms is closely attached to the concept of natural rights developed in the XVIII century, and it refers to those rights that were considered as product of a natural law, and that in the state of nature, every man is holder of all the rights, to keep it simple.

The theory of the natural right or jusnaturalism states the existence of individual rights that are founded or determined in the nature of human beings: these are universal rights which were previous or independent from the positive legal order and from the right based on the custom or consuetudinary right. If the positive right is considered as the body of laws that are effectively in force in a State, the jusnaturalism declares that the legitimacy of these laws depends on the natural right of human beings. This means that, a law that has been enacted by competent authority is not enough to become legitimate.

In the theory of the natural right, the origin of the modern liberalism is found, which is the defense of the individual rights against the excesses of the State. What was subversive in this theory of the natural right at that time was the introduction of a justification to resistance to the abusive authority of the State.

Therefore, as Umberto Cerroni, an Italian author, mentions, the jusnaturalism introduced a transformation in the way of considering the society and the politics. On the one hand, jusnaturalism stops considering society as the product of a superior will, but that can be completely built by man. On the other hand, it postulates the preeminence of the individual regarding society, as a natural primacy. In other words, “the nucleus of the political thought is not the study of the organic, natural, rational, eternal structure of society anymore, but now, it is man who constructs and models society with his natural rights and capacity of decision.”

According to Cerroni, the following features will define, the essence of the law: man is born free and equal, society is a contractual creation, law and authority should be born from consensus, power is responsible, and governors represent the governed people. In this context, Cerroni supports that the search of happiness demands tolerance, freedom of opinion, freedom in the economic activity, private property and respect, and reciprocal guarantees (Cerroni, 1977: 210-211).

The liberal notions of the State and of the modern politics will be developed from these ideas. In brief, the decisive problem of politics is transformed into the problem of the division between the representative State and the privatized society, of the relations between the power and the people, between law and citizens, between governors and governed, or according to Cerroni's words, "the authentic modern dualism is the one that is established between the popular sovereignty and the State sovereignty"<sup>3</sup>.

With the consolidation of modern society, the rights of the individual are also consolidated, becoming autonomous from the State. This distinction is essential in order to understand the notion of "individual rights", since the essence of modern constitutions is framed by cardinal elements that establish the limits of the State activity; this establishes the existing separation between social activity and political activity, between public sphere and private sphere, in a univocal way (Cerroni, 1977: 184-85).

It seems that only with a total separation of life and a total privatization of property it is possible to effectively understand the notion of an exclusively public sphere that nothing has to do with the differences that are born for example, or the differences of positions in the social scale that marked the previous distinctions among people. Just then, it is feasible that in *practice*, the *theory* of liberal rights such as rights of freedom, property, security and resistance to oppression that were proclaimed by the Revolutionary French Assembly at the end of the XVIII century, is elaborated.

To sum up what has been analyzed from the historical and theoretical perspectives, human rights emerge in the XVIII century when the "*National State*" is constituted; this is associated to the movements that tried to defeat the European monarchies and the

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<sup>3</sup> Therefore, the Christian dualism earth-heaven, and the rational dualism natural state and civilized state go to a second place.

absolute power they held. The main cause for the liberal rights struggles was the recognition of the peoples' rights as citizens with the capacity to decide and to define their own status.

In the framework of the French Revolution, the bourgeois movements that are constituted by antimonarchic groups propose the public subjective rights of the people in front of the privileges of the aristocracy; based on the gained achievements, the rights to liberty, to equality and to fraternity are supported and the State is forced to become an entity that guarantees these basic principles of coexistence.

It is important to remember that what has been named as rights of the first generation is the *civil and political rights* associated to the principle of freedom. Usually they are considered as the rights of defense which demand the public powers to inhibit and to avoid interfering in the private sphere.

At this point, it is relevant to present the classification that is inherent to the liberal society, and that refers to the *non-interference rights*. When a person's rights imply that the other agent, institution or person has the obligation to not interfere in the rights of that person, there is a right in the classic liberal form, a non-interference right. The example, which is also classical among the human rights, occurs when a citizen vindicates a right of freedom of expression and claims that the State – or other people – is forced to allow this person make his opinions known by other citizens. They, correlatively, may or may not have the obligation to listen, but they have the obligation of saying that opinion (Knowles, 2009: 130-31).

The examination of contemporary history allows the verification that the world followed a completely different path from the harmony that was foreseen by the liberalist theoreticians: labor disputes, syndicalism, struggle against colonialism; in sum, a process of people's generalized action who did not behave as individuals, but as members of a social collectivity.

During the second half of the XIX century, the history of modern society showed a progressive collapse of the culture of human rights, that is, of the idea that the individual's independence in front of society is an essential condition for the practice of

freedom. Conversely, the extreme exercise of individualism revealed as the authentic source for the lack of freedom in modern times; with the self-consented isolation of all of the individuals, the domination of a few grew up and developed until the socio-political system collapsed surrounded by the deplorable life conditions of the workforce.

From these circumstances, movements and social struggles appeared; they articulated their claims and proposed the emergence of new rights that could solve certain social problems through State intervention. These rights are the result of verifying that with the industrial and employment growth of society and the consequent social class diversification that appeared with the height of the industry, the working classes are submitted to the control of the entrepreneurial class. This demonstrated that the civil and political rights are not enough to guarantee a decent and equal life for everyone (Licenciatura en Género y Desarrollo, qtd: 11).

However, it was only after the hard experiences of the great crisis of the thirties and the Second World War, that the economic, social and cultural rights were generally accepted as indissoluble constituents of the human rights.

#### **1.4. The United Nations and the Universal Declaration of Human Rights: formalization of the second-generation rights**

The end of the Second World War carried a non-expected period of economic expansion and the diffusion of the ideology of social transformation and of human condition. The reconstruction of Europe generated huge expenses and employment; the technological advances accomplished during the war for military purposes were very easily transformed into products for peace purposes. A surplus was the development of the political institutionalism to serve the international pacific coexistence, the protections of the human rights and the regulations of the economic and financial relations among nations.

Within this context, the most important international organization up to that date was created, the United Nations Organization, which has as main purpose: to promote peace

and avoid future war. To this end, in 1945 representatives from 50 countries wrote the Charter of the United Nations which “determines the rights and obligations of the State Members and establishes the bodies and procedures of the United Nations” (United Nations Organization, 2000, page 4).

For the first time, the Charter represents the acquisition of a compromise with the human rights at international level and in a multilateral way. As a matter of fact, it reaffirms the faith on the fundamental rights of men and women, the egalitarianism of these rights, and the value and dignity of the people; at the same time, it compromises to promote social progress and to improve the people’s level of life within a wide concept of freedom (United Nations Organization, 1945).

For this purpose, Article 55 states that the Organization should promote better levels of life, and conditions for progress and economic and social development trying to solve international problems related to these areas. Finally, it declares that the UN must promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction of race, sex, language, or religion, and the implementation of such rights and freedoms” (Ibid).

Yet the atrocities that were committed during the Second World War shocked the world in such a way that the States felt the need to extend the UN’s field of action by applying the international law and by generating preventive measures to guarantee that what happened in previous decades will not occur again in the future. For this reason, in 1948, the country members of the United Nations signed the Universal Declaration of Human Rights that together with the Charter of the United Nations is a compulsory suscription document for all its members.

This Declaration is the first international document that recognizes the existence of economic and social rights, and because of their importance, they are essential for the development of a decent life and for guaranteeing citizens equality. This new conception of human rights was reflected in the international community through the Declaration of the Economic, Social and Cultural Rights, which broadened whatever was just mentioned in 1948. In this way, in 1966 the UN General Assembly defined those

fundamental rights to guarantee the conditions of equality and decent life among all the people (United Nations Organization, 1966).

The analysis of the context of the international politics shows that the feeling of optimism that emerged after the end of the Second War was rapidly extinguished when faced to the menace of an even more savage war, which could reach destruction levels that were never imagined because of the use of atomic and chemical weapons. The world was divided into two large blocks: on one side there was the Soviet block which was headed by the USSR, and on the other side, the group of capitalist countries headed by the United States. In addition, there was a non-aligned group of countries, where the real war usually took place. The Cold War was called this way because the armed-conflicts took place so far away from the two poles of power that the war that menaced the whole world due to the possible use of chemical weapons by one of the two powers never occurred, but an unprecedented arm race started.

One of the main topics of discrepancy between these two powers were precisely the human rights: while the United States and the countries belonging to NATO stated that the obligation of the State was to respect the rights and to enforce the satisfaction of the basic guarantees regarding civil and political rights or non-intervention, the USSR and its allied supported that the obligation of the State was to guarantee that all of the citizens will have access to decent life conditions, providing the necessary resources to guarantee the fulfillment of the economic and social rights.

This work does not intend to analyze which regime is better, or what political tendency is the most effective. For the purpose of the social and political analysis, the most important outcome of this confrontation between systems was that the classic representative State, pressured by the modern social struggles, increased enormously the dimensions of its activity through progressive expansion of the public economy and the social intervention on education, health, social security, public works, foreign trade and planification.

In this way, a broad system for the provision of rights of second generation was created. The political transformation involved the construction of a substantial unity between State

and society, differently from the absolute separation thesis that constituted the developmental core of the classic liberal State<sup>4</sup>.

Nevertheless, due to the strong impacts that the War had generated in the life of millions of people, the UN regarded the protection of the civil and political rights or non-interference rights as a primary need, in response to the liberal position of human rights that was predominant at that time. In this way, the central text of the Universal Declaration of Human Rights revolves around a definition of the civil and political rights, such as the right to life, freedom of association, freedom of opinion and speech, freedom of worship, right to a fair trial, and freedom from torture and inhuman treatment (United Nations Organization, 1948).

The privilege of political rights in relation to the social rights in the practice of the international organizations can be explained if it is taken into account that a very problematic feature for the analysis of the economic and social rights has to do with the distinction between the rights of non-interference and the so-called rights of “provision”. The political rights are the most suitable area for international organization actions, while the provision of the social rights requires of large resources that most of the time cannot be financed by an international institution and it is usually defined by the State authority if it guarantees or not the rights of provision.

In order to clarify this distinction, it is necessary to focus on the legal notions of rights that are effective for the people or the rights that are effective for everybody<sup>5</sup>. In most cases, the rights of non-interference are usually individual rights that are effective for everybody that is, for anyone who can carry out an interference. In the case of the traditional liberties, such as the right to life, freedom of opinion and association, unmistakably illustrate the capacity that all people have to make effective their rights for any person who pretends to interfere (Knowles: 130-31).

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<sup>4</sup> For more information about the development of the unity between State and society and the contradictions that this brings, see Cerroni's work that was previously quoted (pages 227 and 228).

<sup>5</sup> They correspond to the Latin notions of *in personam* and *in rem*. The rights *in personam* are those that establish correlative rights as correlated individuals, as in the case of a creditor that must get payment from the debtor. The rights *in rem* are those that allow claiming any institution or any person; for instance, the right to move freely in a city is a right that the citizen can ask to be enforced against any government employee or individual that tries to prevent the person from doing this (Knowles: 121).



Instead, the rights of provision appear when a citizen or institution claims to any agent, State or individual, the provision of a specific right, imposing this agent the duty to render that service. Among the human rights, the rights to education, to decent work conditions, and to health care impose the provision of these services to the government and to the international institutions. However, the international organizations usually have fewer resources for the direct provision of these services.

When the social and economic rights, typical provision rights, proclaimed by the United Nations Charter are analyzed, it becomes difficult to specify the exact institution or person who has the duty to render these claimed services or goods, because if it is supported that those rights are effective for everybody, it becomes impossible, according to Knowles, to make everybody responsible of the provision of the required goods or services.

This verification, however, should not lead to an erroneous conclusion assuming that the economic and social rights are not authentic human rights. The peoples have solved this dilemma by analyzing the responsibilities that are shared by different actors for the accomplishment of the rights; for example, in the case of the right to education, Knowles believes that this right can be assigned to the parents, the contributors, the school teachers, the local authorities, the State, and even to the international organizations that are compromised to offer this service.

The solution to the problem about good and service provisions claimed by the social organization is feasible through the creation of the Well-being State, which is a modern institution that expresses a substantial unity between state and society. In order to achieve this unity, the price that was paid however, was the subordination of the social activities to the political-bureaucratic processes. Therefore, denying legitimacy to the original representative State and accepting the privilege of the bureaucratic formalism beyond any aspiration to a democratic representativeness (Cerroni, qtd: 228). Some of the problems related to bureaucratic practices within the contemporary State are analyzed in the following section.

### **1.5. Civil rights and the decolonization process: collective and solidarity rights; or the third-generation rights**

Since the beginning of the social nature of the modern political problems, the theory of human rights has been forced to be rebuilt every decade. The liberal rights of first generation and the social rights of second generation experienced a process of diffusion and universalization maybe comparable to the diffusion of the liberal and socialist notions.

But in this context, the notion of rights was not left aside from the revision, since the confrontation of political ideas continued. It is worth asking oneself: is this revision a simple product of the history of ideas? Or does it respond to an inadequacy of the vindicated contents in the traditional declaration of rights regarding the development of complex social phenomena in the contemporary world?

To confirm the last question, a revision of the contemporary history reveals that the claimed legal equality appears as one of the most significant inequalities, just to mention an example. Also, for many occasions, the principle of nationality has led to slaughters, repressions, and practices of social exclusion that were justified by racism and intolerance. At the same time, the growth of bureaucracy, which was supposed to use the most rational means to make the provision of social rights possible, manifested a growing notorious irrationality and incapacity to provide goods and services in an adequate way. Finally, the power division among government institutions for jurisdictional control has often shown incompetence to stop authoritative practices of the State; on the contrary, the State centered-control was constantly promoted (Cerroni, 1997).

This section is devoted to reviewing these contradictions that are focused on the struggle for the rights vindication of the people and minorities who are affected by social exclusion. It has the purpose of setting out a historical framework to analyze the present vindications of indigenous peoples and minorities from Latin America and mainly from the UNASUR country members in the following chapters. To begin, the struggle for the civil rights in the United States is studied as part of the continent; then, the independence

movement in the old European colonies is briefly revised since it leads to the broadening of the human rights conceptions that started to be called rights of the third generation.

The vindication of the post-war civil rights in the United States marked a time in the recent history of human rights. The civil rights movement in favor of the black people that started in Alabama in 1955 divided the country. As consequence, it was the time to grow awareness about the Afro American and their fight against social segregation.

As the fifties went on, the awareness that black people had about themselves increased. On May 17, 1954, the Supreme Court of the United States declared that segregation in schools was unconstitutional and condemned the prevailing doctrine of “separate but equal” that ruled up to that time. Eighteen months later, Rose Parks, a black citizen, “was arrested because of sitting in the front of the bus in a section that was reserved for white people, in Montgomery, Alabama. It can be stated that at this very moment, the movement of civil rights that ended up dividing the country started (Watson, 2003: 490).

Among the black population, as it could be expected, there were diverse opinions about the way they should operate to conclude the fight for the civil rights in the United States. Some, like Malcolm X, believed that a violent fight was necessary, while others supported that non-violence could have better effects. The preacher Martin Luther King defended the resistance and the “non-violent tension” to enforce the human rights recognized by the United States black people; moreover, his statement “I have a dream”, in addition to the speech he pronounced in the demonstration in Washington in August, 1963, became the most memorable campaign for human rights which was practiced during these years within the “civil rights” context (Ibid, 561-62).

The consecutive achievements that took place at this time not only reached the civil rights for the black population in the United States, but also they were expanded to other minorities and to other countries as part of the vindications of the collective rights. Great Britain legalized homosexuality in 1967, in 1968 racial discrimination was proscribed through the Relations Law of the United Kingdom, and in 1970 the Equality Wage Act was approved. In the same way, in 1971 in Switzerland, the women’s vote was accepted, and Canada introduced Medicare.

In the United States, the achievement of collective rights included other minorities. In 1968 and 1969, the Hispanic workers started to claim a better treatment and the land devolution to the North American Indigenous initiated. In 1970 the civil rights are extended to women by compelling the companies of the country to hire a minimum number of women.

A special chapter in the history of human rights, largely due to the questioning of their pretended universality, is the one that derives from the fights of the ex-colonies to obtain their independence. In order to dominate the African and Asian territories, the European powers did not only apply the force, but they also used arguments like “the civilized mission, to claim a supposed right from the most powerful and civilized in order to colonize inferior people whose destiny is to serve” (Said 1997).

Since the beginning, the colonial domination produced clashes and conflicts between dominant and subjugated cultures. After years of resistance, political and cultural movements that sought the independence were organized. A paradigm from this struggle is the one that was carried out by the Congress Party, which was created in India in 1880; later on, it developed a pacific campaign to reach freedom by supporting Indian languages, industry and trade. Edward Said supports that a similar logic is found in the matured Japan from the times of Meiji, as well as in the nationalism that inspired the African and Asian independence movements that triumphed after de Second World War.

As consequence of the end of Second World War, the western world suffered a fragmentation. While the appearance of bipolarity – free world facing the socialist block – may be considered as defining the “Cold War”, many cracks appeared that brought outbursts of political conflicts.

As an inevitable result of this war, the decolonization process took place<sup>6</sup>. The European colonial powers were too weak to maintain the control of their possessions. During this process, the concept of “negritude” to glorify the African past emerged. The most

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<sup>6</sup> India got its independence in 1947, Libya in 1951, Ghana in 1957 and Nigeria in 1960 (Watson, 2003: 490).

important exponents were Leopold Senghor, president of Senegal, Aimé Césaire and Frantz Fanon <sup>7</sup>(Watson, 2003: 492).

The movement for the independence of the colonies conveyed its own awareness, and at the same time, it was one of the ways for questioning the universality of the rights from the perspective of the cultural values, one of the fundamental principles of the Declaration of the Human Rights of the UN that pursued the integration and harmony among the peoples of the world. Conversely, appealing to the national identity and to the rhetoric of belonging to a defined culture according to the decolonization might also be an emblematic feature of the movements of the indigenous peoples in the contemporary history of the Andean countries, as we will analyze in the following chapters.

## **1.6. Rights examination in the mass society**

In the interpretation that was effected on the fights for the new human right vindications in the years that followed the end of Second World War and the end of the sixties, the historians named this process like the fight for the collective or third generation rights.

The third generation rights, because of its recent conception, are the least developed in relation to their study as well as to their regulations. Gross Espiel describes them in the following way: "...while the civil and political rights basically entail abstention from the State, the economic and social rights imply a "Doer State" that grants the necessary services, the means and the provisions to survive". The third generation rights combine both elements, since it requires the authority's non-participation in order to allow the free exercise, but it also needs a doer State<sup>8</sup> (quoted by Núñez Palacios, Susana, 2002).

Anyways, the rights of the third generation were proposed on the basis of a fundamental principle of solidarity and they are contained within the following rights:

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<sup>7</sup> The glorification of the African past underlined the emotion and the institution of the black opposition above the military logic and Hellenic reason (Watson, 2003: 492).

<sup>8</sup> For instance, the defense, peace and environmental policies.

right to peace, right to development, right to environmental care, right to have respect towards the common heritage of humankind (the diversity of cultures, the way of living, the material and intellectual creations, etc.)

In another perspective, the bureaucratic and authoritative character of some States in the mass society of developed countries was questioned in the postwar years, as previously stated in Cerroni's quotation. In the level of the political thought, this confusing time fostered the sociologic creativity. Considerations made by Hannah Arendt and C. Wright Mills, for instance, on the excesses of the mass society can be registered in the academic trajectory to reformulate the human rights.

The analysis that will be presented is vital to understand the struggles for the civil rights in the mass society from the fifties to the eighties. This is significant in order to reach the objectives of this thesis as well as to develop the arguments in chapter four in connection with the vindications of the human rights in the present century in Latin America, such as the right to information, "nature rights", and the controversy about the excesses of the State.

Writers, like the ones that have been mentioned above, on one hand reveal the excesses against the fundamental rights, such as life and liberty which were committed by oppressive regimes like the Nazi and the Soviet. On the other hand, they face the repression of these rights in a very sophisticated way, the alienation of the individuals through the control of the information and of the opinion by the corporations in the United States mass society.

Arendt provided a very accurate vision of the Nazi and Stalinist totalitarianism. The analysis of the North American mass society in the fifties is important for the tutelage of the human rights. In the United States of the postwar, the people, isolated in a mass society, were not able to access to the information that a selected minority of politicians had, due to gigantic corporations and to the bureaucratic power predominance.

If the overcrowding of the society led people to their isolation, the contemporary alienation of society emerged due to the fact that the common individual had little control on the work they did: there were less satisfactory trades and a reduced control of

their income; in this way, they lost part of their collective fundamental rights. The person remained alone knowing that he or she could not act or live alone. The solution was found on what Arendt called “politics personalization”, which corresponded to today’s “politics centered on one question”, either on the environment, feminism, genetically manipulated food, or others (Watson, 2003: 467-68).

Wright Mills<sup>9</sup> is one of the most important advocates of the totalitarian power against the right to liberty. He analyzes the social contradictions in the contemporary society from an approach that reformulated the fundamental classic socialist thesis. He basically supports that the opposition between workers and businesspeople stopped being the main social matter, but the most relevant political confrontation of totalitarianism against freedom emerged. The concentration of power in the hands of the multimillionaire corporations, high military authorities, and high level government employees caused the postwar United States democracy to be transformed into a simulation that encountered its ideal foundation on the ignorance and apathy of millions of citizens who were unable to oppose to the axes of the new power.

According to Mills, this culminated on the fact that the United States citizens, that earlier had demonstrated a combative individualism, have become the “mass”, conformist creatures that acted by custom. His conclusion is discouraging: the United States started to transform into a country that was terribly similar to those totalitarian powers that it had fought against during the recent world war (Vargas, Rafael, 2012).

Wright Mills’s analysis, which has an identical direction as Arendt’s, not only questions the nature of political rights in the traditional socialist concept, but it also critiques the old theories that were charged of individualism. From his perspective, the rights of individuals as part of a group have given up when faced to the new visage of the bureaucratic power of the corporations, army and state. Therefore, the vindication of the new rights should be urgently known and should be turned into truly public affair.

His main work, *The sociologic imagination*, intends to create a new pragmatism, which is to transform the personal problems into public affairs and to understand them

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<sup>9</sup>Sociologist from Texas, he wrote a dozen books from which two have become classics of the Sociology: *The power of the elite* and *The Sociologic imagination*.

according to human values that should reach a variety of individuals. It intends that United States masses find a new way to see the world through the diffusion of knowledge to society as a whole, and as the sole possibility to reach a truly democratic society (Vargas, 2012 y Watson 2003).

It is clear that the vindication of the individual's human rights does not have the conception of person, as in the XVII and XIX century's thought; rather it is conceived within the collective rights. This conception will be approached when the Andean notion of rights is discussed.

### **1.7. The human rights and the critics to the notion of well-being state**

The balance of outcomes in the well-being state in the mass society of the sixties and seventies concludes with a little optimistic vision according to what has been seen previously: the price that was paid was the submission of the social activities to the political bureaucratic procedure. From the perspective of the political theory, the critical thought of the authors that have been investigated in relation to the future of the collective rights of the third generation is not encouraging either, because there is a real growing danger, which is the menace of totalitarianism above freedom in the development of the advanced societies. This pessimism was observed in the progressive thinking of that time, Arendt and Wright Mills's, for instance.

Also, during the Cold War there was a profound critique to the notion of well-being from the perspective of an ideology in the United States politics that was named realist. It tried to recuperate the liberalism from the XVIII century and the rationality that was driven by the selfishness of the free market principles. The economic and social rights that were obtained by the social movements of the fifties and sixties were little by little dismantled by means of a full political turn that managed to impose the logic of the market at the end of the Cold War in the nineties. This section analyzes the circumstances and ideas that shaped this political and social tendency.



At the beginning of the sixties, the economic crisis that affected the developed countries gave rise to radical transformations in the economic rules, in the institutions, and in the visions associated to the social well-being and to the social rights of the second and third generations. The political thought that became dominant at the end of the XX century understands the human nature as suspicious, distrustful and always motivated by selfishness according to the description made by the British journalist, Madeleine Bunting.

Friedrich von Hayek made a direct criticism to the notion of well-being and to its fundamental rights. He recognized the assumption that individual selfishness creates an automatic self-directed system; this agreed with the classic liberalism of Adam Smith, who supported that it is enough to liberate the people's ability to work in favor of their own interests, and at the end, everybody will benefit. Hayek's argument, from the moral perspective, pointed against the foundations of the Well-being State to protect the principals of the economic and political liberalism, and the thesis that freedom "is intended to prevail above any well-being vindication", just because liberty and justice are indeed the elements that create this well-being (Watson, 2003: 555-556 and Bunting, 2006).

As it was observed, what is questioned is the legitimacy of the collective rights, and their denial takes place in order to protect a type of liberty that keeps a close relation with the rights of property; so, for Hayek, the concept of social justice was a myth.

Faithful to these principles, Milton Friedman will propose a strong defense of property and individualist rights. In *Capitalism and liberty* (1962), he tries to recover the original notion of liberalism, which according to him, became corrupted in the XIX century. He looks for a return to its purely economic meaning that is based on the belief of free trade and free market.

In the same direction and following Hayek's line, the idea of liberty being reached only by means of returning to a real market economy is supported: liberty was impossible to reach if man did not feel economically free. It is a clear questioning to the system of rights which was recognized by the well-being state; he supported that the basic social

problems of health, education and racial discrimination will be alleviated only when returning to the free market system, as opposed to the State granting a free provision of basic services (Watson, 2003: 557).

Two decades later, Friedman and his spouse Rose, in their work *Free to choose*, confirm one of the theses that gave rise to the individual rights, that is, that liberty only could be guaranteed through economic autonomy which could give men and women the “right to choose”. In the same direction, the old controversy that opposes the individual rights to the collective rights is taken up again. The authors’ attack was directed against “the big government” that, according to them, has excessively enlarged the legal infrastructure to protect the social rights which seriously interfered with life and people. “There is no place where the gap between rich and poor is as big...as in the societies where the existence of free market is not allowed” stated Friedman.

Based on the previous analysis, they extend their criticism to all social movements that have emerged in the sixties and seventies: “the consumers, the hippies, the ecologists, the return to Africa, the organic food, the protection of the jungles, the antinuclear movement: all of them have something in common; they have obstructed growth in any form. They were opposed to new advances, to the industrial innovation, to a better use of natural resources” (quoted by Watson, 2003: 693). These ideas are the foundation of the criticism to the “rights of fourth and fifth generation”, as called by some authors, and also to the social movements that promote them. In order to quiet down these protests, the Friedmans, from their liberal perspective, propose a law on Economic Rights that will remove the excesses of the State against the individual liberties. In the following section, the analysis of the fourth and fifth generation will be undertaken.

Friedman defended the thesis that government policies are responsible for the little growth that has taken place, and that just tax reduction together with the elimination of the state regulations will be the sole methods that will be capable to liberate the necessary forces to restore development: (Watson, 2003: 695). This argument became central in the “neoliberal” politics, as named by some critics from the eighties and nineties. They will be further studied in the chapter about Latin America.

Friedman's ideas inspired Margaret Thatcher's governments in the United Kingdom in 1979, as well as Ronald Regan's in the United States a year later, who promoted a series of privatizations which granted the private enterprises the management of the public services. In spite of all these efforts to reform the world of the economy, the Western growth continued to be significant compared to the previous levels of 1973, at the same time that a huge jump on the differences of the wealth distribution took place. These were features that characterized the eighties in the developed countries (Watson).

### **1.8. The human rights reformulation within the critique to a unipolar world: fourth and fifth-generation rights**

In 1989, the United States had an even more important victory than in 1945, when they won a war "without a war"<sup>10</sup>, and demonstrated that its idiosyncrasy was superior to the Soviet Union's and got what both nations were disputing since Second World War: the total hegemony through the establishment of a "unique world superpower...with a great economic strength, a broad military capacity and an important political-ideological influence" (Avilés; Sepúlveda, 2010: 41).

If the first post-war quinquennium was essential to constitute most part of the international institutions that were to govern the world in the following decades, 1989 represents the decisive victory of a political ideology and a type of government that will dominate the world for at least two more decades. Fukuyama called it the end of the history, referring to the birth of a new unipolar world system, with only one block and only one ideology.

In effect, with the disappearance of the Soviet bloc, the countries that were part of it faced a transition "towards political regimes and economical systems that were comparable to their western neighbors" (Avilés; Sepúlveda, 2010: 46). In the same way, the international institutions like the UN were strengthened once the obstacles that kept

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<sup>10</sup> As it was mentioned before, the Cold War maintained different confrontations far away from the poles of power (United States and Soviet Union), and the feared nuclear confrontations that could be developed in case of an attack to the United States or Soviet territory never occurred.

them tied up disappeared; also, the economy, democracy, society and human rights, which were accepted as the unique truth, were suggested by the United States and the western bloc.

Nevertheless, in the unipolar context some political dilemmas appeared. As it was mentioned, after the traumatic experiences of the crisis in the thirties and Second World War, the idea that the economic, social and cultural rights were essential constituent of the human rights was accepted; this acceptance did not manage to solve the opposition between the free enterprise and the social needs. The importance that Hayek and Friedman conceded to the individual development – which was supposedly based on the own interest and the competence – ignored the various forms that the social groups used to relate among themselves and left a gap that soon showed a serious fracture.

The absolute confidence about a globalized world under the hegemony of a sole power did not last long. With the advent of the first years of the XXI century, the security of the consolidation of a unipolar system started to fissure due to the increasing consolidation of the economy and the political influence of the so-called emergent countries, such as China, India, Russia and even Brazil. Moreover, the confrontation of the West with the Arab World caused that the traditional comprehension of human rights begins to have an unexpected turn.

The current way to face the mentioned gap came from the cultural sphere. From a cultural perspective, the universality of the rights that are pillar of their historic conception was questioned, and gave way to what was called *the moral relativism*; this supports the idea about the non-existence of values shared by the whole humankind because these are essentially cultural products. The development of this idea led to support the thesis that the critical distinctions among peoples were not only ideological, but also cultural, as they were based on the groups (Watson, 2003: 822).

The cultural perspective, however, gave rise to at least two opposed approaches. First, the discourse about the culture specificity which suggests that every culture is so special and protective about itself that rejects and fights the others; this is the clash of civilizations. The second approach claims that the attention should go back to the

groups with the purpose of determining how they are related and how the individuals are linked to the groups they are part of (family, sex, generation, race, nation) in such a way that one day people will be able to understand and control phenomena like racism, violations, minors' abuse, drug addiction.

According to the first approach, some thinkers assured that Fukuyama was mistaken when he supported the end of history in a world under the western hegemony and predicted, on the contrary, the emergence of what Huntington calls the Clash of Civilizations: a multipolar world which is divided, not only by political ideologies but by much stronger cultural and social values, that are much more related than a system of government or an economic model.

Huntington does not reject the existence of a unipolar world, although temporarily, and recognizes that with the end of the Cold War, United States emerges as the Western major power and faces the non-existence of a bloc to compete with. The West "uses the international institutions, the military power and the economic resources to conduct the world in a way that will serve to keep its predominance, protect its interests and promote its political and economic values" (Huntington, 1996). He explains that this phenomenon reaches such extremes that in a specific moment, when decisions are taken by the Western world, they refer to the international community.

To this respect, he asserts that the non-Western World has three paths to follow. The first refers to the non-participation in the world that the west proposes; the second is to join the west and accept its values and institutions, or maybe to other non-western civilizations, and try to balance the power system by avoiding that it be unipolar. The appearance of new international actors, the increasing importance of the international organizations, the emergence of NGOs as direct participants in the international relations, the consequent power decrease of the States, seem to have given the reason to Huntington. Consequently, "the disappearance of the international system based on bipolarity gave rise to an asymmetric multi-polarity, where the uncertainties are much bigger, the need for consensus is more imperative, and the menaces (...) more numerous and difficult to control" (Avilés; Sepúlveda, 2010: 52).

In this context, Huntington points out that, far from emerging a major culture with the same values, the considerations related to individualism faced to collectivism, liberty, equality, human rights and democracy are not conceived in the same way in the west as in the non-western world. For this reason, he confirms that “the western intents of spreading these ideas produce a reaction against the *“imperialism of the human rights”* and a reaffirmation of the autochthonous values” (Ibid).

In order to broaden the second approach about the moral relativism, the direction of Huntington’s clash of civilizations unleashed a passionate polemic, particularly among authors who interpreted his hypothesis as based, almost exclusively, in the confrontation and the conflict among civilizations and no in the search of harmony among them.

One of these authors is Edward Said, who adheres to the notion of cultural relativism finding two directions in the discourse upon cultures or civilizations specificity. The first, a utopic way that insists in the global scheme of integration and harmony among the peoples, and he brings as an example the UN words and its institutions as well as the development of several world government instruments based on coexistence, voluntary limitation of own sovereignty and harmonious integration of peoples and cultures (Said, 1997).

The second way suggests, as it was mentioned above, that every culture is very special and protective of itself, so that it rejects and combats the others. For Said, the theories and the practice of the Cold War and the most recent idea of the clash of civilizations are within this direction which can be a necessity and a certainty for a multi-polar world. Accordingly, the cultures and civilizations are essentially separated among them; this is to say, that the essence of Islam, as well as the essence of the West, is to be distant from everyone else.

If this is like this, it will be assumed that there is a complete homogeneity inside a definite culture, and at the same time, every possibility of debate among different civilizations is disregarded. In Said’s refutation to these assumptions, he argues that not every approach about culture is similar, as it depends on other values that have been assumed by diverse social groups. In this way, he supports that there is an official

culture, a culture of the priests, a culture of the academics, a culture of the State that defines patriotism, loyalty, and frontiers. This official culture talks in behalf of the whole, he confirms.

However, there are dissident, alternative, non-orthodox and heterodox cultures that contain many anti-authoritarian aspects which get in conflict with the official culture. This is contra-culture, which for Said, is a set of practices associated with the intruders, the poor, the immigrants, the bohemian artists, the working class and the rebels. To disregard this state of uneasiness within a culture, either in the West, the Islam, the Confucianism, etc., is assuming that there is an absolute homogeneity between culture and identity; it is forgetting what becomes vital and fertile, the author warns.

The most dangerous, from Said's perspective, is the emphasis on the differences among cultures, totally ignoring the literally never-ending debate about the definition of culture and civilization that is produced inside every civilization, including the Western. These debates completely undermine any fixed identity, therefore, the relations among identities from different civilizations. Paying close attention to handling and clarifying the clash of cultures hides another situation: the fact that there is a great interchange and a great dialogue, often silent, among these cultures.

The vision of the rights is not only debated from the cultural perspective nowadays. At the end of the XX century, the traditional conception of economic development is also questioned. Another way to think the relation between individual and collective rights as an alternative to the competitiveness ideology emerged from the periphery to the centers of the developed world; they presented different approaches and emphasis, vindicating the central role of the human being, their needs, their freedoms and their perceptions, as principles of the rights. In this final section of the first chapter, a perspective that does not reject the individualist look, but rather intends to give a humanist content to it, is introduced.

The recognition of these rights is a substantial part of the way of conceiving the developmental problem. For instance, the conception known as *sustainable development*, which in its more accepted and recognized meanings, considers the human

being as the center of its concerns and his survival capacity as species in a planet that is being submitted to an exploitation that is endangering his own reproduction (Cuervo, 2010: 17).

This thought is found in the reflection developed by the Indian economist, Amartya Sen, who did not share Friedman and the monetarists' faith in the free market system. To this end, he reintroduced the concept of the "well-being economics", but now, with the purpose of analyzing the problems of poverty and the concept of "necessity", beyond the market operations (Watson, 2003: 696-697). For Sen, development consists of a continuous expansion of liberties and opportunities of and for the human beings. He suggests as a priority to remove the main absences of liberty, such as poverty and tyranny, the shortage of economic opportunities as well as the systematic social deprivation, the negligence about the public goods, as well as the intolerance or over activity of repressive states.

In Sen's thought, the market and the democracy are fundamental social institutions which grant a particular and potential contribution to the purposes of development, as the expansion of liberties. Without doubting of the market's role in increasing efficiency, he believes that it is necessary to recognize its limitations as a wealth redistribution and equity instrument, so it demands that it is accompanied by public political initiatives for the creation of social opportunities. Democracy, on its part, has an intrinsic value as a means to exercise liberty, including the so-called civil rights, besides contributing to the quality of the public politics and to the accurate definition of the true social needs. For this author, in many cases, the efficient provision of the public goods requires the intervention upon the social values and behaviors, for instance, on the development of an ethical environment (Cuervo, 2010: 18).

From the political theory, the dimension acquired by the issue of human rights within the perspective that has been already discussed, causes that some authors support that a fourth and fifth generations of human rights are being constructed. The fourth generation rights will go from considering the environmental right that was already stipulated in the third generation to aspects that have to do with bioethics and genetic manipulation. For other authors, the fourth generation rights should consist of new actors and social



movements' managing, those that are not recognized as social subjects: the lesbian-gay movement whose rights have not been recognized in spite that it is not a recent movement.

In order to specify this new category of rights, it is also supported that the differentiating element will be the fact that, while the three first generations referred to the human beings as members of society, the rights of the fourth generation will focus on the human in so far as species.

An opposed position manifests that the fourth generation of human rights is not strictly conferred or attributable to human beings, but it refers to the rights of the non-human animals, as for example, the preservation of species in danger of extinction and the ethical treatment to non-human animals (Licenciatura en Genero y Desarrollo, 2012).

## **CHAPTER 2**

### **THE HUMAN RIGHTS IN LATIN AMERICA**

#### **2.1. Introduction**

The history of human rights in Latin America is interlaced in an inseparable way with the history of the international relationships in the American continent. The human rights recognition in the region has as guiding element the plot where demands for more autonomy about the institutionalization that was born at the independence time of the English and Spanish colonies in the American territory develop. This is the approach to elaborate a human rights history in the Latin-American region.

The first section develops from the fact of a historic confrontation from the inside of Latin America with groups that are in the same line of the United States position and others that denounced them as a form of neo-colonialism to resume the Bolivarian unitary zeal. Firstly, the discussion related to the history of the international relationships in the region since this first rupture is exposed, going through the later stages like: the Pan Americanism of the early XX century, the conformation of an alternative Latin-American thought during the cold war period after World War Two, the convergence with the “neo-liberalism” of the end of the XX century, and finally, the Bolivarian thought of the XXI century.

In the remaining sections of this chapter, the issues exclusively related with the development of human rights in Latin America are reviewed: their evolution from the Inter-American Charter until the creation of the Inter-America Human Rights System (ISHR) and the implications that come with the existence of an Inter-American Human Rights Commission into the ISHR.

## 2.2. A historical review of the Latin-American social political development

A very frequent interpretation of the history of the Latin-American social and political processes is to closely associate them with the experiences of change lived in the relationships of the region with the United States of America; this is to say, with the appearance of the American Monroeism, the consolidation of what in the history of this relationships was called *Pan-Americanism* and the initiation cycles to search autonomy and self-determination. This Chapter takes this perspective of analysis.

At the end of the XVIII century, the English colonies became independent and one of their main conquests was the recognition of the human rights inspired in a liberal and republican ideology. At the same time, the Caribbean and Latin-American liberation movements spread as an expansion of the original ideology of the North American independence and the following French revolution, always accompanied by the recognition of the individual rights.

Nevertheless, what emerged as a shared expansion of the liberal ideology for liberty and rights towards the middle of the XIX century shows already a rupture that marked a large duration wave in the continental history that confronted the unitary conception of the new Hispanic-American republics proclaimed by Bolivar with the Americanism of Monroe.

Since the independence wars, the confluence of a politic game that expresses the interests of the creole elite together with those of the European expansion, especially British, appears in Latin-America. After the independence, the European powers still played a significant political as well as economical role in the new Latin-Americans republics until late XX century. All these forces came together to strengthen the regional joints oriented to trades and supported by the economic liberalism. In the beginning, these interests entered in confrontation with the new conformed United States of America.<sup>11</sup>

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<sup>11</sup>"In 1830, after gaining the independence, the Latin-American nations found themselves in an international world rivalry and on a power-based policy. The European powers, especially Great Britain, that sometimes had interpreted a decisive role in the fight for the independence, continued to perform a significant political and economic role in Latin-America well into the 20<sup>th</sup> century. After

The process of formation of the Hispanic-American republicanism has been fed by two opposite doctrines. In one side the Bolivarian unsuccessful looked for the preservation of the continental unity searching the zeal of the great State, at least, South-American. On the other hand, the Monroe doctrine looked for a distance from the Britain and European presence under the slogan “America for the Americans”. The Bolivarian ideal did continue to develop through the history as an expression of that regional self-determination search.

During much of the XIX century, the greatest worry of the external policy of the United States was the role of Europe in the region. This political orientation of the external policy on the relationships between Latin-America and United States that are conclusive to interpret the conflicting relations in the continental history is highlighted by some analysts. Thus, for R.F. Smith (1991), the initial purpose of the United States governors was to prevent the restoration of the old European colonial order of economic mercantilism and political authoritarianism in the Iberian ex-colonies.

The largest and most coherent approach was made by President Monroe in 1823, by proposing an “American System” that will not only be based on the liberal economic principles, but also on the civil, political and religious liberties. However, Smith recognizes that in the game of relations between European and North-American interests, the reason of power often prevailed in the relations of these two countries with Latin-America.

For other authors (González Casanova 1979, Chomsky 2000, Dos Santos, 2013) the United States could not be loyal to its Pan-American pretension and, in the practice, the Monroe doctrine was useful to justify its political intervention and the protection of its economic interests in the region. All in all, through this interpretation, the Americanism

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the independence, the English showed a special interest in Brazil, Río de la Plata region, Chile, Central America and Mexico; in a lower degree, the French felt likewise about Río de la Plata and Mexico, and the Caribbean was still a region dominated by the European, where Spain, Great Britain, France, the Netherlands, Sweden and Denmark dominated the numerous islands converted in colonies. Many times between 1830 and 1890, the European powers intervened directly in the hemisphere by using diverse degrees of military force” (Smith, 1991:73).

of Monroe had adjusted to the designs of the management of Washington's international policy and the imposition of its power requirements in the continent.

In a real sense, the United States invaded Mexico in the middle of the XIX century and appropriated half of its territory, besides making many military interventions in Central America and in the Caribbean<sup>12</sup>. In the 80's, the North American governors restart the plan of contributing to pacific relations, the mediation in conflicts, to the reduction of the European influence and to the increase of the exportation trade under James G. Blaine's guideline. Blaine looked for an Inter-American conference to reach this goal. In 1889, the conference that created the International Union of the Americans Republics met; there, Blaine proposed measures directed to create a custom union of the hemisphere and to create an arbitrage formula for the resolution of disputes between nations<sup>13</sup>.

The vision of the Inter-American System under the hegemony of the United States failed during these years because of the persistence of the ideal to build an authentic regional community of interests and because the North-American leadership could pervert that potential.

Two episodes that evidenced the mistrust in the Americanism supported by the United States were those of the Chilean (1891-1892) and Great Britain (1895) crisis<sup>14</sup>. The

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<sup>12</sup> In 1836, Texas separated from Mexico and the British encouraged the province not to join the States. The Texan government accepted the annexation to the United States in 1844 and then the war between Mexicans and Americans exploded. At the conclusion of the war between the United States and Mexico (1846-1848), the Caribbean became a confrontation zone with the English. President James Buchanan (1857-1861) believed that the United States should fulfill a police function in Central America and in the Caribbean, to have the security that the disorder will not threaten the foreigners, or the routes that crossed Central America. Almost fifty years passed before President Theodore Roosevelt consolidated this affirmation of the police power of the United States in the Caribbean, natural consequence of the Monroe doctrine (Smith, 1991: 75 and 76).

<sup>13</sup> The proposal of a customs union was not adopted, but an arbitrage treaty that was only accepted by eleven nations (no one ratified) was approved. Argentina led the contrary efforts to the customs union, and Chile, that had made important territorial conquests in the Pacific war, objected the arbitrage of conflicts (Smith, 1991:78).

<sup>14</sup> "In both cases the North American government, whether republican or democrat reacted to the adoption of an emotional nationalist attitude; an attitude conditioned by exacerbated feelings of international rivalry. A sort of "mentality of crisis" started to characterize the North American points of view in relation to the hemisphere" (Smith, 1991:80).

Chilean crisis emerged because of the death of two North American sailors in Valparaíso, in the middle of an increasing hostility from the Chilean government to the United States in those years due to its intervention in internal political business. President Harrison sent an ultimatum to the Chilean government and demanded compensation for the soldiers affected in the incident<sup>15</sup>. United States and England were involved in the dispute between Venezuela and the British Guiana colony.

### **2.2.1. The Pan-Americanism**

Kissinger maintains that “in every century, a country with the necessary power, will, and intellectual and moral energy to modify the whole international system according to its own values seems to emerge” (2004; 11). Taking this phrase as true, it is indisputable that during the XX century the maximal world leader was the United States with its military power and its economic liberation policy, its minimization of the role of the State in daily life, its moral values and the defense of the human rights assumed as a banner, that directly influenced the international relations, including the internal politics of other countries.

In this regard, Kissinger introduces two possible roles for the United States: the one of guiding light, that based on its internal system and the proper application of its moral and political values will serve as example for the rest of the world; or the one as crusader, that will impose those values through either military or economic interventions –through the IMF, the WTO and the World Bank-, or diplomatic intervention with the UN and its Security Council intermediation.

While Europe had already a set up system of power that United States considered corrupt, and the African and Asian countries were starting the process of formation, Latin-America represented the natural ally who shared a common independence process and the possibility of creation of a new world system. In this way, whether if United

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<sup>15</sup> What were really doing the Harrison administration under the exaggerated rhetoric of national pride was declaring that the United States were an important power in the hemisphere and that, in consequence should receive the same treatment that were offered to Great Britain.

States applied the guide light role or the one as crusader, Latin-America was to play a fundamental role in the exercising of the world leadership.

Similarly to the history in the last century, the North American hegemony in Latin-America presented considerable variations during the XX century. As noted, in 1889 the North American government organized in Washington the first Pan American Conference, emerging the so-called Pan Americanism. In the Pan-Americanism interpretation made by R.F Smith, en the XX century, many of Blaine's successors promoted programs that pretended to create a system that will solve the problems of the Inter-American relationships through the cooperation and the agreement, even though these efforts gave limited results because the basic conflicts of interests simply could not be solved by making profession of Pan American harmony. Also, the ideological stance of many Latin American leaders that adopted their own version of the hemispheres relationships was present, "especially in trying to impose utopic patterns of international conduct to the United States" (Smith, 1991:79).

Under another perspective of interpretation, the Pan American ideology developed through three methods that focused on the purpose of consolidating the political and economic interests of United States in the continent. The North American government did not follow an unique line of action to consolidate its continental hegemony, but it was adjusted to different historical moments, whether they imposed their interests through a military way, or negotiated their interests through democratic channels, or finally, through economic integration policies and the coordination of political and military forces within the Pan-American system.

For authors like Pablo Gonzáles Casanova, the American hegemony in Latin-America was achieved particularly through the action of the naval force, since in 1898 the United States government started to gain control of the rest of the ancient Spanish empire in America<sup>16</sup>, and in the period ahead, the political interventions in Dominican Republic,

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<sup>16</sup> The participation of the United States in the Puerto Rican and Cuban independence wars led to the incorporation of Puerto Rico as a colony and to the establishment of the military base of Guantánamo in Cuba. The same role was executed during the Channel of Panama construction that separated this region from Colombia, and so many other interventions in the region (Dos Santos, 2003).

Cuba, Honduras, Nicaragua and Puerto Rico continued. According to his interpretation, the conformation of the international relations network between the region and the new hegemonic power is the result of a combination of the Monroe doctrine, “Latin-America for the Americans”, and the practice of the “Caribbean Police” introduced by Theodore Roosevelt in 1904. Later, the policy of the “big stick” was replaced by the “dollar diplomacy” that searched for the regulation of the obligatory indebtedness of the Latin-American countries (González Casanova, 1979: 16-17).

Faced to this interpretation, it is necessary to remember that the United States was not the only country that showed an increasing interest in Latin America in the early XX century, but also Germany started to act in the region not only in the economic field, but also in the demographic and military grounds. Officers of the German army began to instruct the Chilean army in 1896 and in 1900 through the foundation of the War Academy. Before the 1914's war, Germany had sent military missions to Argentina, Bolivia and Paraguay.

The administration of William Taft, first Roosevelt's successor, proclaimed a policy that consisted of replacing “the bullets by dollars”. The president and the State secretary, Philander C. Knox, believed that fiscal and economic stability was the key to development. The administration encouraged to the North American bankers to refinance the bonds of the different countries, with the purpose of eliminating the cause of a possible European intervention (Smith, 1991: 86 and 90).

With the crisis of the 30's and the emergence of the Well-Being State, the relations between United States and Latin America experienced a substantial change for a large period (1934 - 1959). The essential characteristic of this change was that the American government tried to consolidate its hegemony through a pacific policy, of economic integration and of coordination of the political and military forces within the Pan-American system.

To face the severe effects of the 1929-33 crisis, a further State intervention in the investment, the production, and the social expenses was necessary to carry out. This new social and democratic policy in the Inter-American sphere was expressed through



Franklin Delano Roosevelt's "good neighborhood" ideology. During World War Two, it was complemented with another policy called "hemispheric defense" against fascism, which was consolidated during the "cold war" against the Soviet bloc. "The good neighborhood and the hemispheric defense policy and ideologies forged the foundations of a pacific hegemony through agreements between the North American government and the Latin- American... In the international forums, the United States accepted the Latin-American principle of 'non-intervention'. In practice, 'hemispheric solidarity requirements were enforced mainly since 1936 and during the war" (González Casanova, 1979:20 and 21).

From this much synthesized explanation, the following interpretation of the relations between Latin-America and the United States can be elicited with the purpose of getting a personal vision for the subsequent discussion of the themes of this work.

The Monroe Americanism emerged as a political practice and thought in the middle of a substantial rivalry of United States with the European powers, particularly with England and France, when demarking the continental political and economic space. The international relations of the old British colony were defined by an absolute mistrust regarding the objectives of the old metropolis in America, mainly because England contributed to the achievement of the independence of the Hispanic American colonies.

This environment fed the Americanism of the Monroe doctrine, which could be accepted in its origin, as a proposal to spread out to the continent the foundations of the political rights that were present in United States independence; the economic liberal interests, as another strong foundation of the relations with the Latin America region, were not put away. Towards the middle of the XIX century, the relations of United States with its neighbors of America experienced a rupture because of the war with Mexico (1846-1848) for the Texas territory, so the Monroeism started to be seriously questioned as a principle of the international American relations.

As far as Latin America is concerned, the first half of the century that followed the independences of the Hispanic-American republics, the region lived violent political and ideological conflicts and a considerable political instability accompanied by a modest

economic growth. Its international relations revealed a permanent intern struggle provoked by the fights to define the rising republic's territory and politics. The frequent extra continental interventions – from Britain especially- and an everyday more expansionist United States were added to this scenery.

The (1830-1880) period ended with two internal conflicts: the war of the triple alliance – Brazil, Argentina and Uruguay- against Paraguay (1865-1870) and the war of the Pacific between Chile and Peru (1879-1883). Latin-America was experiencing a big growth that would end with World War One. It is known as the “golden edge” of the first export model and the conformation of an important sector of exporting traders, financiers and a growing middle classes in the cities. The Mexican revolution (1910-1920) and the wars between conservative and liberal people in some countries interrupted the relative political stability of those years. In this period, the working class had also developed and organized the struggle demanding social or second generation rights.

In this second period (1880-1920), the international relations of the region were characterized by the continuance of the foreign interventions, mainly of North America, in Mexico, Central America and the Caribbean. It is the period of confrontation between the European powers for the colonial distribution in Africa and Asia and the United States that put pressure to impose a regional hegemony.

The Americanism of those years oscillated between the military intervention and the dollar diplomacy. In the first Inter-American conference (Washington, 1889), the United States tried to print a pacific orientation to its continental relations, the mediation in conflicts as a counterpart to the reduction of the European influence and the growth of the North American exportation trade. With the presidency of Thomas Woodrow Wilson (1913), the vision of the conciliatory nation is imposed; it had a mission and a special destiny, another version from the manifest destiny, characterized by an active military participation of the United States in the Caribbean and Central American regions, which was bigger than in any other previous period of its history.

In the 20's, the United States followed a more cooperative policy with respect to many aspects of the Inter Americans relations. This policy opened out to the “good

neighborhood” of President Roosevelt, in circumstances when fascism, the economic crisis and the searching of an internal and global new order propitiated a radical change in the North American policy.

The review of the Latin America and United States relations in a little more than a century of history, shows that they developed in a very unsettled context of internal conflicts, of conformation to the European imperial policy –where the commercial and financial interests not only affected the colonial territories but also regions like Latin-America- and of expansion of the hegemonic area of the United States in the continent.

In the last mentioned dimension, a very practical ideology emerged for the forgers of the North American international policy: if they considered taking part in a Latin American country distorting the Monroe’s doctrine, it was very useful to go to a real or imagined presence of an external threat. With this ideological deformation, the target of the aggression appeared disguised as the “European menace” to justify the practice of seizures, pressures, menaces, and in some occasions, the use of the military force.

The same political strategy appears again in the years of the Cold War that at this time was made up as the “communist menace”. However, it does not imply, on the other hand, the inexistence of Soviet interests in the second half of the XX century, or British and French, in the past. These interests are mentioned in a limited extent in the interpretations, like for example, from Gonzales Casanova. As a conclusion, the analysis of the international relations must take into account that complex plot of the game of diverse interests.

### **2.2.2. The Bolivarian movement**

Bolivar’s life and thoughts, as those of other great personalities of history, have been a source for the most diverse interpretations. The discussion about the Bolivarian dream and project had resumed unusual prevalence because of their recovery by the leaders of the so-called Bolivarian revolution, who try to find the original source for the elaboration of the “21<sup>st</sup> century socialism”. From the diverse interpretations, we will

refer to three that can help to contextualize the projections of the Liberator's thought in the Latin-American history, particularly in the discussion about the Ecuadorian proposal for the creation of a human rights commission which will be developed in the third and fourth chapters.

For the Uruguayan political scientist José Aricó, the Hispanic-American independence was a process made "from above", this is, creole elites that conducted the independence fights showed a complete unwillingness to consider the popular and national interests. The authoritarianism that Aricó finds in the Bolivarian historic deed does not express the personal features of an individual, but the weakness of an advanced social group that only could project the construction of a modern nation from the presence of a strong State (Aricó, 1980: 77-78).

Faced to the great social heterogeneity of that time, Bolivar made efforts to achieve "a project that will introduce a system based on a central power of such a nature to develop in the new situation the same role that would have developed the administrative, ecclesiastical and military apparatus of the Spanish crown. For the interpretation of the most recent Latin American history, it is relevant to rescue two remarked ideas from the mentioned author that are essential components of the Latin American creoles' project headed by Bolivar's leadership. The first one points to the objective of the "formation of a nationality, geographically extended, able to defend and promote the subsequent economic progress... The second fights for the establishment of the political and social order, with the purpose that the emergent anarchy –which emerged from the own nature of the independence process- will not invalidate the economic progress and subject the people to an even more arbitrary and despotic tyranny, that the revolution had rebelled against" (Aricó, 1980: 75-76).

Another line of interpretation tends to remark the critical thought of Bolivar with respect to the external policy of the United States to support the development of a project radically alternative to the Monroe's doctrine in Latin America. Following the stream of thought of the Colombian Indalecio Liévano Aguirre (1969), the Russian historian Anatoli Shulgovsky remembers Bolivar's well-known words: "The United States seem to be destined by the Providence to plague America with misery in the name of liberty",

to show Bolívar's rejection towards the government institutions of the United States as support of his search for the social ideals that will adjust better to the concrete historic conditions of the life of the Latin-American peoples and of the political and social bases of the young states of the region. For Shulgovsky, the Liberator's project is clearly expressed after promoting Bolivia's constitutional project, which incarnates his persistent efforts to build a society of social justice and equality. The Russian author also specifies the distance of the Bolivarian constitutionalism to the North American model, qualifying the last one as "reduced and limited in popular sovereignty, because of the innumerable legal obstacles... Without speaking that both constitutions are completely separated from each other in relation to slavery" (Shulgovsky, 2012, np).

Interpretations as the previous one have served, throughout the history of the relationship between Latin America and the United States, to sustain the radical difference between Bolívar's thought and the North American external policy interests in the continent. So, Theotónio dos Santos supports the thesis gathered in this work about the conformation of two different projects in the Latin-American countries: social groups that associated their interests to the American powers as they agreed with the Monroeism and others that searched the regional autonomy resuming the Bolivarian project, critical of the North American model.

Finally, as far as Bolívar's thought and project is concerned, another frequent interpretation is that the liberator followed an anti-Spanish, republican and libertarian line of action primarily to defend the human rights in the same direction as the declaration of independence of the United States. The Panamanian historian, Enrique Rosas Ledezma, supports that authors like Liévano Aguirre make quotations out of context and mutilate the Liberator's thought to prove that Bolívar was opposed to the Anglo-Saxon countries politics. He remembers that with the North American revolution, the democratic revolution Age begins, and for the first time in history the ideas and the fundamental principles of the political liberalism, such as the representative government, the civil liberties, the separation of the powers of the state, and the declaration of the human rights are carried on. For the Panamanian author, this democratic revolution was the model that Hispanic-America and Europe had to imitate; and with the purpose of

distorting Bolívar's anti-Monroeism, he affirms that "the so-called Monroe's doctrine that is resumed in the phrase 'America for the Americans', acquires its pejorative character after the time of the Anglomania the Liberator belonged to. Besides it evolved with the time, acquiring different connotations and results in different moments" (Rosas Ledezma, 2012:15).

The interpretations of the Bolivarian thought by Aricó and Rosas will be resumed later. It is relevant to continue with other dimension of the Bolivarian project interpretation, made by Liévano. The Liberator, as he takes dictatorial power in Peru, launched the social reform. The Peruvian project, according to Bolívar's thought, was related to the beginning of the defense policy of the raising industry in front of the foreign competition, and with the performance of protectionist measures to safeguard the national handmade production. According to Liévano Aguirre, this got into an intense contradiction with the politics of the American governing nucleus, while promoting Monroe's doctrine in 1823, tried not only to hinder their competitors of the Western European countries, but also to exercise decisive influence in the current development of the young Latin American states (quoted by Shulgovsky, 2012).

This protectionist dimension of the Bolivarian project that is found by some authors in order to write the Latin-American history, reappears with strength in the second half of the XIX century, in diverse situations, as for example, in the Triple Alliance war. In the Latin- American nationalistic ideology of the nineteenth century, the doctrines elaborated by two Argentinian jurists are also interesting<sup>17</sup>. Their purpose was refuting the extraterritoriality doctrine that the industrial and developed nations have instituted to protect the activities that were developed by their out land citizens. The western nations defended such principles as the sanctity of contract and the legitimate legal proceeding as an essential part of the international right, with the purpose of protecting their citizens and their properties in the out land. In the practice, Smith supports, the principle of extraterritoriality was used to demand a privileged treatment for the foreign interests.

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<sup>17</sup> The description of the Latin-American approaches by Calvo and Drago was obtained from R.F. Smith (1991: 91-92).

The Argentinian lawyer Carlos Calvo, between 1868 and 1896, defended a version about the national sovereignty with the argument that the foreign citizens should be treated in the same way that the natives of the country are treated: they should be subordinated to the laws and national tribunals, without any right to appeal to their respective governments searching for support. Since 1890, Calvo's thesis expanded as a juridical and ideological argument of the Latin-American nations that searched to prevent that the industrial powers protect their citizens and their interests.

In the second International Conference of the American States (Mexico, 1901-1902), a resolution about the treatment of the foreign people inspired in Calvo's doctrine was discussed. The motion that the states were not responsible for the harms that the foreigners suffer during civil wars or that the foreigners had no right to appeal to the government of their natal country had the opposition of the United States that voted against it. The North American historian Smith interprets that it was the classic debate between debtors and creditors, developed countries and underdeveloped countries, weak and strong. Meanwhile, the battle around this doctrine will appear under a form or another in almost every Inter-American conference.

In an identical perspective in 1902, Luis Drago resumes Calvo's arguments to substantiate that the debts acquired by a nation with another should not be paid by force. In the Second International Conference of The Hague celebrated in 1907, the North American delegate supports the adoption of Drago's doctrine with an important amendment: that the no intervention should be based in the acceptance of the arbitration. In The Hague, only six Latin-American nations ratified the protocol that was approved with the mentioned amendment.

With the Mexican revolution in 1910, the political thought strongly identified with interests of large popular sectors is expanded in Latin America. The Nationalist-Reformist elements of some revolutionary leaders centered in the land reform and in the national control of the foreign inversions, particularly in the oil exploitation. The Mexican constitution of 1917 incorporated Calvo's doctrine in several sections affecting

the land property, the control of the subsoil rights of the farm owners, and the foreigners' rights<sup>18</sup>.

The questioning to the expansionist ideology of the United States was strongly challenged by the intellectual Latin-American community, as well. The classical book by José Enrique Rodó (1900) *Ariel*, confronts the Latin culture and civilization to the Anglo-Saxon culture and civilization, presenting the North American people as materialist and to the Latin Americans as idealist (Smith, 1991:104).

For the objectives of this thesis, some characteristics of what historians acknowledge as the legacy of Bolívar's emancipatory project have been discussed with some amplitude, as well as their prolongation up to the present to define the international policy of our republics. Although it is necessary to recognize again the diversity of the interpretation of the Liberator's life and thought about the topic that has been exposed, two ideological contents are adopted which will be resumed later on.

The ideal of conforming a great nation, at least Hispanic-American, is inherent to an economic development project. Therefore, Bolívar's ideology becomes the greatest foundation for the diverse integration processes that have been started in Latin-America, and even more, for the Mercosur and the Unasur proposal. This recognition allows highlighting these features of the Liberator's perception in relation to the expansionist ends of the recently conformed United States, no matter how small they are. The history of the relations of the Northern republic with the Southern republics confirms a frequent use of the force to impose its objectives of universal hegemony and its economic interests.

In Bolívar's political action, there are episodes that point to power centralization features that characterized some periods of the Latin-American political history, features that are also found in the self-defined socialism of the XX century governments. The social

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<sup>18</sup> "The 27th article contained the doctrine by which every subsoil rights belong to the nation; during the next twenty years, the foreign oil companies and the Mexican government will periodically engage in battles that were motivated by the interpretation and by the enforcement of that article. Under the umbrella of the new constitution, the Mexican revolution turned into the first national movement that really implied a serious threat to the foreign inversions and to the very juridical principles that such inversions were based upon" (Smith, 1991:96).



development based on the presence of a strong State responds, largely, to the absence of will of the liberal elites to include the popular interests in the process of building an authentic democracy in the region. This characteristic enables the ideologists aligned with the Pan-American integration alternative led by the United States, to disqualify the Latin-American project as “Bolívar’s insomnia”, to use Jorge Volpi’s metaphor, which will be discussed more extensively in chapter 4.

### **2.3. Political factors in the history of human rights in Latin America**

In the last sections, the revision of the Latin-American history was done from the perspective of the regional relations with the United States. In the subsequent sections of this chapter, the regional history will be reviewed principally from the point of view of the political factors that contributed to an early expansion of the human rights in the region.

In the explanations of the regional political history, the democratic institutions analysis that consolidates the political and social rights exercise is, frequently, directly related with broader forces from a cultural and economic domain. The cultural factors predominated in the interpretations of the political history since the independence until the 30’s inspired in the Catholic legacy and in the Iberian colonial experiences to argue that the liberal democracy did not find favorable field for its development in particularly conservative societies characterized by a hierarchical social-relations form, where the absolute authority of “caudillos” (strong men) and personalist leaders was finally imposed. In the economic perspective during the decades from 1950 until the beginning of the seventies, the ideology of modernization blindly trusted that the development pushed by industrialization enhanced the social differentiation and the education levels, basic requirements for the exercise of the political pluralism and the extension of the practice of the human rights.

While factors of cultural and economic character can be considered as conditions that have contributed to the extension of the political and social rights, they do not necessarily explain the democratic evolution linked to the implantation of the human rights. The adoption of proposals linked to the human rights in the Latin-American

countries were mainly an answer to diverse political factors, among them, the most significant was the creation of an international institution to ensure the protection of the citizens' rights. Of course, the emergence of political and institutional actors of the regional experience, such as the liberal revolutions of the late nineteenth century and first decades of the twenty, must be also considered; at that moment, most of the principal Latin-American countries had succeeded in establishing regimes whose national presidents and assemblies were derived from the support of a limited electorate that could be compared with the also limited representative systems of Europe in the same period<sup>19</sup>.

It is also important the process of constitution of the left and populist political parties and other forms of political expression of social groups. They connected the civil society with the State and definitely influenced upon the constitutionalism, the enlargement of the suffrage, the relations between the executive and legislative powers, the capacity of government, and the state of rights since the decade of the twenty's in the region.

### **2.3.1. The early constitutionalism: from the independence process to the conservative vs. liberal confrontation**

Previous to the universal declaration of the human rights, the Latin-American republics lived experiences leaded by the implantation of the citizens' rights, and most of all, by the early recognition of the social and economic basic rights.

The liberal rights were received in our republics even before they were adopted in most part of Europe: a system that was based on the doctrine of separation of powers and measures searching both, to imitate the executive power and to moderate the selected chamber<sup>20</sup>. The Latin American constitutions reflected the influence of the statement of

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<sup>19</sup> For an expansion of the determining political factors in the construction of democracy in Latin America, see in J. Hartlyn y A. Valenzuela, 1997 cited in the bibliography.

<sup>20</sup> See in Hartlyn and Valenzuela. For these authors: " The rupture of the Spanish America with Spain during the first quarter of the nineteen century, was characterized by the influencing forces delivered to the republican principles and to the revolutionary idea that the political authority arises from citizenship rather than from the divine right of the kings... In a very short period from

the North American rights and of the statement of the French human rights, and proclaimed the protection of the rights, the freedoms and the individuals' properties, individuals who were defined as "citizens".

Projecting this experience to the whole Latin-American history, for several times the rhetoric characteristic of the liberal constitutionalism tended to be highlighted because of the verification that until the two first decades of the last century, predominated what has been called an "oligarchic democracy", in the way that a defined "public sphere" did not clearly emerge: more than full citizens, most of their inhabitants could be considered as subjects<sup>21</sup>. With the exception of Mexico after the 1917's constitution, in the countries of the region, only one small sector of the population participated with full rights in the civil life and could gain access to limited social services<sup>22</sup>. Ultimately, it is true that in the whole region and during the "oligarchical democracy", only a small sector had enjoyed the benefits of the participative constitutional republican system.

Historians who have gone in depth into the Latin American constitutionalist investigation, however, considered that it will be a mistake to suppose that all constitutional changes have been of minor significance, or have been put into practice only to favor the immediate objectives of authoritarian leaders, although in some cases, it has been that way. In Latin America, Hartlyn and Valenzuela affirmed that the new constitutions have been frequently born in "decisive moments" of democratic nature as

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1811 until 1830, seventeen countries enacted republican constitutions that in different degrees were inspired in the document drafted in Philadelphia in 1787. Only Brazil preserved a monarchical system after its separation from Portugal in 1822. Even more, after abolishing the empire of 1889, Brazil adopted a republican constitution" (1997:19).

<sup>21</sup> The political scientist Laurence Whitehead made the following distinction "In a simple way, there are two possible relations between the State and the peoples' elements. If it was considered that the town is formed by "subjects", the main worry of the State is to secure their obedience (and maybe, as consequence, offer them security); if it was considered that it is formed by "citizens", the members of the people acquire rights, that are assumed, will be respected by the State. At the beginning of the studied period, most of the inhabitants of Latin America were a little more than subjects; at the end, they were much less than full citizens" (Whitehead, 1997:67).

<sup>22</sup> "In its external form, the oligarchical State was structurally incapable to offer social services (or inclusive formal political representation) to the majority of the population; it was also incapable to impose an oppressive rational control (often not a minimum of public order) in all its domain, and its business capacities were extremely limited" (Whitehead, 1997:68).

part of a bigger process of democratic transition (1997: 21)<sup>23</sup>. By generating new political rights, by increasing the popular participation and promoting economic and social rights, they have marked a way for the protection of the human rights, even before the universal recognition by the Charter of the United Nations.

The early incorporation of economic and social rights in the Latin America tradition was conceived with the Mexican Constitution of 1917 that was the first one in the history to include the social rights, two years before the Weimar Constitution in 1919. In this way, a tradition in the Latin-American constitutionalism of subordinating the individual rights under the collective rights began<sup>24</sup>.

### **2.3.2 The populism ambiguities**

A subsequent phase of remarkable expansion of the collective rights corresponds to the called “populist” governments in the 40’s, coinciding with the restriction of the civil rights. This verification of the regional historical tradition allows supporting the hypothesis that in the Latin-American history, there is the tendency to alternate a kind of exchange between people’s rights and collective rights. Periods when distribution and equality policies have progressed as in the populist regimes, but the citizens’ political rights were abused, followed by periods when the achievements of the individual rights were observed, while the collective rights were sacrificed.

The populist phenomenon was originated in a phase marked by very special characteristics inside the Latin-American republics and also in the world. In the political

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<sup>23</sup> The mentioned authors recognized that the fact of adopting a new Constitution sometimes reflected the efforts of an authoritarian leader to legitimize or increase its power, particularly in the years between 1930 and 1980: Perón in Argentina (1949), Vargas in Brazil (1934, 1937), Pinochet in Chile (1980), Terra en Uruguay (1934), and Gómez (1931), López Contreras (1936) and Pérez Jiménez (1953) in Venezuela (Hyterlin and Valenzuela, 1997:20).

<sup>24</sup> “During the 30’s and 40’s, most of the Latin-American countries followed the Mexican example and incorporated social, educational and work charters in their respective constitutions, remarking the ‘social function of the property’ over the individual property rights. The guaranties of those rights and of others have tended to increase with the time, in number as well as in specificity, increasing the extension and the complexity of the Latin-American constitutions of our time” (Hartlyn and Valenzuela, 1997: 21).

context, the crisis of the 30's brought a generalized tendency to the formation of strong governments in Europe and in Latin America<sup>25</sup>, and in the United States the "Well-being State" was originated, process that was previously analyzed in the first chapter. The relative isolation of the world markets –engaged in a deep depression–, made possible a political and an economic development relatively independent in Latin America, promoting from the State the industrialization that also accelerated urbanization. The urban concentration made that the political confrontation got worse, which led to a suffrage expansion, and the consequent expansion and diversification of the political parties, overcoming the traditional conflict between conservatives and liberals.

The traditional opposition between the conservatives and liberal parties was expanded from the ending of the nineteenth century, because of the influence of ideological currents which promoted the organization and recognition of the workers' rights, such as socialists, syndicalist, anarchists, and lately, the communist parties under the tutelage of the Communist International<sup>26</sup>. In the crisis of the 30's the populist ideology was incorporated to the power in some Latin American countries under the direct tutelage of the State who adhered the syndicates to the power system<sup>27</sup>.

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<sup>25</sup> The tendency to an increase of executive authority in the period that follows the 1929 depression was a world process that affected the democracies and also the authoritarian governments. The presidents, the prime ministers, and the dictators' powers increased, while the central governments turned in directors of huge bureaucratic organizations whose purpose was to provide social attendance and foster the economic development. The critics to the "liberal" State by the left and also by the right increased the pressure from states with "developed" ideologies. In Latin America like in Europe, the democratic values that stressed the political rights, the competition and the participation became less important than the capacity of the state" (Hartlyn and Valenzuela 1997: 22 and 23).

<sup>26</sup> Alan Angell makes an interesting presentation of the evolution of the left parties and the populist ideology in the most developed countries in Latin America, "La izquierda en América Latina" in *Historia de América Latina*, Vol. 12. CRÍTICA-Grijalbo Mondadori, S.A. Barcelona, 1997. Also the quoted text by Hartlyn and Valenzuela in the same volume of *Historia de América Latina* was revised for this work.

<sup>27</sup> The juridical institutional framework that was created in the 20's and 30's for the industrial relations, at the beginning contributed to control the economic demands of the working class, and lately, to subordinate the labor movement to the State. In Mexico, despite the reformism of Cardenas presidency, there was little possibility that the state apparatus let that the organized worker movement became free of its embrace" (Hartlyn and Valenzuela, 1997:43).

In Ecuador, the Julian revolution of 1925 marked a milestone in the economic modernization and in the process of centralization of the power. The monetary and fiscal reforms and the creation of new

From the 20's, the debate about the big issues of the Latin-American social movement started. The principal issue was the discussion about the role of the State as constituent of the national unity. For the Latin-American populism and for the socialism, the conquest of the State was a requirement to conduct the transformation and the industrialization process<sup>28</sup>. In the populist ideology, the only mode to give a sense of meaning to the concept of "people" was, paradoxically, only as a product of the State's action. This led to an overvaluation of its function in impairment of the civil society which, all in all, was considered unable of any autonomous action.

These elements constituted the foundations of the confusing ideology of the Latin-American populism. On the one side, the populist movements had as zeal, the immediate takeover of power. On the other, the populist movements had to lead their ideological slogan to an extended electorate and that meant to conquer the adherence of the middle class, which was very important from the electoral point of view. That meant that they should incorporate to their vindications the classical liberal rights, at the same time that they led the working class rights and often expressed a national and anti-imperialist discourse. Hence that ambiguity is maybe the dominant characteristic of the populist ideology; even though they could be inspired in the socialism, they also expressed nationalist feelings, attracted groups from every kind of social spectrum, and not necessarily awakened the church or military hostility, according to Angell's characterization.

The most meaningful populist movements promoted a reformist agenda favorable to industrialization by the substitution of importations; they worked in favor of reforms at the work places and of the expansion of the sanitary services and of the social security in

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economic institutions extended the State economic apparatus. The labor and social protection legislation was incorporated to the Constitution of 1929 and to the 30's legislation.

<sup>28</sup> This double state function as constituent of the national unity and as a decisive factor, and almost, excluding the economic transformation, remits directly to the soviet experience and to the Leninist conceptualization, but it is founded also in the modalities that are inherent to the building process of the Latin-American nations. Look at José Aricó "1917 y América Latina", in *Nueva Sociedad*, No. 111, Caracas 1991.

charge of the State. Nevertheless, very often, when coming to the power, they didn't doubt to control by force the popular mobilizations that they contributed to generate<sup>29</sup>.

### **2.3.3. From the human rights' institutionalization to the Cold War**

The dispute East-West, in the middle of the cold war and Asia and Africa decolonization after Second World War gave larger implications to the universal protection of the humans' rights' project. The new countries participated at the United Nations creation, whose weight, together with the post-war intellectual idealism and the international solidarity generated during the conflict, promoted the creation of organizations devoted to development, from two perspectives: praxis and a theoretical analysis.

The trauma behind the Second World War, as it was explained in the previous chapter, was so vast that the international community was in the necessity of establishing a group of international rules that guarantee the international stability, lasting peace and the protection of the basics rights of all citizens. For this reason, a whole international political institutionalism was built around the system of the United Nations, the World Bank and the International Monetary Fund (IMF). This contributed to the creation and diffusion of the thought aimed to find a world of peace, with the purpose of institutionalizing the praxis of the human's rights and getting the peoples' economic and social development.

The creation of the United Nation was the definitive recognition of the historical fact that a State belongs to a community of other States in the framework of the international law. Therefore, the establishment of international relations within this community demands the maintenance of a balance between opposed centers of powers. In other words, the history of the international relations until the Second War had shown the material existence of an international system where every State was not conceived as a whole, but as a part of a larger system. There was the necessity for a formal constitution of this international system to find a guaranteeing institution of the international balance,

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<sup>29</sup> The main populist parties were *Acción Democrática (AD)* in Venezuela, *Partido de Liberación Nacional (PLN)* in Costa Rica, *APRA* in Peru and *Peronismo* in Argentina.

and this was the United Nations Organization (UN). From this perspective, the human rights and even more, the social and economic development policy will be in the future responsibility of this International institution, a key aspect in the analysis of this thesis.

The optimistic atmosphere in the international cooperation which has promoted the creation of the UN and the rest of institutions aimed to help the development of the peoples at the end of the catastrophe of the Second War, searched to universalize not only the protection of the human rights but also the characteristic features of the advanced societies: high levels of industrialization and urbanization, increased use of technology for agricultures, fast growth of the material production and the life levels, and generalized adoption of education and modern cultural values. In a UN publication, this ambition that is part of the occidental modernity was exposed, as this is emphatically resumed by the post-war world: “There is a direction where the economic progress is impossible without painful adjustments. The ancient philosophies should be eradicated, the old social institutions have to disintegrate; the bonds of caste, beliefs and race should be broken; and large masses of people who are not able to follow the progress rhythm should see their expectations of a comfortable life frustrated. A very few communities are prepared to pay the price of economic progress” (United Nations, 1951:15, quoted by Cuervo, 2010).

This notion of progress was accepted by the Economic Commission for Latin America and the Caribbean (ECLAC), institution created by the United Nations and that opened a new path in the political and economic thought of the region. ECLAC’s major contribution to the Latin-American thought was the theoretical systematization of the industrialization experiences in the main countries of the region through national integration procedures, constant social-economic development and social inequality reduction that could contribute to the formation of democratic institutions and practices. In the 50’s and 60’s, as a tangible result of this thought, the region experienced an accelerated process of development with the industrialization policy by the substitution of the imports as an ideological version of the nationalism under the direction of the State for the peripheral zones.



As opposed to this and with the optimism of the first post-war years, the industrialization and the economic growth were not decisive factors to the strengthening of democracy, resulting from a high concentration of economic and political power: Instead of stimulating the formation of intermediate sectors in favor of democracy, they contributed to the authoritative responses from the same sectors that, allied to the elite, the military and the international capital, made efforts to stop the growing power of the workers and popular groups that menaced their privileges<sup>30</sup>.

Afterwards, the initial success of the Cuban revolution was interpreted as a hint in searching the autonomy of the Latin-American peoples. However, the political turn of Cuba toward the socialist bloc placed this process as another element of the Cold War. The Cuban revolution deeply influenced the ideas of Latin America. It seriously questioned the capacity to carry on social changes by means of the western democratic system, which promoted the multiplication of the *guerrillas* movements that looked for socialism. Not only the insurgent movements, but also broad Church groups preached the Liberation Theology, besides the activity and influence of Christian Democratic tendencies grew. As a reaction, the military and police sectors of the Latin-American countries concentrated their action in the internal security and the fight against subversion. The Alliance for the Progress was an institution created by the United States aimed to promote reformist constitutional governments which constituted the most

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<sup>30</sup> At the end of the decade in the 40's and beginning of 50's, a new cycle of authoritarianism started. Coups d'état or attempts at coups and civil wars overthrew or weakened to the democratic regimes of five countries: Peru (1948), Venezuela (1948), Costa Rica (1948-1949, Colombia (1948-1953) and Brazil (1954-1955). In Argentina, Perón, who was democratically elected in 1946, has turned authoritarian before being overthrown by the military in 1955. New fears from the elites that the populism will come to be majority and they will be excluded from the powers in a democratic presidential system (either real as in Argentina or Venezuela, or potential as in Costa Rica or Peru), as well as institutional and constitutional conflicts, worked reciprocally with the advent of the cold war and the relation, sometimes ambiguous, that the leftist parties and the populist movements had with democracy. In Brazil, the limited post-war democracy overcame the crisis that followed Getúlio Vargas's suicide in 1954 (Hartlyn and Valenzuela 1997: 46 and 47). Additionally, in the 50's, the Latin-American nationalisms received serious hardships: the Bolivian government, elected by an important popular movement, lived a destabilization and corruption process until 1952; Jacobo Arbenz's government in Guatemala was overthrown in 1954 by an armed intervention, and Perón was exiled in 1955 after a military coup (González y Casanova 1979:28).

effective response to the appeals of the revolutionary left, as well as to reinforce the military action<sup>31</sup>.

#### **2.3.4. The end of the Cold War: the globalization and dispute for the economic and social rights in Latin America**

During the two last decades of the XX century, the west and Latin America live a long regression period in relation to the practice of the social and third generation rights and the emergence of the economic liberalism and the individualism as substitution. To reinforce the hypothesis that was proposed above, the two final decades of the last century are an example of this political interchange determined by an advance in the individual rights at the expense of the collective rights. As one of the analysts of the regional history states, the social dimension of the citizenship has been in regression in most part of Latin-America, at least since the debt crisis in 1982. This change was accompanied by the practice of the political rights that became fixed as ever before. In these two decades, the free elections based on the universal vote turned into the main method to renovate or change local or national authorities (Whitehead, 1997: 71).

As it was analyzed in the first chapter, the economic crisis in the seventies in the developed countries gave rise to radical transformations of the rules of the world economic game, of the political organizations and of the visions related to social protection and well-being. These modifications caused that the concerns for the social rights initiated a long period of lethargy which was accompanied by progressive weakening of the idea and of the role that was granted to the State. When the American countries entered in the crisis of the eighties similarly as what happened in the previous decade in the United States and Europe, it is observed a decrease of the collective social rights and identities that as a counterpart came with the affirmation of the liberal principles and the reaffirmation of the individualist ethics as part of the values.

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<sup>31</sup> Regarding the multiple influence of the Cuban revolution in the political processes of Latin America, see Hartlyn and Valenzuela (1997).

In short, the economic liberalism that was imposed for more than two decades in Latin - America held that the economic stagnation that affected the region economies derived from an inadequate functioning of the market due to the distortions that were generated by the State intervention in the economy that took place during the boom of the cepaline thinking. Consequently, the best way to fight against the underdevelopment was to reduce the State intervention through internal economic liberalization policies that permitted the functioning of the national market in conditions of free competency and of external economic liberalization.

To establish a relationship between the economical factor and the sociopolitical factor, the discussion between statism and liberalism, between Latin-American nationalism and external opening confronted not only two development styles, but also two ways to make politics. The development, that was oriented towards the inside of the populist governments and the ECLAC thought, supposed the preeminence of collective actions, of wide social and regional groups' participation in a project of national integration and collective demonstrations and social integration. Meanwhile, the alternative of reintegration to the international markets, that is in force since the eighties, is directly associated with the recognition of a more individualistic and privatized image of citizenship that protects the individual rights as opposed to the collective rights.

The last factor will explain the reason why Hayek and Friedman's ideas were expanded in Latin America in the nineties as conviction, due to the fact that the political and technical Latin-American elites embraced the doctrine and the political proposal from Washington's Consensus, at the same time that they continued to defend the hegemonic project of the United States in a supposed current unipolar and globalized world.

Even though the menace of a real socialism disappeared and the global hegemony of the United States seemed to be consolidated, during these years the increasing dispute of the new industrialized countries appears and little by little the western developed economies were superseded by them. In broad terms, it is assumed that even in China a capitalist production organization has been imposed as well as in Russia. The basic principle of a political organization refers to a broad separation between the public bureaucracy and the civil society as product of the preeminence of the function of state in society.

One of the difficulties for the total consolidation of the liberalism in the nineties seemed to come from the fact that the specificity of the relations between the state organization and the enforcement of the civil rights throughout Latin American history was neglected. This means that the weakness of the civil society organizations explains, to a good extent, the need of a strong state. It also explains that even at the beginning of the nineties full citizenship was maintained as an evasive aspiration which was little practiced by the majority of the population.

At the same time that the liberalism of the international institutions was imposed as the new representation of the ideology and of the practice of the economic and political Latin-American elites, the social collective rights that were promoted during the developmental inside-oriented stage were meant to disappear under the impact of the international competence and the economic austerity. The increasing internationalization of the economy caused internal transformations that were shown through a progressive reduction process of the functions of the state, the increasing informalization of the labor and the weakening of the social-historical actors, such as, syndicates and worker movements, in general.

However, soon it was observed that the most individualist citizenship approach directed to the market was fairly incompatible with the aspirations of wide social groups. The evidence of these disruptions between ideology and reality started to be observed because of the emergence of alternative social projects that had very different approaches and emphasis on the social life, the politics and the rights. In most countries of the region, new actors and social movements emerged, such as the indigenous and Afro-descendants, the women, the defense of sex-difference rights, the ecologists. All of them started to question the political bases of a democracy based mainly on the individual rights, which created a political and institutional polarization climate and demanded a more active role of the state to face the increasing social conflict.

To analyze these actors and movements, it is necessary to make an important distinction on the historic conformation of the national society between at least two groups of countries. In their historic configuration, some countries of the region were not affected by the conflicts that were originated by ethnic, cultural and territorial differences that

complicated the consolidation of the national authority in Europe; these are nations like Argentina, Uruguay and Chile that are constituted by immigrants. In this group of countries, the conflict developed basically through proposals to shape a redistributive capitalist project that vindicated the central role of human beings, of their needs, of their freedoms and of their perceptions, as principles of the political practice<sup>32</sup>.

A second group of countries – Peru, Bolivia, Ecuador, Mexico, and Guatemala – formed by a large indigenous population, multiple languages and cultures, historically presented conflicts and difficulties to create a national political community. In some of these countries, like Mexico, Ecuador and Bolivia during the last decade of the XX century, the indigenous movements were in the process of developing a project of democratic radicalization in favor of a participatory, communitarian and intercultural democracy, of the democratization of the access to the land, of the redistribution of the income earned from the exploitation of the natural resources, of the promotion of alternatives to the development under the conception of the good living (the Sumak Kawsay or the Suma Qamaña), or of the negotiation related to the splitting of society and nature, conceived as the Madre Tierra (Mother Earth).

In sum, in the intellectual and academic circles, the project that will become strong in the following decade started to be designed. It was conceived within the historical tradition of one of the interpretations of Simon Bolívar's thought that conforms around the characteristics that are essentially governmental from the Latin- American national formations.

### **2.3.5. The Bolivarism reinvention in the 21th century**

The beginning of the new century shows a deep decline of the United States hegemony in the world system. This situation explains the reasons why some Latin American

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<sup>32</sup> Within Amartya Sen's thought that was mentioned in Chapter one, these vindications recognize the market and the democracy as fundamental social institutions to reach social development, and at the same time, as a means to get the expansion of liberties, but they question the market limitations to obtain wealth and social equity redistributions. On the other hand, they question the practice of the formal democracy as an insufficient means for the exercise of freedom.

governments that moved around the left-center or the left “have succeeded to keep the power and develop progressist policies, without the strong intervention of the United States that took place in previous decades” (Wallerstein, 2011). The analysis of this new reality gave rise to different interpretations of the future of the region. Some of them are mentioned later.

While the world economy experiments the most acute crisis since the thirties, a widely spread opinion is that the emergent economies are leading the way out of the crisis. This appreciation corresponds to the most optimistic interpretation about the creation of a new political and economic world order in the region, where Brazil and Mexico are to play a definite role for its conformation. In this context, after the apparent collapse of the openness and liberalization policies, and amid a favorable international context due to the strong growth of China, India and Brazil and other emergent economies, the new situation in the present history is that some countries of the region have radically transformed their development strategy. This transformation was focused on a dynamic growth of the internal market and their exports; the main focus of their growth was based on a strong funding of the public investment and on a more equal distribution of the income, which means a project of redistributive capitalist development and more democratic societies. What is important for this international reorganization is that the world nowadays points towards the tendency of making regional blocks; this led most of the South American countries to form the Union of South American Nations (UNASUR).

Even though the economic scene is still favorable for the South American republics, it is not this way for the political social scene, due to the evident lack of means that will allow the whole population to reach full social participation. The most clamorous example is Brazil; it was not enough to release millions of people from poverty to give rise to an enlarged consumer middle class which left numerous unsatisfied needs on the way to enjoy full progress. The hindrances for the full exercise of democracy, such as equity, justice, and social inclusion become more and more evident in Chile, Mexico and Colombia, countries where the strengthening of the political rights seem to be compensated with considerable loss of the social dimension of citizenship.

The reformulation of the concept of development stated by Luis M. Cuervo, staff member of the ECLAC, could be applicable to the above mentioned countries. According to this author, “the material wealth is not understood any more as the aim of development; it is as a source of well-being and happiness to be placed in a different position, as the means to obtain a different aim...The aim of development is not human beings’ material wealth, but the expansion of their liberties and opportunities. The ultimate goal of society is to have autonomous individuals with the capacity to decide and take advantage of the opportunities. Their freedom will depend on economical facilities (basic need satisfaction), on transparency, on social opportunities, on security and protection, and on the absence of tyranny”.

On the other extreme of this perspective, Boaventura de Souza, regarding the confrontation of the Andean countries, asserts that the novelty in the present history would be that today’s complex dualities that are anchored in very different cultural and political universes are being debated. For instance, the author mentions some dualities: natural resources or *Pachamama*?, development or *Sumak Kawsay*?, land for agrarian reform or territory as a requirement for dignity, respect and identity?, State-nation or pluri-national State?, civil society or community?, citizenship or collective rights? (De Souza, 2010: 59 and 60).

The project of the socialism of the XXI century does not have a very accurate characterization in relation to the proposals that are discussed in South America. According to Rene Ramirez, some Latin American countries try to live a post-neoliberal society by refocussing into a popular capitalism or market socialism, and finally, a republican bio-socialism. It is intended to build a social and solidary economy which does not deny the market, but that is subordinated to life reproduction and to other forms of organization and production. The social and solidary economy recognizes the human being as individual and end, and it proposes to generate dynamic relations between State and society that allows the Good Living (...). The path to reach a solidary and social economy points at changing the monopoly of the means of production of the present market society (...). This is articulated by means of an insertion proposal in the globalized world through the sovereign trade policy (...). Within this framework, it is

possible to point out that this egalitarianism does not have the State as an end, but the society and the collectivities themselves. In this framework, the economy is social and solidary; it is not of the market but with the market, since it supports other forms of ownership and organization; these are the most important: state property, large national property, republican property, communitarian property, social property and capitalist property. In this framework, it is necessary to think of all the possible combinations of property and organization that are generated from them (Ramirez, René *Socialismo del Sumak Kawsay o biosocialismo republicano*, Documento de Trabajo n° 2, SENPLADES, Quito. Quoted by Hidalgo Capitán, 2012: 20).

Finally, for the traditional allies of the United States and hegemonic European countries, the entrance of new actors to the world markets is another process within the globalization. On this logic, the Latin American countries have to continue being part of the western world since the main trade and political allies are the United States and Europe. This will be a unchangeable destiny, while the conditions before the crisis return. This perspective will be broadened when the topic of the Inter-American Commission of Human Rights is analyzed.

#### **2.4. Analysis of the institutional framework for the protection of human rights in Latin America**

The history of human rights in Latin America, especially its theoretical and philosophic tradition, gets confused with the agreements and declarations of crucial moments of their history since the conformation of the independent republics, as it was analyzed in previous sections. The most recent history of the human rights has taken place in a parallel form to the development of the Pan-Americanism in the Organization of the American States under the vigilance and hegemony of the United States. However, at present the South American countries feel uneasy about the Inter-American System of Human Rights (IASHR).

The debate is centered on the intromission of the States that are not part of the Inter-American System of Human Rights concerning its functioning and the extreme



importance that it grants to the first generation rights, neglecting those of the second, third, fourth and fifth generation. From what has been analyzed previously, a hypothesis that maybe could clarify the extent of this discussion is that the creation of the Organization of the American States was a response that emerged from the urgency to preserve the heritage of the Monroeism of America for the Americans, from a political perspective that preserved the traditional hegemony of the United States.

#### **2.4.1. The universal human rights system: the UN and its agencies**

In 1948, the country members of the United Nations signed the Universal Declaration of the Human Rights. This instrument defined and recognized a broad range of fundamental rights; at the same time, it originated a series of mechanisms to promote and protect them, in such a way that the States will be able to fulfill the obligations referred to this topic. The United Nations Organization (UN) is the sole intergovernmental forum with a universal calling, since its system has transformed into the main world referent for the protection of the human rights. The Human Rights, in this way, have gone beyond the framework of the national states and became part of the international relations.

The UN was not restricted to write the Declaration, but it looked for mechanisms to implement the responsibility of the States that ratified this compromise with the universal rights. The UN System of Human Rights is integrated by the International Bill of Human Rights that includes the Universal Declaration of the Human Rights and two main treaties on human rights in the international field (Licenciatura en Género y Desarrollo, 2012, Mejía, 2012). Indeed, in 1966, two different treaties were subscribed: The International Covenant on Civil and Political Rights which is the major treaty in the universal system. It widely recognizes “individual rights and liberties, as well as the associated guarantees; moreover, it institutes the creation of the Human Rights Committee and a mechanism of reception to report violations to recognized rights”. The second treaty is the International Covenant on Economic, Social and Cultural Rights that protects several of the second generation rights. A strong criticism formulated against

this instrument is that it subordinates the protection to the will of the state, “instead of establishing the subjective character of the rights that are picked up; also, its execution is conditioned to the principle of progressivity and to the existence of resources in order to adopt measures”. The two instruments were just enforced in 1976 (Mejía Guerrero, 2012).

The major specialized organization to supervise everything that is related to human rights is the Human Rights Council whose main activity is the performance of a Universal Periodic Review. The Council has other mechanisms, Special Rapporteurs, who are responsible of thematic and geographical mandates (Ibid).

#### **2.4.2. The regional systems of rights: the OAS and the Inter-American System on Human Rights**

Additional to the universal system of human rights, there are multilateral regional systems of general nature: the Organization of American States, the Council of Europe and the African Union, that, similarly to the UN “have a normative framework to recognize and protect the human rights and one or several supervision mechanisms for the application of measures for their achievement, as well as for the presentation and revision of complaints”. However, the regional systems have developed their own rules and have specific mechanisms of supervision for each region (Mejía, 2012).

In this section, the Inter-American System of Human Rights (IASHR) will be analyzed. It anticipated six months to the Universal Declaration of Human Rights of the UN, having both identical aims. The American countries were already looking for a project that reinforces and improves the Pan-American system whereby “...the American Republics will recognize the international right as an effective regulation of their behaviors and will commit them to observe the regulations that would be established in the Declaration on Rights and Duties of States and in the International Declaration of the Rights and Duties of Man” (Medina and Nash, 2009).

The ethical foundations of the Inter-American System of Human Rights are collected in the American Declaration of the Rights and Duties of Man (ADRADM) and in the American Convention of Human Rights. The American Declaration that was simultaneously approved with the OAS charter in 1948 recognizes the civil and political rights, that is, those of the first generation, as well as several social and economic rights; also it contains a “rights” charter.

The central criticism that has been made to the ADRADM is that it is mainly declarative. The language that is used turns to be “partially extemporaneous” at present; some words, like “the rights of man” became obsolete the same year of the American Declaration, after the Universal Declaration of Human Rights of the UN.

On the other hand, at the time of the adoption of the International Covenant on Economic, Social and Cultural Rights of the UN, “its supervision was subordinated to an organization that was created by the OAS charter (the Social and Economic Commission) which lacks of complaint mechanisms for its application in the American continent. This constitutes the ‘weak’ instrument of the International Bill of Human Rights” (Mejía Guerrero, 2012). As a result and in conclusion, the main criticism to the Inter-American System of Human Rights lays on that the main concern focus on liberties and civil rights, neglecting the concern on social and economic rights, and others, such as women and minorities. These arguments have constituted the core of the present questioning, as it will be seen later on.

From the previous process and in spite that it constitutes an innovative advance of the regulations, the resulting document did not represent a binding instrument for the subscribing countries since it lacked the nature of an international treaty. This situation changed radically in 1969 through the subscription of *the American Convention on Human Rights or Pact of San José*, which created a complete mechanism of promotion and guarantee of protection of the Human Rights for the citizens of the subscribing countries. In this way, since the execution of the Convention, a system of protection of Human rights is created through two organizations that are entrusted of specific competences: the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights.

To perform the function of protection, the Inter-American Commission of Human Rights is the organization that receives requests referred to the infringement of the Inter-American rights regulations; at the same time, it enhances friendly processes of dialogue with the United States to look for resolutions for the received claims. When the process of dialogue fails, the members of the Commission evaluate the presentation of a claim to the Court against the State; in such circumstance, they act as auditors in front of the Court. The Commission, similarly as the United Nations Council of Human Rights, has the so-called Special Rapporteurs, yet only for the exclusively thematic mandates in the American case. “These mechanisms count on technical assessment responsibilities, report writing, public indicators of situations that require special attention [...] selected by the commissioners” (Mejía Guerrero, 2012).

The Inter-American Court of Human Rights is the jurisdictional organization of the system. Therefore, it is in charge of processing the claims that are submitted by the Commission, and if applicable, of initiating the contentious disciplinary proceeding against the denounced State, “provided that this has accepted jurisdiction of the Court. Its judgment is binding for the States. It has also the faculty to deliver *Advisory Opinions* to interpret the Inter-American regulations for the human rights, by request of the States who have ratified their statutes and by request of the Commission; besides, it can adopt precautionary measures when applicable if it considers that there is a menace of violation of the human rights” (Mejía Guerrero, 2012).

#### **2.4.3. From the Pact of San José to the current demands of reformulation in Latin America**

The political and economic changes that took place during the last three decades of the XX century marked decisively the route that the fight for human rights in the region will follow. With the triumph of the authoritative regimes in South American countries during the sixties, the policies of dismantling the democratic institutions were expanded and the “institutionalization of governments based on fear” developed (Gonzales Casanova, 1979: 42).

The repression sent many workers and intellectuals to exile. Even though, the ideology of the Latin-American autonomous development found a favorable space for larger diffusion and discussion, the pacific way that has characterized it before has been interrupted. (Hidalgo Capitán, 2011). In this situation, the Inter-American System of Human Rights, and the main organizations that became part of it a few years earlier, had a leading role in the fights to preserve somehow the respect for human life and basic liberties in the region.

Boaventura de Souza dos Santos, a very critical sociologist of the capitalist system and of the role that the hegemony of the United States has played in Latin America, as well as the role played by the OAS, in an interview given to an Argentinean newspaper, comments the nature of this fight in the following terms: *“We know that the Inter-America system of human rights is far from perfect, due to the fact that the two more powerful countries of the region (United States and Canada) not even signed the American Convention on Human Rights. We also know that, in the past, the Commission as the Court revealed weaknesses as well as political biased selectivity. However, we know that the system and its institutions have gained strength by acting with more independence and by acquiring prestige through the efficiency in condemning the numerous violations of human rights: since the 70s and 80s, when the Commission carried on missions in Chile, Argentina and Guatemala, and published reports denouncing the crimes that were committed by the military dictatorships, besides the missions and denounces after the coup d'état in Honduras in 2009, and not to mention, the reiterative petitions asking for the closure of the detention center in Guantanamo”*.

Years later, after the fall of the Berlin Wall and the collapse of the real socialism, the ideal of the Latin-American unity was archived as an obsolete idea, an uncomfortable heritage, a heavy burden or a debt impossible to figure out, as literarily confessed the Mexican writer, Jorge Volpi. And the international institutions, included those of the Inter-American system also archived their concern for the social well-being, to openly declare their preference for a vision with marked emphasis on the economic and on the international opening; this turned as dominant the paradigm of competitiveness and

globalization. From this bias, the questioning to the Inter-American Commission has deepened.

However, in a hot debate, some opposed criteria have been expressed in this line, as the one that is quoted hereby: “The Commission has settled diverse and sensible cases for the public opinion. Since the prohibition of the fertilization *in vitro* by Costa Rica’s Government, up to the protection of the rights of the working class minorities in Peru and Mexico, or the fight for the police and military abuses against the citizens [...] The most emblematic cases that were settled by the IACHR are: the massacre of farm workers in the area of El Amparo (Venezuela) in 1995, the disappearance and torture of Eladio Torres (Argentina), the judgment against El Salvador due to Monsignor Oscar Romero’s assassination in 1980, the La Cantuta massacre against the government of Alberto Fujimori (Peru). In 2006, Paraguay was condemned by the disappearance of people in the so-called ‘Operación Condor’ that took place in the 80s” (Diario *Expreso*, Guayaquil, Tuesday, March 12, 2013).

#### **2.4.4. Implications of the Inter-American Commission on Human Rights**

As a strong criticism to the international systems of human rights, Luz Patricia Mejia supports that the international law continually privileges the civil and political rights rather than the social rights. According to this expert, in the field of rights, “this represents one of the main weaknesses of the international law regarding the existent human rights, *which cannot be reproduced in the framework of the UNASUR* (author’s underline), given the recognition of the integrality of the human rights in the founding charter and in the set of the regional integration dynamics” (Mejía Guerrero, 2012).

Mejia provides as examples the cases of the UN system and the European System of Human Rights that adopt two differentiated pacts, one for the civil and political rights and other for the social rights. The OAS adopts a protocol on social rights, just in the American Convention on Human Rights. “Even though this dichotomy has been partially amended through subsequent declarative instruments that have reiterated the interdependence and indivisibility of the human rights, the truth is that both groups of

rights have differentiated status regarding their effective recognition in binding treaties and regarding the existence of mechanisms of international protection” (Ibid.).

This simple finding can lead to the following hypothesis, which certainly is not subject of this thesis: In the recent history of Latin America, a sort of interchange between individual rights and collective rights tend to alternate: while the governments more advance in rights such as the property tutelage, freedom of speech, power separation, others such as the working class, indigenous communities, etc., are sacrificed. This situation took place, for instance, in Latin America between the eighties and the nineties. Or, as some analysts assure to have verified that nowadays, it is occurring in Venezuela, Argentina or Ecuador: policies of distribution and equity have advanced, but the political rights of the citizens are mistreated.

This is a hypothesis that could explain the present argument about the Inter-American System of Human Rights. In effect, the System and specifically its Inter-American Commission of Human Rights have recently placed themselves in the eye of the storm regarding the discussion about the reform of the Inter-American System which was prompted by some countries, where Ecuador was acting as a spearhead of the debate.

Maybe the strongest argument comes from the previous review of an entire history of particularly conflictive relations between Latin America and the United States, as well as the thesis that the OAS and its regional organizations have been very often used as instruments for the United States hegemony in the continent. Other questionings about the legitimacy of the Inter-American Commission as an impartial organization to protect the human rights by the OAS State Members rather highlight some operative proceedings to stress the following weaknesses:

- “The independent experts that are elected by the General Assembly meet annually for three times in brief sessions when they review the work that has been done by the Technical Secretariat of the Commission.
- “The predominant role that the Secretariat has with respect to the daily work of the Commission reduces the power of action of the elected commissioners and affects their independence, since they act under the supervision of a non-elected technical body.
- “The Commission is invested with the discretion to indicate what OAS countries should write special reports; this affects the balance in the supervision and subordinates certain

countries to an intensive scrutiny faced to others that scape the attention of the organization.

- “The Commission has the faculty to ask for protective measures to the States, in such situations where it is considered that there are imminent menaces to the human rights. These measures are not regulated enough and it has been pointed out that there was a disproportionate use in some cases, and a denial to use the mechanism in others” (Mejía Guerrero, 2012).

The argument in favor of the Commission refers to the sustainability of the original principle which points out that the individual rights protect the citizen right faced to the power; this is, the citizen rights faced to the State, the individual liberties, the development of the tutelage as opposed to the arbitrariness of the power. The Ecuadorian expert, José Ayala Lasso supported that “The confrontations between the citizen and the power have a common feature: they are born because who is in the power wants to strengthen their authority and to discipline the citizens so that their governmental program becomes effective. From this deceitful premise, improper limitations to the human rights emerge, and worse, their systematic violation takes place. Who is critical and protests against these abuses, the power declares them as enemies and pursue them [...] This is happening now with the Inter-American Commission of Human Rights, which is besieged by initiatives that intend to weaken and diminish its faculties through a series of amendments that could transform it in unworkable and ineffective” (El Comercio, Saturday, March 9, 2013).



## **CHAPTER 3**

### **SOUTH AMERICA AND REGIONAL INTEGRATION PROCESSES**

#### **3.1. Introduction**

As we mentioned in the preceding chapters, after the fall of the Berlin wall in 1989, the bipolar world concept was left behind where two big powers disputed the control in the world, remaining United States as the only superpower. This country, through its military and economic power and thanks to the creation of economic international institutions as well as of political agreements, expanded its system of values and implemented a unipolar order in the international arena.

Nevertheless, along the course of the Latin American history, several lines of an “anti-American” thought have emerged, often inspired in Bolivar’s thought and in a regional cohesion. These lines of thought have gained a special strength in the last decade arising from three factors: the international economic crisis originated precisely in the financial sector of the United States, the constant growth of the so-called emerging powers, and the reconfiguration of the economic world matrix. These three factors, also, have caused a reconfiguration of the global order, through which the international analysts foresee the birth of a multipolar order, similar to the one that was proposed by Huntington, with an active and different participation of the developing nations (Luzzani, 2013; Muzaffar, 2013).

In this scenario, Latin America searches for a different configuration that will allow an internal cooperation and a negotiation with the traditional powers in terms of more equality. At the same time, it confronts three big challenges that occur in the region at the same time: global economic crisis, integration crisis, and identity crisis. In this way, the new regional geo-politic map corresponds to the birth and consolidation of new schemes of regional integration, new centers of power, and new leaderships.

In this context, and with the purpose of strengthening the possibilities that the regional integration provides, in the last two decades the Latin American countries, and particularly the South American ones, have materialized several economic and political integration processes. In the previous chapter, we discussed about the socialism of the XXI century and the growing tendency in favor of the South American integration as response to the dominant role that the United States maintains over the OAS, where we find three South American integration processes (CAN, MERCOSUR and UNASUR) that stand out because of a stronger legal personality, their own institutionalism and a deeper cooperation nexus. In the same line of counter- hegemonic contents adopted by at least a part of Latin America, two processes of regional character (ALBA and CELAC) are observed, which also express a common cultural and historical identity. Nevertheless, in the last years the Pacific Alliance integration process seems to consolidate; this is oriented by a completely opposed political line from the previously mentioned ones as being supported by free trade principles and inscribed in the international political current constituted around the axis of the relations between Mexico and United States.

Thus, the emergence of a multipolar global order is the hypothesis that opens the basic argument for the development of this chapter. The emergence of “all the others” faced to the unipolar world of the ending of the XX century is a very suggestive hypothesis raised by F. Zakaria, which allows to deal in the second section, with the present Latin-American political reality under the influence of new leaders: on one side, Venezuela and Brazil that question the United States hegemony in the continent, and on the other side, Mexico that leads the free trade and with its proximity to the colossus of the north, as two alternatives where the topics on regionalism and integration in the continent are discussed upon. In the last three sections of the chapter, we essentially revise in a descriptive and short way the main organizations of regional integration: ALBA, ECLAC, MERCOSUR and CAN, as a background for the process of formation of UNASUR. Finally, we describe in a more or less extensive form the constitution and consolidation of UNASUR; then after, we review the strengths, the weaknesses and the perspectives of the South American organization.

### **3.2. The emerging world: “The rise of the rest”**

While in the previous chapters we reviewed, in a superficial way, the falling of a bipolar order, the emergence of a unipolar world dominated by United States, the love-hate and the mutual dependence that have characterized the relations between Latin America and the giant of the north –although we spoke about globalization and the last international crisis generated in the United States financial sector, and the consequences in an even more co-dependent world- we have not explored the rising multipolar global order. We will not deeply discuss about this as it is not subject of this thesis; however, it is important to dedicate some paragraphs to understand the scenario in which Latin America, as region, should develop.

There are many books, essays and articles that intend to show the rising international reality. A few succeed to make it in a simple way as Fareed Zakaria, in his book “The Post-American World” in which he states that more than only entering into an anti-American era, as we could pull away from reading the “Civilizations Shock” or from Hugo Chavez discourses and from the Iranian governments, actually we are experiencing the emergence of a multipolar world in which United States ceases to be the world’s only great leader and becomes one of the many actors, whether they are state actors or not, in the international arena.

Zakaria starts from an analysis of three structural changes that the international policy has lived in the last 500 years, which has given the great patterns for the new era: the emergence of the western nations, the emergence of United States, and at the end, the emergence of “all the rest”.

The first began in the XV century and intensified in a dramatic way in the XVIII century. It is about the hegemony of occident. This process had two big consequences which are present until now: on one side the evident, although every time more decadent, political domination of the western countries; and on the other side, the rising of the so-called modernism: the establishment of democracies, the development of science, technology and industry, the trade increase in a global scale and the birth of capitalism (Zakaria, 2008).

With the modernity instituted in the western countries –including United States-, the progress of the Hispanic American pro-independence processes, and the Great War which was already glimpsed at the end of the XIX century, United States emerged as the great power. This process accelerated in the first half of the XX century and it turned in its maximal expression during the last decade of this century. In Zakarias' words, there has not been such a powerful nation as the United States of the second half of the last century since the imperial Rome. This country managed to dominate the trade, the industry, the science and the technology in a global level; its armament force was, and still is, the most powerful; at the end of the XX century, none of the economies of the countries was comparable to the American economy; and there was not any viable possibility of alliance among the nations that could confront the United State (Ibid.). As noted in previously chapters, the end of the Cold War represented more than a victory to the Capitalism, the emergence of a unipolar world and the representation of United States as the unique hegemonic nation.

Nevertheless, this process far from representing the “end of the history”, as Fukuyama stated, prepared the scenario for the third change noted by Zakaria. Globalization generated two apparently contradictory effects: in one way, it helped to crystallize even more the American hegemony at a global level by expanding the scope of its economy, the inversion of its capital, and the creation of markets in any part of the world; it expanded the American economy to a global reach and without precedents in history. In another way and as a consequence of the foregoing, it generated a co-dependence of all the countries of the world, including the United States.

Being aware of this, the American politicians initiated several processes, often messianic, to promote the constitution of a more stable international order. In this way, the United States was involved in as many wars as they thought could affect them, in spite of the distance of the countries where the wars were fought (Iraq, Afghanistan, Vietnam, Golf Wars). With the same perspective, the United States used the international organizations that were created with the support of the countries that won World War two, not only to keep the established international order, but also to keep its hegemony in that order.

So, the birth of a real global economy for first time as well as the interest of the United States in the entire world generated the so-called “emergence of all the rest”. Zakaria expresses this statement in the following way: during the last decades, countries of the whole world have experimented economic growth rates that were unthinkable in the past, “for first time in history, we have witnessed a genuine global growth that is creating an international system where countries from all over the world cease to be observers or objects, but they transform themselves into authentic players” (Zakaria, 2008:3).

Another aspect of this new era is the diffusion of power from the States to other actors. Among “the rest” that are emerging, there are not state actors: groups and individuals had gained power, functions that were controlled by the government before, are now shared by international organizations like the World Trade Organization and the European Union. Non-governmental groups are born every day in every country of the world; terrorist groups, drug cartels and insurgent groups search space to operate in the inner lands of their countries and in the international arena (Ibid).

In this way we see that not only the economy, the resources, the products and the capital are global, but also we start to see the emergence of actors that do not necessarily belong to a State but play a role in the international arena, and the emergence of problems of global scale: like drug smuggling, the white slave trade, the climate change and the environmental contamination, people and capital migration, in addition to the use of natural resources and their sovereignty. It is the context where Latin America must go through a definition process to determine the role this continent will play in this new scenario.

### **3.3. Old and new leaders: a brief allusion to the current political situation in Latin America**

Once the context is analyzed, it is convenient to know the principal actors and their visions about the role that Latin America could perform in the international arena. As we reviewed in the last chapter, the XX century was very convulsed in Latin America: in

one side the dictatorial governments and military regimes had a big presence in the region; the democratic processes could not always build strong states in terms of stability, neither managed to guarantee the citizens' rights nor the reduction of asymmetries; these characteristics were deepened with the structural reforms of the "Washington Consensus".

Probably as a consequence of this, in the last decade of the XX century and the first of the XXI, left tendency governments appeared in the region. Especially the South American countries, except Colombia and Peru, chose presidents through democratic processes, who exhibited reformist characteristics -at least in their discourse-, for the democratization of the state, defense of the natural resources and a renewed sovereignty, together with the offer of strong social changes,.

The emergence of these governments is added to the "emergence of the rest", noted by Zakaria, which had weakened the image of the United States in the region. As a consequence, the one who was the big power in the XX century, at the beginning of the XXI century began a process of losing continental leadership which will represent a limitation in the access to a large quantity of natural resources, a generalized questioning about its political legitimacy as world leader, and as a result, the loss of an important base for the global hegemony. In this regard, Luzzani supports that for United States "there is an iron truth: without the control and the total domain upon Latin America, the construction of the empire and the conquest of the global hegemony is impossible" (Luzzani, 2013:108).

To avoid losing its –generally- strong ties with the region, United States had signed cooperation agreements with some Latin American countries. It had created institutions such as the Development Inter American Bank, had financed projects which supported the regional development, had settled troops in several countries of the region – justifying the combats to the drug smuggling- and has signed free trade agreements with Colombia, Mexico, Chile and Peru. However, the strong criticism that received from other governments such as Venezuela, Bolivia, and Ecuador, and in less measure from Argentina and Brazil, weakened its capacity of action and evidenced the loss of its presence in this region. In view of that, as an additional strategy, United States

constantly reinforces its relation with Mexico so that it can directly exert the regional leadership (Luzzani, 2013; Muzaffar, 2013).

The United States strategy is very natural because historically Mexico had exerted leadership in Latin America. Since the colonial time –because of its size, wealth, culture and social-economic development- it was the strongest Viceroyalty of the region and it often constituted a referent for the rest of colonial territories. During the first republican years, the nascent countries confronted diverse internal struggles or with their neighbors regarding the constitution of their states and the limits definition, which impeded the emergence of a regional leader. However, once the United States intervention in Mexico was overcome between 1846 and 1848, this country managed to conciliate a bilateral policy with the United States that gave rise to strong trade opportunities and to economic and industrial growth of both countries; at the same time, the Hispanic country looked for European capital inversions that boosted the economic development during the Porfiriato – from 1876 to 1911. During this time, caudillista governments were established in the region; Mexico from Porfirio Diaz managed to obtain a strong influence in Central America, and also he was opposed to the Guatemalan attempts to create one whole Central-American nation. All of these factors caused that Mexico become the wealthiest Latin-American country and the most relevant for the foreign powers (Bazant, 2003).

Between 1924 and 1934, Mexico adopted a foreign policy close to the Soviet Union, which generated a strong detachment from the United States and caused the need of the United States to gain more influence in Latin-America to avoid the Soviet presence. In this way, notwithstanding that since the Second World War, and even more, since the 1950's, the relationship between Mexico and United States was strengthened in connection with trade; Adolfo Ruiz Cortines, Mexican President between 1952 and 1958, looked for the creation of a counter-hegemonic force to face the strong influence of United States in the region, reason why he looked for alliances with the Latin-American countries (Ibid).

Once, the characteristics of a bipolar world typical of the Cold War were overcome, the Mexican foreign policy has been closely linked to the United States, acting even as a

Latin-American representative in front of the major powers and international forums in the last decades of the XX century up to present.

However, the end of the XX century and the advent of the new century have brought several difficulties that affected the maintenance of the Mexican leadership: at internal level there were increasing social conflicts, the emergence of armed groups linked to drug-smuggling, a strong decline of the government and State institutions; at regional level there is the reappearance of leftist governments, faced to a Mexican country that every time is more politically linked to the United States. All of these factors have come together and resulted in a loss of presence of this Central-American country in the region, as well as, in a gradual decline of its leadership and influential power.

After the recent return of the PRI to the government, Mexico reassumes the struggle for the regional leadership. Today's president, Enrique Peña Nieto, has clearly expressed the determination to position his country as an actor with global responsibility. In order to recover the leading role that it had performed in the world scenario, Mexico needs the ties with Latin America and the Caribe; for this reason, he has lately promoted the Pacific Alliance with Chile, Peru and Colombia, associates that have the same ideological and economic orientation and share the same concern about the Brazilian or Venezuelan leadership in South America. For some analysts, this is another game of the United States diplomacy with the purpose of using Mexico as a screen in the reconfiguration of the Inter-American relations; at the same time, the Pacific Alliance will be an instrument to safeguard the economic interests of Asia, far away from the decisive importance of China.

Thus, it is possible to observe that the "emergence of the rest" also applies to the Latin-American region. As the strong leaders of the XX century were beaten, new profiles begin to appear at country level as political figures that have been gaining strength in the last decades. The failure of the institutions and the policies derived from the "Washington Consensus" and the previous support of United States to authoritative and repressive governments in the region generated a renewed anti United States feeling and evidenced the strong social gaps that are always present in Latin America.



In this context, leftist governments came to power through electoral processes: Hugo Chavez in Venezuela, Lula da Silva in Brazil, Nestor Kirchner in Argentina, Manuel Zelaya in Honduras, Michelle Bachelet in Chile, Rafael Correa in Ecuador, Evo Morales in Bolivia, Fernando Lugo in Paraguay and Jose Mujica in Uruguay. Several studies intend to determine the reason why this evident turn to the left in the Latin-American politics occurs; among the most common factors that can be identified are: a large social debt, a renewed sense of nationalism, a weakening of the facto powers –often related to interests of large companies and foreign groups-, a new awareness about the possession of the natural resources, and in some cases, a strong confrontational speech; in addition, the emergence of a multipolar world must not be neglected. Those are contexts where these new presidents, to a greater or lesser extent, intend to shape a united Latin America that represents one of the poles of the new order.

The clearest example of this confrontation is Venezuela with Chavez. According to Serbin, since Hugo Chavez was sworn as President, he boosted “a sequence of processes that have generated a significant impact in his own country, in the region and, in some way, in the world” (Serbin, 2011:27). Very often, President Chavez handled the foreign politics in the same way that he handled the internal affairs by taking advantage of the social polarization and transforming it into political polarization. Therefore, the economic differences which have been carried out since the colonial times started – not without reason – to be the result of many years of *imperialist* domination and *neocolonial* policies. The Manichean discourse which was characteristic of the Cold War dividing the world between the good and the bad was retaken. Hugo Chavez divided the region “in two clearly opposing poles: in the one hand, the Bolivarian revolutionaries and their allies in the different countries who fight against the inequalities that are characteristic of Latin America and the Caribe, against the neoliberalism, against the uni-polarity of the United States hegemony and against the globalization, and in the other hand, the elites that are allied to the interests of Washington and the large corporations” (Ibid:28).

Venezuela promoted – at regional and extra regional level – the antimperialist speech of confrontation and the socialism of the XXI century through a geostrategic vision from a

military point of view based on the sovereign use of resources, the regionalist speech, the petroleum diplomacy, the reduction of the asymmetries, the use of international platforms as the OPEC, the conformation of strategic alliances with extra regional countries – and in some cases, openly adverse to the United States – such as Iran, Russia and China, the creation of regional organizations such as ALBA, CELAC and UNASUR, and the denunciation of international agreements and treaties and their confrontations with the OAS and Inter-American Commission of Human Rights (Serbin, 2009). However, President Hugo Chavez' death and the political crisis that it generated made of Venezuela a country that will hardly be able and have the charisma to exercise this longed leadership.

As far as methods refer, Brazil is in the opposite side since its economic growth, its huge natural resources, the development of an important industrial platform, the strong presence of workforce increasingly qualified, as well as its belonging to a block named the BRICs, have given this country the opportunity to become an important international actor. To this aim, with the government of Henrique Cardoso, Brazil has looked for the consolidation of its leadership in Latin-America through the formation of regional organizations that will allow its recognition as the region "interlocutor" at global level, and at the same time, the execution of a reform to the Organization of the United Nations in order to obtain, among other things, a permanent position in the Security Council (Serbin, 2009; Rojas, 2012).

Hence, after the eventual disappearance of Venezuela of this competition, Brazil could naturally become the regional leader. However, either for its emergent internal political instability, or for a fear that the regional representation could generate more conflicts than benefits, Brazil – after President Chavez' death-, does not seem too willing to a leadership commitment with Latin-America.

In spite of the eventual disappearance of Venezuela as regional leader and the lack of Brazilian commitment, their political visions about the regional integration have created two clear currents at the time of consolidating a regional integration process: on the one hand, Chavez' confrontation, and on the other, what Serbin calls "a cautious diplomatic strategy" from Brazil. Despite the divergences, these two visions have several common

features: both respond to a multipolar vision of the world, search the construction of a counter-hegemonic position which is understood as the establishment of a necessary balance in front of the United States, base their discourse in the possession of huge resources and their sovereign use, and maintain a leftist discourse focused on a redistributive development that leads to the reduction of the social asymmetries and the fight against poverty which has a strong social content.

### **3.4. Regionalism and South-American integration:**

Once the general context of the world's emergent order has been presented, the Latin-American politics, the possible interests of probable regional leaders, and the features of the instruments they use to reach their objectives, it is easier to understand the scenario that the region lives.

It has already been discussed that in an eventual multipolar world, Latin America will look for a consolidation as a block in order to have a major possibility to act in front of other regions and powers of the planet. With the exception of Brazil, and eventually Mexico, it will be highly difficult for a unique Latin-American country by itself to exercise the power in a multipolar order. Even Brazil is afraid that without the region support, it will not be able to become a sufficiently strong actor to perform in this scenario with multiple characters. Thus, the regional integration might be accomplished as a possible platform that will be an example of the well-known saying "strength through union".

In other words, if the reconfiguration of the international order implies a more active participation of the emergent countries, the regional leadership will allow an eventual emergent power to have a stronger political weight in the international arena and better negotiating conditions with other States. To this effect, the possible leader will require of a stable regional context, of an increasing socio-economic development, of a large political and economic interdependence, and of an important social and political engagement. Thus, the conformation of regional blocks is the result of the search of

platforms that allow that one of the State members obtain a greater influence in the multilateral organizations and in the international relations, in general (Serbin, 2008 y 2009; Malamud, 2009; Rojas, 2012).

The integration processes, however, do not belong to the present order. As it has been signaled along the second chapter, Latin America has undergone a persistent effort to become independent from the hegemonic blocks and the traditional powers, and to accomplish the union of its countries, justified on a common history and culture, and to strengthen to each other in order to negotiate in a more equitable way with the rest of countries of the world. But the region has not been able to find a definition at the time of building an integration process, either due to unwillingness, lack of political conviction, latent nationalism, influence of extra regional factors, excessive rhetoric, or lack of leadership (Serbin, 2008 y 2009; Malamud 2009),

As a result as well as a cause of this lack of definition, Latin America has presented a series of integrationist projects that few times have had enough political and institutional strength. This ends up on what Serbin calls the “alphabet soup” of organizations that in many cases, superpose, oppose and disagree among themselves. In spite of this, all of the integrationist processes have three common issues: in the first place, the intention or need to cooperate in a joint manner to achieve the construction of a fairer, more equitable and more harmonic international order. Secondly, they are supported on the principles of equality, respect to each other, and no intervention; finally, they are always committed with the promotion of democracy, human rights, transparency and representativeness (Serbin, 2008: 184-189).

These disagreements rather appear in two interrelated issues: the political focus that is intended for the integration and the exercise of leadership of one of its members. Notwithstanding that the socialism of the XXI century has been extended in the last decade and has gained adepts in the whole region, liberal governments have emerged who consolidated the capitalism; they often have an open vision of the integration which is used to focus on the creation of free trade and tariff liberalization agreements.

However, for Serbin and Malamud, the most difficult issue in the consolidation of a unique integration process is related to the above-mentioned countries' search of leadership.

In this regard, the Venezuelan confrontational focus clashes with the Brazilian diplomacy, producing that the different integrationist processes contain, at the same time, a strong anti-hegemonic political discourse and a rather pragmatic orientation for a practical search of ways that will consolidate the integration. This situation is closely related to another vision about the difficulties that the integration is facing: Sanahuja criticizes the Latin-American policy that bases its regional integration processes on matters related to the political juncture, and he discusses the existence of a strong nationalism feeling that will stop the countries of the region to cede their sovereignty.

Sanahuja supports that beyond the practical factors that usually boost the regional integration processes, the regionalist Latin-American discourse is based on a common past, its close cultural identity and political values, its historical integration ambitions, and a traditional faith and activism of these countries in the context of the international law and the international organizations. This pro regionalist feeling is likewise contrasted with a historical nationalist feeling which has been present in the countries of the region since they were constituted as States; this became the fundament of their independence from the colonialist countries; afterwards, it legitimized the domination by the elites; it was continuously used on the debates between conservatives and liberals, and it often stopped the conformation of regional integration processes (Sanahuja, 2012).

Although it was demonstrated before, the regionalism was often based on a nationalist, counter-hegemonic and anti-imperialist discourse; Sanahuja considers that all these factors pose what he calls a trilemma with three contradictory objectives: "the defense of the state-nation and the national sovereignty, the traditional ambition of regional integration, and the search of a greater autonomy at national and international level. In this impossible trilemma, the only possibility will be to reach one or two objectives, at the most, but not the three" (Ibid:1).

### **3.5. Main organizations of regional integration:**

As a result of what has been previously analyzed, the region has presented several integration processes in its search to consolidate a block that could become a global actor. From all of these, and without prejudice that there could be other important regional processes, Latin America presents two large-scale integration projects and three other processes in South America which have reached different degrees of importance.

*The Community of Latin-American and Caribbean States* (CELAC) is the project with the largest span as it gathers 33 Latin-American and Caribbean States. It was officially launched on December 2012; CELAC is visualized as a space that will allow the region to become a political global actor by means of dialogue, political agreement, and the promotion of intraregional cooperation and sustainable development. The promotion of political agreement to boost the Latin-American and Caribbean agenda in global forums and to strengthen the regional presence in the international scenario is one of its main objectives (Rojas, 2012). This process is often seen as an attempt to take OAS's place because it is a political forum that excludes the United States and Canada. As it is a fairly new process, it is hard to determine the direction or success that CELAC might have; however, it is evident that to go ahead, it will have to overcome the confrontations among the several regional leaders, the disagreements among the political projections that they have, and also, the difficulty of getting a consensus among 33 States.

On the other hand, the Alliance of the People of Our Americas (ALBA) that was started as an agreement for economic complementarity between Cuba and Venezuela, is a process of "solidarity-based integration", whose objective is to achieve economic integration supported by petroleum assistance and by several non-traditional ways of cooperation and interchange; as an example, we can mention the health services in exchange of petroleum between Cuba and Venezuela. Since 2012, when Honduras abandoned the block, the ALBA is integrated by 8 full members: Antigua and Barbuda, Bolivia, Cuba, Dominican Republic, Ecuador, Nicaragua, San Vicente and the Grenadines, and Venezuela; in addition, Surinam and Santa Lucia are special guests, and Haiti, Iran, Syria and Canada are observer members. However, because of the original impulse that Venezuela has given to this organization, the ALBA has not been

able to overcome the discourse that is charged of political ideology, and to build, up to now, a well-defined institutionalism as it is exclusively based on the summits among the government heads (Serbin, 2009).

The *Andean Community of Nations* (CAN) is a regional organization that aims “to reach an integral, more balanced and autonomous development, through the Andean, South American and Latin-American integration” (Secretaría General de la Comunidad Andina, 2010). Even though in the beginning it included Venezuela and Chile, at the moment it is constituted by four countries: Bolivia, Peru, Colombia and Ecuador. According to its Constituent Treaty, its ambitious process of integration will have an integral reach which includes economic, legal, social and cultural aspects. Due to the ideological differences, it is increasingly difficult to achieve political cooperation; the social agenda has been getting stronger since almost a decade ago, and nowadays it “counts on a social instance of high ministerial level and an integrated plan of social developments where the priority is the fight against poverty, the social exclusion and inequality, and territorial asymmetries” (Varillas, 2012). Likewise, it has developed several instances and initiatives related to health, education and culture, work, gender equality, protection to the indigenous people, and protection to children and adolescents.

Although until recently the CAN was the Latin-American principal process of integration and the one that most institutionalism reached, in the last decades it has suffered a strong stagnation. The separation from Venezuela, the severe ideological divergences between its members, the tense relations that they had maintained among each other, and the differences about the relation with the European Union and the United States have conducted this process of sub-regional integration to a very fragile situation that prevents to suggest a concrete long term proposal. In fact issues that matters to the CAN are being gradually transferred to other integration bodies. For example, on September 25, 2013 the Colombian chancellor, María Angela Holguín, confirmed the suppression of the Andean Parliament –deliberative and control body of the CAN- in order to create a parliament at the UNASUR level. In this sense, UNASUR is gaining space in front of the CAN in moving “Andean Community issues to the

Unasur forum, such as education, health and drugs issues” (El Universo Newspaper, 2013).

Additionally, some authors consider that the Andean Pact as predecessor of the CAN, is established in the context called “old regionalisms”. José Antonio Sanahuja describes the old regionalisms as the one that was born during the cold war with the use of economic integration strategies that allows certain degree of autonomy to apply its own development policies, and at the same time, as a United States strategy that allows to maintain the military alliance with the region as a tool to preserve the balance of power in a bipolar world (Sanahuja, 2012). In this regard, neither the Andean Pact nor the CAN achieved that the sub-region reach a commercial complementarity that allows the economic integration; on the contrary, it was frequently reinforced as strategic-military alliance with the United States.

Finally, born from a security agreement between Brazil and Argentina and subsequently inspired in the European integration model, currently the MERCOSUR has mainly a commercial and productive projection focused on reaching a commercial agreement of tariff- liberation among its members. Although, it is much more recent than the CAN, both developed on the processes that most institutionalism has reached inside the region. Despite this, the process has not succeeded to taking hold an institutional structure that be strong enough as “to deal with tensions and conflicts with its original partners (Brazil, Argentina, Uruguay and Paraguay) as well as with the associated members and with those who aspire to become full members” (Serbin, 2009), to fulfill the assumed commitments or to overcome the asymmetries among its members.

Just as the CAN, MERCOSUR develops more and more projects of social character that are aimed to the protection of human rights; among them the most remarkable are: the Human Rights High Authorities and Chancelleries of MERCOSUR and Associated States Meeting (RAADH) which counts into its structure with: an Observatory of Human Rights for the sub-region, the Standing Committee of Promotion and Protection of the Human Rights of Elderly Persons, the Standing Committee of Education and Culture of Human Rights, the Standing Committee of Memory, Truth and Justice, the Standing Committee Initiative Niñ@sur (South-child), the Standing Committee of



Promotion and Protection of the Disabled People, the Standing Committee about Discrimination, Racism and Xenophobia, the Group of Indicators Work DESC, the Group of work LGBT, the Group of Women Work and Human Rights; also it counts on the participation of Non-Governmental Organizations (Human Rights High Authorities and Chancelleries of MERCOSUR and Associated States Meeting.)

In this context of several integration and regional cooperation processes –where there are different leaderships and targets of the region-countries with a clear divergence on their political orientation, besides of ideological differences about the scope that an integration process must have- UNASUR is born and must develop.

### **3.6. The UNASUR as a regional developmental organization: structure and current situation:**

Even though, the Union of the South American Nations was officially born in April, 2007, since 2000 the region was already committed to the sub regional integration. That year, the first South American Summit of Presidents met in Brasilia. From the present perspective, it seems that the most significant aspect of this summit was that for the first time, 12 presidents from South American States actively expressed their will to work on the regional integration looking for the “creation of a common agenda of specific opportunities and challenges” (Cumbre Presidencial de America del Sur, 2000). After the Summit in Brasilia, the presidents announced an ambitious plan that intended to direct the region towards a new economic integration process that focused on the abolition of trade barriers and the economy and market liberalization.

In fact, the most concrete goal was the creation of a broad economic commercial space in South America by means of liberalizing the trade between CAN and MERCOSUR, which included in the process countries like Chile, Surinam and Guyana that did not belong to any of these two organizations. To achieve this, the Declaration of Brasilia, document that was generated as a result of the summit, involved fundamental aspects of the process, which are: to promote the investment, to continue with the trade liberalization process, to reinforce the creation of an area of free trade in the Americas,

and to look for a greater articulation with the European Union and the World Trade Organization.

In other words, the new integration process was conceived almost exclusively as a way to generate new spaces and mechanisms of economic insertion in the world market; though, it had few concrete objectives beyond the commercial objectives (Gudynas, 2000). In fact, despite that the declaration includes some topics regarding “the common commitment that is inalienable with democracy (...), essential condition for the regional peace, stability, and development” (Cumbre Presidencial de America del Sur, 2000), the decrease of asymmetries, the eradication of poverty, and the improvement of the quality of life, it does not stipulate aims nor specific mechanisms to reach these objectives, so they become just declarative clauses.

In fact, besides the commitment with the integration and the will to look for common solutions to shared challenges, probably the only aspects that have transcended from this declaration are the issues related to the creation of infrastructure for the integration, and the development and interchange of some aspects related to information, science and technology, since these are considered as the basic mechanisms to boost the economy, expand the commerce, and promote the integration within the region.

In the year 2002, the Second Meeting of South American Presidents was held in Guayaquil. There, the heads of states reiterated their “will to promote actions of coordination and cooperation that were aimed to the formation of a common South-American space” (II Reunión de Presidentes de América del Sur, 2002). As a result of this summit, the Guayaquil Consensus was signed, which meant an advance on the integration process since it did not only reiterate its compromise with the democratic principles, the construction of a fairer and more *solidaire* region, the respect to the human rights, the fight against poverty and social exclusion, but some concrete actions were promoted, such as the Declaration of the South-American Zone of Peace, some agreements about physical integration, and compromises with the energetic development and interchange among the countries of the region (Ibid).

The agreement to continue with the energetic integration and the acquired compromises through the Initiative for the Integration of the Regional Infrastructure in South America (IIRSA) related to the physical integration, certainly generated a greater link among the South-American countries. This fact together with the increasing presence of leftist governments and the inspiration received from the European integrationist process were the main drivers for its ratification on the Declaration of Cuzco in 2004 which originated the South-American Community of Nations.

Compared to the previous declarations, the Declaration of Cuzco has a clear political background. For the first time in the integrationist South-American process, it is referred to as a shared South-American identity, as an integrationist process inspired in common values, as an unexploited potentiality, as a convergence of political, economic, social, cultural and security interests, and as an integration of people rather than countries. In this way, the integration is not thought only of commercial terms but it acquires a definitely political orientation, since it surpasses the intention of having a free South-American trade space and the proposal is “to develop a South-American space that is politically, socially, economically, environmentally and infrastructurally integrated that will strengthen the South-American identity (Comunidad Sudamericana de Naciones, 2004).

In accordance with this declaration, the rising South-American Community of Nations is compromised with “the fight against poverty, the elimination of hunger, the generation of decent jobs and everybody’s access to health and education as the fundamental tools for the development of the peoples” (Ibid). All these facts show their commitment focused on social development that gave a new direction to the South-American integration.

Moreover, in the Declaration of Cuzco, the South-American countries agree to politically and diplomatically boost the integration process. In the same way, they agree to deepen the convergence between the integration processes of CAN and MERCOSUR, including Chile, Guyana and Surinam, as well as to continue with the processes initiated in the previous summits of presidents. Finally, the declaration requires from the South-American countries to continue progressively with the integration process and the

conformation of a greater institutionality to this end. All of these compromises will create the conditions for the emergence of a future South-American Union of Nations, that faced to the entity that emerges from the Declaration of Cuzco, has more institutionality and is an organization with more structure, legal personallity, and definite objectives.

In this way, in 2005, the South-American Community of Nations entered into force and established the main political and estrategical guidelines for the integration. During its life, until April 2007, the South-American Community of Nations created a prioritary agenda and an action plan based on:

*“the political dialogue, the physical integration, the environmental care, the energetic integration, the creation of common finnacial mechanisms, the promotion of social cohesion, social inclusion and social justice, and the joint integration and development of telecomunications* (Comunidad Suramericana de Naciones, 2011).

Similarly, it was established that the paradigm of integration must be based on: solidarity and cooperation for greater regional equity, sovereignty and respect to territorial integrity and peoples’ self-determination, peace and pacific solution to controversies, democracy and pluralism to prevent dictatorships and lack of respect to human rights, universality, interdependence and indivisibility of human rights, and sustainable development (Ibid).

On April 16, 2007, in the framework of the Second Extraordinary Summit of the South-American Community of Nations, the South-American Energetic Council was created and the South-American Community of Nations was institutionalized, and its name was changed to UNASUR. Thus, it abandoned the concept of summit and adopted the concept of an integrative organization with its independent legal status, with a definite structure, with established objectives, and with specialized organizations that work together to reach the common ambitions (Ibid).

On May 23, 2008, in an Extraordinary Summit of the Council of Heads of States and Governments of UNASUR that was called to overcome the conflict between Colombia and Ecuador, the Constituent Treaty of the South American Union of Nations was

approved; in compliance with Article 26, this will enter into force in thirty days after the reception of the ninth ratification instrument. In this way, after its ratification in Uruguay on February 9, 2011, the Constituent Treaty of UNASUR entered into force on March 11 of the same year. This day, in an Ordinary Reunion of the Council of Ministries of Foreign Affairs, the General Secretaries of UNASUR were designed for the two following years; they were the Colombian ex-chancellor, Maria Emma Mejia, and the Venezuelan ex-chancellor, Ali Rodriguez Araque (Comunidad Sudamericana de Naciones, 2004).

Since its creation until August 2009, the UNASUR grew in institutionalism by creating the South-American Defense council, the South-American Health Council, the South-American Council for the Fight against Drug Trafficking, the South American Council for Infrastructure and Planning, the South-American Council for Social Development, and the South-American Council for Education, Culture, Science, Technology and Innovation (Ibid). In this way, the so-called material bases of the integration process were consolidated.

According to the Constituent Treaty of the South American Union of Nations, the integration process has as a general objective:

*“to build, in a participative and consensual manner, an integrative and linking space regarding the cultural, social, economic and political aspects among its peoples, giving priority to the political dialogue, the social policies, the education, the energy, the infrastructure, the funding and the environment, among others, in order to eliminate the socio-economic inequality, to attain social inclusion and citizen participation, to strengthen democracy and to reduce asymmetries in the framework of sovereignty and independence of the States”* (Unión de Naciones Suramericanas, 2008).

This general objective clearly differentiates UNASUR from the initial processes of South-American integration. While those processes were focused only on trade and the non-tariff trade barriers, the UNASUR has a much more social perspective which intends to improve the citizens' quality of life, to attain an equitable development, and to create a space for political agreement.

Likewise, the Constituent Treaty proposes that UNASUR, for its operation, will be constituted by four principal bodies and they could call to sectoral ministerial meetings, specialized work groups, and other institutional entities, whether permanent or temporal, that will be required to boost the integration. These four bodies that will be in charge of the decision-making and the general operation of the organization are the Council of Heads of States and Governments, the Council of Ministries of Foreign Affairs, the Council of Delegates, and the General Secretariat (Ibid).

Even though the main function of the Council of Heads of States and Governments is probably to establish political guidelines, inside as well as outside the organization, this body also has the legal authority to propose the action plans, programs and projects for the South-American integration process, and to decide on the priorities for their implementation. To accomplish these functions, it can call Sectoral Ministerial Meetings and create Councils at Ministerial Level and decide on the proposals that were submitted by the Council of Ministries of Foreign Affairs (Ibid). In other words, this is the highest body that UNASUR has; its work is mainly political and decision-making; therefore, it is the instance that defines the direction that the integrative process will have.

Meanwhile, the Council of Ministries of Foreign Affairs can coordinate positions related to central topics of the South-American integration, develop and promote the political dialogue and the negotiation of topics of regional and international interest, implement the political guidelines regarding the relations with third-parties and carry out the follow-up and evaluation of the global integration process. For the latest, it has the legal authority to adopt resolutions in order to implement the Decisions of the Council of Heads of States and Governments through project proposals on the Decisions and through the creation of Groups of Work in the framework of priorities that were fixed by the Council of Heads of States and Governments (Unión de Naciones Suramericanas, 2008).

The capacity to negotiate positions about topics of regional and global interest has been essential for the consolidation of UNASUR as a political block at region and world level. A clear example has been the UNASUR's unified position to face the crisis in Paraguay, or the meeting of the ministries of foreign affairs that took place in Guayaquil

on August 19, 2012, which did not only support Ecuador to face the menace of the United Kingdom in connection with the violation of its diplomatic mission headquarters, but it allowed that Ecuador obtain a strong support from the Organization of American States in relation to this issue.

Notwithstanding, if this function has strengthened and boosted the integration process at supraregional level, one of the most important aspects of the Council of Ministries of Foreign Affairs is its capacity to create specialized work groups that deal with important issues for the South-American integration, and thus, to propose projects to the Council of Heads of States. Then, it is this capacity that has most favored the institutionalism of this organization which has created work groups that have allowed the treatment of several topics of regional interest and the creation of Sectoral Councils. In fact, thanks to this, on March 17, 2012, as an Ecuadorian proposal, this body established a Work Group that had its first meeting the first days of June in order to study a proposal about the treatment and promotion of Human Rights in UNASUR (UNASUR, 2012).

The Council of Delegates, which is formed by one representative of each state member who is recognized by the General Secretariat, has as main attribution to adopt the appropriate Dispositions for implementing the Decisions of the Heads of States and Governments and the Resolutions of the Council of Ministries of Foreign Affairs. It may prepare summits for the Council of Ministries of Foreign Affairs through the elaboration of projects for the Decisions, Resolutions and Regulations to be considered by the Council of Ministries of Foreign Affairs. Also it must make the UNASUR initiatives compatible, as well as, coordinate them with other regional and subregional integration processes with the purpose of promoting the complementarity of efforts (Unión de Naciones Suramericanas, 2008).

On the other hand, the main work of the General Secretariat under the direction of the General Secretary is to execute the mandates that are conferred by the different UNASUR bodies and to support them in order to accomplish their functions. It has the right to speak and it may exercise the secretariat in the summits of the UNASUR bodies and it serves as depositary of the Agreements in the area of UNASUR; it is also in charge of the corresponding publication (Ibid).

Finally, the Constituent Treaty declares that some attributions of the Pro Tempore Presidency are to prepare, call and chair the summits of the UNASUR bodies, presenting the UNASUR Annual Program of Activities in advance to the Council of Ministries of Foreign Affairs and to the Council of Delegates; it should include dates, places and agenda for the meetings of the bodies in coordination with the General Secretariat (Ibid).

### **3.6.1. A temporary balance:**

These general aspects of the history, objectives and functioning of UNASUR, based on the perspectives that were introduced in the first sections of this chapter, permit the analysis of the perspectives, strengths and weaknesses that UNASUR has in front of the other integrationist processes.

As it was already mentioned, the emergence of a new world order announces an appropriate moment for new integration mechanisms. In this context, South America is seen as an emergent new block within the new world order, and at the same time, the presence of strong countries at international levels as Brazil strengthens the sub region. In a short time, UNASUR has achieved a notorious political weight out of the region and has successfully constructed an important institutionalism that fortifies the region and differentiates it from other regional processes. However, the ideological divisions, even more, the discrepancies in relation to the willingness to obtain an effective integration constitute the Achilles' heel, as they are difficult to overcome.

One of the most important UNASUR outcomes is the inclusion of Guyana and Surinam which had been physically isolated up to now, considering even the inexistence of airways to access there from the sub region; thus, this is the first regional block that includes the twelve South-American countries. This gives an advantage above the other regional blocks, because of the fact that having twelve countries it becomes big enough to have political relevance at international level, and small enough to be easily handled, that is, to achieve an effective integration, to facilitate the political dialogue, and to obtain the characteristic consensus of the Latin-American integration processes.



UNASUR offers a space for the joint search of solutions to common problems and potential menaces to its State members, such as the joint defense of their territories and natural resources, the struggle against terrorism and drug smuggling, the eradication of poverty, hunger and illiteracy, the reduction of social asymmetries, and the joint defiance to eventual economic and financial crisis. At the same time, it allows its beneficiary members the interchange of energy, knowledge and experiences in good practices related to science, technology, health, education, culture, etc. Also it intends to achieve more technological and infrastructure interconnectivity and works for a better joint and potential utilization of the natural and human resources of the region.

As it was previously mentioned, in a short time UNASUR advanced considerably in the construction of the institutionalism. At the moment, the organization has 12 sectoral councils of ministerial character and several work groups that in a coordinated way, work in the different areas of integration. However, UNASUR's institutionalism faces three big challenges that refer to the role and legal authority of the Council of Delegates, the Pro-Tempore Presidency, and the General Secretariat.

The first is due to the power that the General Regulations of UNASUR grant to the Council of Delegates. This body determines the information that will be submitted to the Council of Heads of States through the Council of Chancellors; it prepares the meetings of the two previous councils and most of their declarations and decisions; moreover, it acts as interlocutor among the sectoral councils of ministerial character and the Councils of Chancellors and Heads of States. All of these have generated a heavy bureaucracy inside the UNASUR undermining the integration process. This situation is aggravated by the participation in the Council of Delegates because most of the time the attendants are the alternate delegates in place of the official members who have the capacity for a political decision and who are close to the centers of power of their own chancellery. This brings an additional problem at the time of reaching consensus within the block.

The second is the role of the Pro Tempore Presidency (PPT) which has become essential to define the direction that the integration will take during the year of mandate. In practice, the PPT boosts the integration process, determines the projects that will have more prominence during the following meetings, and acts as UNASUR's interlocutor

with other non-member states and international organizations as well as interlocutor among the State members. In sum, the PPT is one of the most powerful resources of the organization. Taking into account that the exercise of the PPT rotates and has annual priority, the direction of the integration process varies every year and it often happens that while a PPT gives priority to a certain type of projects, the following dismisses them or focus them on a different political perspective. Finally, this role that has been granted by the Constituent Treaty and the General Regulations limits the General Secretariat capacity of action that assumes an exclusive administrative role which is completely subordinated to the performance of the Pro-Tempore Presidency.

On the other hand, several times, the block has demonstrated political strength at regional and international level, for instance, in 2008 when the Declaration of La Moneda was delivered as an expression of rejection to the attempted coup d'état in Bolivia and of support to the government of Evo Morales; as consequence, the opposing forces gave up when they realized that there was not regional support. Similarly, after September 30, 2010 (30-S), UNASUR presidents met and condemned the attempted coup d'état in Ecuador, offering support to President Rafael Correa; they created the Supplementary Protocol on the Compromise with the Democracy which has still not been ratified by the State members. Finally, UNASUR condemned the British menace against Ecuador, when Julian Assange asked for diplomatic asylum, and stopped the British intensions of entering the Ecuadorian Embassy by force.

Nevertheless, not all the political reactions of this type have obtained favorable results. After the controversial process that ended with the destitution of the Ex-President from Uruguay, Fernando Lugo, the European Union and the OAS expressed their reluctance to make a pronouncement before the UNASUR did; this action granted recognition to UNASUR as regional interlocutor. However, in spite of UNASUR, in a first moment, rejecting the process, suggesting its country members to reduce the diplomatic relations to a minimum and suspending Paraguay from the block until the constitutional order was restored a few months later, two state members, Colombia and Chile, reestablished their diplomatic relations as their ambassadors returned to Asuncion, and together with the Pro-Tempore Presidency that was exerted by Peru, urged the other countries to

recognize the de facto government of President Felipe Franco. This situation produced an uncomfortable situation to UNASUR in front of the international community, made it evident the existing divergences among its State members and allowed the Paraguayan authorities to discredit the sub-regional process inside and outside its territory. Anyway, the strong stance of UNASUR as a block probably put pressure to bring forward the elections in that country and avoided any other possible intention from Franco to extend his period of mandate.

The uncomfortable position of UNASUR in front of the situation of Paraguay is the result of a strong internal division due to ideology. While UNASUR was constituted, the sub-region was mainly leftist; at present there are clear divisions: in one side there are the countries that are influenced by the socialism of the XXI century: Bolivia, Ecuador, Venezuela, and in a lesser degree, Argentina; countries of a moderate left: Brazil and Uruguay, and countries belonging to the Pacific Alliance: Peru, Colombia and Chile with a neoliberal tendency close to the United States policy and with a strong presence of Mexico.

Probably this division might be more evident in the South-American Council of Economy and Finance which confronts strong difficulties at the time of reaching decisions due to the lack of political will and a technique to define agreements among the representatives of the country members. The members of the Council disagree about the priorities that are associated with extra-regional monetary and financial initiatives, as well as about the definition of the new productive and political matrices for economic development. The discrepancies inside this Council reflect the fears, jealousies and political differences existing inside UNASUR; they could eventually constitute a serious problem at the time of building a long-term integration process.

Beyond the disagreements regarding the political orientation that the process should have, the difficulties to build a strong integration process with an important institutionalism and reachable long-term objectives could be the result of what Sanahuja calls an unsolvable paradox which resides in the regionalism that is characteristic of Latin America, faced to the almost instinctive nationalist feeling of the countries in the region.

As a conclusion, UNASUR has been successful in the construction of the institutionalism and has demonstrated to be politically efficient as it has gained relevance at extra regional level. All these considerations have placed this organization above the other integration processes. However, to keep this position and to accomplish an effective long-term integration, UNASUR will have to overcome the limitations that its two main documents (Constituent Treaty and General Regulations) impose; it will have to demonstrate that it is effective at the time of taking decisions; that it has the capacity of negotiating to reach consensus, of overcoming the image of consensus that its Constituent Treaty imposes to the union, and to accomplish all of them, of overcoming the nationalism to achieve a South-American integration.

## **CHAPTER 4**

### **THE INTER-AMERICAN SYSTEM ON HUMAN RIGHTS AND THE PROPOSAL OF CREATION OF A HUMANS RIGHTS COORDINATION IN UNASUR: A COMPARATIVE ANALYSIS**

#### **4.1 Introduction**

In the last section of the second chapter, the debates about the development of the human rights institutional protection system were approached, emphasizing a generalized perception about the precariousness of this institutional legislation of the region. This feeling results in the two already mentioned ideological positions that could be denominated Pan-Americanism and “Latin-Americanism” –or more specifically “South-Americanism” in the case of UNASUR.

In the context of this debate -as it will be seen in this chapter- in May, 2013, Ecuador presented a proposal for the creation of a Human Rights Coordination to UNASUR considering two central purposes for the discussion: to take the Human Rights as fundamental axis for the South-American development and integration, and to include the private sector in the responsibility of protection of human rights and in its possible infringements; moreover, to take them as articulator axis for a new discussion of the relations between the State and the society in the present Latin American politics. These involve a displacement of the reflection on human rights, which are not only centered on the relation between the individuals and the State, but between the citizens and the national and international private corporations.

The dynamics of the confrontation in the international relations and in the American continent integration processes are added to this scenario, generating a renewed confrontation between the free exchange promoted by Washington against the protectionism adopted by the Mercosur. Additionally, the appearance of the Pacific Alliance constituted by countries that had a free trade agreement with United States

increases the confrontation between Pan-Americanism and Latin-American regionalism. All these factors have caused UNASUR to lose the initial boost that has helped it to its emergence; therefore, the Ecuadorian proposal has been suspended in order to be re-dimensioned within this new turn that the discussion about the regional and continental integration has taken up.

Accordingly, in the first section of this chapter, two topics of debate between the materialized Pan-Americanism in the OAS and a new sub-regional order of human rights will be developed. In the second section, the probable orientations that UNASUR could adopt from a perspective of a Latin-American integration will be discussed. In a third section, an alternative analysis for a proposal of continental integration having as axis the Pan-Americanism and the free trade will be developed; and finally, the chapter will end with the analysis of the consolidating perspectives that the CELAC could have, an exclusively Latin-American integration, mainly political and diplomatic, as an alternative to the traditional Pan-American organizations.

#### **4.2 The debate between Pan-Americanism and South-Americanism.**

The first of these options refers to a fervent defense of the Inter-American system which was enhanced by those who consider that United States as the principal western democracy is a stabilizing force which guaranties the permanence and the strength of the system against the institutional fragility and the arbitrariness with regard to the human rights which would be the generalized characteristic of the political Latin-American systems. The second position argues that the Inter-American system has been degenerated into a transmission mechanism and into a perpetuation of the American hegemony, and therefore, it holds the necessity of setting up an international and exclusive sub-regional new order, disregarding United States and Canada; this position was mainly encouraged by the orientation assumed by some Latin-American regimes in the first decade of the XXI century.

Accordingly, the debate about the human rights moves towards the character of democracy in the different American nations. The Mexican Jorge Volpi and the

Brazilian Boaventura de Souza Santos were taken as representatives of these positions for the development of this thesis. One part of the public opinion believes that Latin America is not prepared for democracy; therefore, a new Pan-Americanism should be imposed as a necessary approach for the continent in the future. An interpretation in this line is found, for example, in *El insomnio de Bolívar* (2009), essay by Jorge Volpi. On the opposite side, Boaventura de Souza Santos (2010), supporter of a radical re-foundation of the State in Latin America says that when the indigenous movements of the Latin American continent lifted the re-foundation flag, they advocated for a new type of constitutionalism expressing their will of getting away from the democratic concepts that were built in occident and of generating new democratic conceptions and more adequate practices according to our historical and cultural process. This new constitutionalism feeds a part of the proposal which is debating the creation of UNASUR Human Rights Commission as we will see subsequently.

#### **4.2.1 The Ecuadorian proposal: the creation of a Human Rights Coordination in UNASUR**

The concerns that led the Ecuadorian government to propose to UNASUR the creation of a coordinating body to promote the rights in a more efficient way in the sub-region are very diverse. The Ecuadorian authorities responsible of the international relations of the country supported their petition based on two hardly refutable arguments. The first one supports that the Inter-American existent system has not been able to overcome the bias which privileges the protection of the individual rights, therefore the raising organizations, like UNASUR, in accordance with the new regional integration principles should be guided by multiple objectives in the economic, political, social and cultural spheres. The other argument claims the responsibility that the institutions and organizations of the private sector have for the integral protection of the people's rights by overcoming the conventional practice that sets the duty of protection of the citizens' rights and the responsibility of their violation only in the States.

By mid-2012, the proposal also makes explicit the conviction of the Ecuadorian government that Latin America has found in the rising institutionalization of UNASUR a leadership able to successfully manage an integration process in a counter hegemonic line to the interests of the United States, interests that historically have been the pillar of action of the traditional continental organizations, particularly of the OAS and its mechanisms of rights protection. The clear orientation of the Ecuadorian international politics regarding its differences with the interests of the Pan-American institutionalism corresponded also to a concern of the government's internal policy: the very legitimate interest of extending the rights protection as a responsibility of the private sector as well; the rivalry with the media and the control of the opinion that they have historically exercised showed another face of the confrontation that transcended towards the Inter-American system of human rights.

However, this discourse generates a 'hot' new debate between two extreme positions: those who consider that the Inter-American System of Human Rights (ISHR) (Sistema Interamericano de Derechos Humanos) (SIDH) – and in particular, the Human Rights Inter-American Court- has degenerated into a political mechanism of repression against the governments which are against the American hegemony in the region; and at the other end, those who consider that the weak institutional structure that affects most of the Latin-American countries not only make impossible the guarantee of the human rights fulfilment, but also some governments use this fragile institutionalism deliberately to impose limits to the free opinion and expression. These aspects are discussed in this first section.

#### **4.2.2 A regional structure on human rights in accordance with the new times**

In the preceding chapters, the context of the new world that emerges after the Cold War was analyzed. The emergence of a multipolar world, the emergence of countries which begin to be the protagonists in the international context, the questioning to the hegemonic role of the United States, the power of the transnational companies which expands itself weakening the frontiers of the countries and imposing its rules of the



game above the power of the national states, the emergence of social movements that seek different objectives from the traditional (ecologist, feminist, sexual diversity, ancient peoples, youth), the big migratory waves that invade the metropolitan centers of the first world, are factors that shape a completely different picture from the one that existed until the Cold War, and proposes new challenges in the area of rights protection.

Those who advocate for the creation of new organizations aiming to the protection of human rights start with the premise that the right must contribute to the construction of a new society, and thereby, must be intimately linked to social empowering objectives typical of this new era. Additionally, they hold that when the law -considered as universal law- pretends to analyze a specific case in a State, the political, cultural and social context of the country is often not analyzed.

These arguments can be seen in the Ecuadorian proposal to create a new Human Rights Coordination in UNASUR when this country says that it is fundamental “to rely on a regional structure of Human Rights according to the new era. As such, a new South-American Human Rights space should overcome the existent limitations that anchor their mandate on the vision that there are only States who are guarantors or violators of the human rights”. Similarly, in the initial paragraph of the proposal this orientation was highlighted: “... the Constitutive Treaty of UNASUR recognizes the human rights as fundamental axis of the (integration) process, mainly, based on the recognition of the integral necessities of the South–American citizens for the protection and execution of their rights in the existing social reality of the sub-continent” (Ecuadorian Foreign Relations, Trade and Integration Ministry 2012: 1 and 2).

From the above quoted paragraph, two mentioned elements were recognized in the introduction of this chapter that are important for the analysis: the responsibilities of the private sector overcoming the focalized vision upon the State, and also, the human rights taken as fundamental axis of development and integration.

The argument that claims the responsibility of the private sector gets stronger when the extraordinary power that the private transnational corporations in the contemporary world is considered, and its capacity to avoid social responsibilities as the emblematic

case of the Chevron company in Ecuador. It is probable that the national government has been thinking precisely of this example, when in its proposal to UNASUR, this country claimed as crucial to “rely on an own space where the violations to the human dignity committed by private supranational actors against our countries and their citizens can be faced” (Ibíd.:2) and proposed the constitution of a volunteer mediating organization that will allow the resolution of this kind of conflicts.

The case of Chevron-Ecuador becomes interesting because it also reflects a feeling of vulnerability –not entirely unjustified- that annoys the Latin American countries facing the huge power accumulated by the transnationals. In this context of clarification of the private responsibilities that infringe the sovereignty of the regional States at the same time that the peoples and citizens’ rights, the problem of the natural resources emerges; this is a topic that often involves the interests of the foreign extractive companies. Aspects that in accordance to the governments’ thoughts are systematically avoided by organizations as the OAS, precisely because of the United States hegemonic presence engaged with the interests of the transnational capitals. It is important to account that to arrive to such conclusion the Latin American governments bring the concept of sovereignty as the interest of all the citizens of their country and consider that an attack against the sovereignty and the national interests represents an attack against all of them.

If the above-mentioned concern is part of the international relations field and of the lack of efficiency of the Inter-American system for the defense of the regional interests in front of private companies, inside the South-American countries, the accusation made by some governments about the irresponsibility of the private communication media that pretend to be the unique and legitimate agent of the free expression emerges.

By the way, this aspect has been converted in the most controversial topic of discussion to reform the Inter-American System of Human Rights. On one side, some South American governments maintain an active international agenda focused on limiting the action of the IACHR and its Special Rapporteur for Freedom of Expression, arguing with reason, that these organizations have assigned themselves attributions that were never assigned by the member States. On the other hand, the communication media and wide sectors of the public opinion hold that the Inter-American System is precisely the

unique authority that defends the press and the free expression and opinion from possible State repressions in front of the Governments' interests in order to silence some aspects of the internal political reality of their countries, also facing the consideration that the freedom of expression is essential for the preservation of the other universal rights. In this regard, the defenders of the ISHR remember the decades when several Latin American countries were subject to strong dictatorships that restricted this and other individual rights, as well as the important role of promotion, defense and sentence that the Pan-American system played at that time.

Anyway, nowadays the major concern from those who advocate for the maintenance of the Pan-Americanism revolves around the freedom of expression. As an example, we can mention that wide sectors of opinion and the own media consider that the actions undertaken against the journals *El Universo* in Ecuador and *Clarín* in Argentina, and the confrontation with some television channels in Venezuela, are representative cases of abuse of the state power. However, from the governments' perspectives, the problem arises because the private media claim absolute rights for themselves without the recognition of the responsibilities that are derived from them, neither they admit the legitimacy of the institutional and legal mechanisms that a society builds to defend itself from the extreme politicization of groups with powerful economic interests which transform the communication media into political actors who are opposed to the society progressive transformation; this is how Boaventura De Souza Santos characterized this conflict (2010:56).

The problem lies in the definition of the limits of the freedom of expression. Although any reform to the human rights protection systems must be cautious to avoid leaving open doors to possible violations to the freedom of expression, the problem of the private responsibility in the practice and violation of the citizens' right is not recent; as it was exposed in the first chapter, this matter was already discussed in the fifties in the North American society. Nevertheless, it is appropriate to remember some aspects about this topic. As it was mentioned by the middle of the XX century, the German-North American journalist and philosopher of Jewish origin, Hannah Arendt, denounced the political alienation that caused the common citizens to become uninformed by the

gigantic corporations. This position was followed by Wright Mills in the sense that the concentration of the multimillionaire corporations' power degrades the democracy and weakens the citizen initiative that becomes unable to oppose to this power. Both confirmed that alienation can only be defeated through the transformation of personal problems into public matters.

The contribution of these sociologists to the current discussion on the manipulative power of social consciousness by the big private companies is an important call of attention to seek collective solutions. Therefore, today it is considered necessary and legitimate to restrain the exercise to the right of free expression as long as it aims to protect third parties' rights and ensures an effective responsibility on this practice.

In this field as Mejía Guerrero writes, the international right has developed norms and doctrines that specify the responsibility of the media in the exercise of social communication. This analyst quotes the statement that is mentioned in article 19 of the International Agreement on Civil and Political Rights where the freedom of expression carries especial duties and responsibilities; therefore, it must be subject to legal restrictions. She writes down as example that "all propaganda in favor of war and all apology of national, racial or religious hate that set up the beginning of discrimination, hostility and violence are prohibited by law". The author also mentions that these necessary prohibitions are totally compatible with the freedom of expression in opinion of the UN Rights Committee (Mejía Guerrero, 2012).

However, in the light of an increasing expansion of the State-owned communication media and in the light of the management of the opinion and information that has frequently been instrumented, the regulation of the communication media cannot, in consequence, be delegated to national governments. This situation requires an external control of the power abuses that are caused by a party, a political group or a leader, that from their government position incite systematic violations to the guarantees of free expression. The responsibility of the international organizations and institutional mechanisms, in this case UNASUR, could be of suitable guarantors of an effective exercise of this right for the people's benefit, establishing at the same time the necessary responsibility of the private and public media. Of course, this demands as a premise a

major consolidation of UNASUR as a political, social and economic integration organization in the sub-continent, at the time that an effective strengthening of its institutionalism will allow autonomy from the South American governments, situation that incidentally has not been configured yet.

#### **4.2.3 The defense of the IACHR: legal vision and state obligation**

The controversy generated by some South American countries due to their questioning to the Inter-American Commission of Human Rights highlighted two aspects concerning the arguments exposed by the supporters of the Inter-American System: a conception of the human rights centralized on the legal approach of the political rights, and the exclusive attribution of the State regarding the obligation of ensuring them as well as the responsibility for its eventual violation.

To the supporters of the inter-American System, the IACHR has been the legal and political space of confrontation between the State representatives and the supporters of the rights or the victims of violation. A fundamental part of the Commission's operations has been the possibility to dictate preventive measures of security for the threatened people as a columnist of an Ecuadorian newspaper remembered. This disposition anticipated the obligatory compliance of the state members of the organization based on the IACHR Regulations which require that the precautionary measures, with the appropriate opportunity, will preserve the life and the heritage of the people from the continent (Alfredo Negrete, *El Comercio*, Thursday, March 14<sup>th</sup>, 2013).

Based on the predominant legal approach which concentrates the protection and eventual violation of the rights in the State framework, the expert of human rights Juan Pablo Albán in an interview carried on by *El Comercio* newspaper (on Monday, March 18<sup>th</sup>, 2013) supported that the citizens will remain unprotected if the announcement of Ecuador and Bolivia saying that their countries will not accept the conditions of the IACHR becomes effective. Thereon, Albán thinks that “withdrawing from the IACHR will be a form to get rid of the precautionary measures, and partially, from the individual petition procedure” bringing serious consequences to the victims of outrages and attempts to the free expression:

“The legal expert declared that in International Rights, instruments like the American Declaration will not have an obligatory force, at first. Instead, a treaty, a convention, a pact will be of obligatory nature. The effect of this is that the State could avoid fulfilling the decisions of the supervision bodies. Without a constitutional guardianship mechanism of rights, the logical situation is that the citizens at least have an international mechanism of human rights. Without that, the Ecuadorian people will only have a single way to act: to submit ourselves to the outrages that they want to impose upon us” (*El Comercio*, Monday, March 18<sup>th</sup>, 2013).

He also argued that although there is a universal system of protection of human rights in the domain of the United Nations, the problem with these organizations is that they have less effectiveness than the Inter-American System because the UN does not hold a legal body: faced to a claim, there is no possibility that a judge speaks out about the action, neither issues effective measures. This is to say that, because of its strict political-diplomatic nature, it could emit suggestions or recommendations to the State, but anyway its appeal does not have the binding effectiveness, so the proceeding drops. On the contrary, the interviewee confirms that in the IACHR there are specific instruments which grant the power to dictate precautionary measures as the 25th article of its regulation and the 106th provision of the OAS Charter which says that the commission is a protecting entity, and as such, it has attributions to order a right protection to a State.

Without judging the validity of these arguments, it becomes clear that they respond to the typical liberal conception of the rights focused on the person in front of the State. It is necessary to remember what has been explained in the first chapter concerning the traditional notion of the natural and human rights which is focused on the individuals as rights bearers, notion that is defended by the contemporary liberalism. Since they are universally accepted, representative organizations have been established in the UN and in the OAS that are in charge of the application of the mechanisms for rights supervision, respecting the sovereign egalitarian principles and the internal democracy of the States. Consequently, they have extended legitimacy among the State members, but they impede their equitable application in the report evaluation practices and reduce the intervention possibilities when evaluating interests linked to the asymmetries of power that exist in the respective blocks.

#### **4.3. The defense of the human rights by regional organizations: UNASUR's approaches and perspectives**

The dispute between some South American States and the Inter-American Human Rights System revealed some critical aspects showing that the State is certainly the responsible actor of possible rights violations. The internal confrontations that occurred in some countries, as in Ecuador, have been emblematic examples that have been referred to as “criminalization of the social demonstration” that includes the qualification of “terrorism” to some expressions of the social movements and causes the prosecution of its leaders. Boaventura de Souza Santos has highlighted this and other existing contradictions of the sub-continental emergent democracies (2010: 56).

Even though the governments, in the light of this confrontation, questioned the conflicts presented by citizens or by private agents that were to be acknowledged by the Inter-American System, the proposal made by the counsellor of the Ecuadorian government, Luz Elena Mejía and the proposal presented later by the Foreign Relations, Trade and Integration Ministry of Ecuador for the creation of a Human Rights Coordination in UNASUR, revealed the spirit of preserving some experiences that were considered as very positive in the existent mechanisms for the protection of the Human Rights.

In that way, for example, we recognize the representative models of peer evaluation which are derived from the Human Rights Council of the UN as an effective framework for their protection. The same happens with the diverse supervision trade mechanisms established by the OAS that account with a recognized representative and balanced guarantee for the conventional evaluation activities: the treaties linked to fights against corruption and drug dealing, and the treaty of the “Inter-American Convention to Prevent, to Punish and to Eradicate Violence against Women” or the “Convention of Belem do Pará” adopted by the General Assembly of the OAS which established that violence against women was a violation of the human rights and recognized extensively their right to live a free-violence life. Another example is the work done by the Andean Community through the Andean Charter for the Promotion and Protection of the Human

Rights and the compromise of the South Common Market with the Asunción Protocol, the creation of the Human Rights Public Politics and the implementation of the Observatory of the Human Rights Public Politics (Mejía Guerrero, 2012. Work document; Foreign Relations, Trade and Integration Ministry of Ecuador, 2012: 1 and 2).

#### **4.3.1. Human Rights: States' unique responsibility?**

In relation with the discussion about the guarantee of the human rights being power of the public or the private sector, the American Declaration of the Human Rights and Duties as well as the Universal Declaration of Human Rights point that both sectors have responsibility to get an integral and effective protection. However, none of the proceedings of these two organizations foresees a mechanism to measure or regulate this aspect in relation to the private sector. According to some academics, this happens because the State should internally regulate the private sector and, in that way, guarantee the citizens' rights. However, in a globalized world and in front of an undeniable presence of transnational companies whose interests are supported by economically and politically powerful countries, many States have been unable to defend themselves from violations to their sovereignty, their environment and their citizens' security. Therefore, this is another prolific space to establish cooperation mechanisms in new organizations to be created, as well as in the ones that already exist in the Inter-American System.

An evidence of this necessity is the existence of organizations such as the International Labor Organization which develops a clear system where shared responsibilities are established between the public and the private sector (employers as well as labor unions) for the protection of the workers' rights. However, according to a previous assertion concerning the mechanisms employed by the organizations created by the UN as well as the OAS, only instruments that have a binding character for the associate States in relation to each one of these organizations are established.

The general orientation of the international organizations turned hegemonic the doctrine which affirms that the State is the only responsible for the respect and guarantee of the



human rights. This perspective seems to be in contradiction with established basic parameters of the international right which recognized the private sector's responsibility in relation with the persons rights (Mejía Guerrero, 2012). This issue is discussed hereafter as an element to establish complementary aspects between the existent system and the Ecuadorian proposal to create mechanisms of promotion and protection of the human rights in UNASUR, at the time that the points of divergence between the existent organization within the OAS (the ISHR) and the proposed framework of the South American integration are analyzed.

Based on the criticism to the perspective of State as the unique responsible for the rights protection and for their eventual violation, the opportunity of generating complementary mechanisms between the OAS organizations and those which could be created by the regional proposals, like Ecuador's in UNASUR, emerges. The objective is to strengthen and legitimate the existence of operative mechanisms that turn enforceable private responsibility of rights protection at an international level. This perspective would not follow a selective opposition, but shows the necessity of complementarity mechanisms between two regional systems, the Inter-American Human Rights System and an eventual system in UNASUR. The confrontation points come from the ideological opposition that marks the origins and the historical development of both integration organizations –OAS and UNASUR- and from the political objectives that each one pursuits for the continental or for the sub-regional sphere. Essentially, it shows the opposition of two perspectives: the recognition and acceptance of a consolidated hegemony built along the XX century or the construction of a new sub-regional power with its own voice, as it has been discussed along this work and which will be exposed again in this section.

#### **4.3.2 The human rights as a development and integration axis**

At a different level from the disagreements above described (externally with the ISHR and internally with the private sectors), the most relevant of the Ecuadorian proposal to UNASUR is the extension to new fields of protection and exercise of the human rights

derived from a contemporary conception of the social relationships. In the Ecuadorian proposal, new mechanisms are designed that could be created to respond to critical problems of the South American present reality. A key element of the Ecuadorian proposal for the creation of the Human Rights Coordination in UNASUR consists in adopting the human rights as a fundamental axis for development and integration.

The UNASUR's Constitutive Treaty states a South American line of thought which reintroduces the project of Latin American unity formulated by Bolívar and which was present in higher or lesser degree in the political-ideological projects that guided the independence of our nations as they have been exposed from multiple perspectives along this thesis. The paragraph that opens the Preamble of the Constitution Treaty of the Union of the South American Nations is expressed as follows:

“SUPPORTED by the shared and solidary history of our multiethnic, plurilingual and multicultural nations that have fought for the South American emancipation and unity, honoring the thoughts of those who forged our independence and freedom in favor of this unity and the construction of a common future” (UNASUR: 2008).

In this way, the recognition of a shared identity since the independence resumed in the XX century history is recreated in the XXI century through concrete proposals from where the new integration process must take place in the contemporary reality of the region:

“TO CONFIRM their determination to build a South American identity and citizenship and to develop a regional space integrating politics, economy, society, culture, environment, energy and infrastructure to contribute to the strengthening of the Latin America and Caribbean unity” (Ibid.)

The Ecuadorian proposal highlights the requirement of finding ways to guarantee the rights in line with some factors that emerge from the present reality. In the words of the Foreign Relations Ministry:

“Ecuador proposes the creation of a South American organization in charge of the promotion and protection of the human rights and the coordination of its corresponding public politics at a regional level that guarantees in an effective way the integral fulfilment of the human and peoples' rights with special emphasis on the social, cultural and economic rights, on the right to development, on the right to peace, respect and harmony with nature and the defense of the environment” (Ecuadorian Foreign Relations, Trade and Integration Ministry 2012: 1).

By restoring the central place of the human rights, of the social necessities and of the citizenship freedoms, this integral conception of development searches to give to it a humanistic vision, different from the traditional vision that is reduced only to the economic growth indicators. From this perspective, the end of development is not the material wealth production at any price, but the progressive expansion of freedoms and opportunities; there are no freedoms if first the citizens' basic necessities are not satisfied, if a secure and protected environment has not been created. In addition, the ultimate society's purpose is to have self-sufficient individuals with capacity to take decisions and to take advantage of the opportunities. The Ecuadorian government's vision about development coincides with the integration notion that guides the formation of UNASUR:

“The South American integration and union are based on the governing principles of: unconditional respect to sovereignty, territorial integrity and inviolability of the States; self-determination of the peoples; solidarity; cooperation; peace; democracy; citizen participation and pluralism; universal, indivisible, and inter-dependent human rights; reduction of the asymmetries and harmony with nature for a sustainable development” (Constitutive Treaty of the South American Nations Union, 2008: Preamble).

From these perspectives, another questioning to the limits of the Inter-American Human Rights System derives: in some governments' opinion, this privileges the political rights and sets aside the fulfillment of the social obligations of the States and of the private actors to secondary instruments, generating the emergence of profound asymmetries in the practice of the region rights. In the analyzed document, for the national government the fundamental axis of the human rights in the world is the guarantee of persons and peoples' universal access to decent and equitable life conditions. During the long controversy between individual freedoms and equity, this vision displaces the emphasis from the individual rights to the collective rights and to the construction of societies based on equity, the elimination of exclusions and asymmetries in the access to wealth and participation.

Without ignoring the importance of the fundamental political rights, the Ecuadorian Government supports the principle of “*equal status for all human rights*” without distinctions of any kind, and gives the importance that the economic, social and cultural rights deserve, and the peoples' right to development and peace according with one of

the central principles of the South American integration process (See Proposal, 2012: section 3.4).

For this analysis two dimensions are relevant in the current conception of human rights: one is the right of the native people within the national environment, and the other, the elimination of the economic and social inequality. The dimension of building a democracy in terms of a “civilized debate”, as Boaventura de Souza stated, is collected in the South American integration project and has already been incorporated in the Bolivian and Ecuadorian Constitutions. In Ecuador, as the historian Enrique Ayala reminds, the indigenous movement had fought through years to get their citizen rights recognition until it achieved one of the major advances of the modern constitutionalism. The 2008 constitution depicts:

“the rights of the communities, peoples and nationalities already recognized by the Constitution of 1998. They are explained with more detail or some others are added-on. It recognizes the right to freely maintain, develop and strengthen their identity; not to be subject of discrimination; to preserve the imprescriptible property of their lands; to maintain the ancestral position of their lands and territories; to participate in the use, usufruct, administration and conservation of the natural resources that are found in their lands; to have an informed and free consult about the exploitation of those resources and the right to the benefits obtained for their extraction; to maintain, protect and develop the collective knowledge, the sciences, the technologies and the ancestral knowledge, the genetic resources which cover the biological diversity and the agro-bio-diversity, their medicines and traditional medicine practices, the knowledge about the resources and properties of the wildlife and flora; all forms of appropriation of knowledge, innovation and practices are prohibited” (Ayala, 2011: 42-43).

As it was analyzed, in practice, the demands of the economic development create permanent conflicts between the alliance of the indigenous communities and defenders of the environment on one part, and the modernization strategy on the other part. This reality does not deny the important progress of the civilizing debate which included in the political agenda the complex duality of:

“very different cultural and political universes. It is not about cultural differences which are always present within any civilizing universe, but about cultural differences among diverse civilizing universes. This debate is very promissory especially because it intends to deny the conservative thesis of the “clash of civilizations”. On the contrary, it seems to be aimed to the promotion of an equal interculturality, a truly post-colonial meeting. Once the dualities are recognized as equal differences some creative conceptual, theoretical, and political fusions emerge”. (De Souza, 2010:61)

Regarding the extended notion of “social equality”, based on the recognition that the necessities and individual and collective perspectives are being modified along history, the Ecuadorian chancellery proposes to transform the sub-continent reality due to the fact that it is one of the territories with major social inequality of the planet, situation that is derived from the way the world system works. The Ecuadorian perspective is consistent with the declaration of the Preamble of the Brasilia Treaty as it says that:

“... the South American integration and union are necessary to advance in the sustainable development and well-being of our peoples, as well as to contribute to the solution of the problems that still affect the region, like the persistent poverty, the exclusion and the social inequality”.

At the same time, the second article of the Treaty recognizes as central objective of the integration:

“... to eliminate the social-economic inequality, to achieve social inclusion and citizen participation, to strengthen democracy and to reduce the asymmetries in the framework of strengthening the sovereignty and the independence of the States”.

#### **4.3.3 The construction of a South American citizenship as mechanism for the human rights defense**

Finally, one of the Ecuadorian government basic concerns to bring up to date the international right has relation with the South American citizenship approach because of its suitability to solve a basic right within the globalization process where we are inserted. The Ecuadorian Constitution to support the principle of the universal citizenship anticipated the recognition to free mobility to all the world’s inhabitants and the progressive extinction of the “foreigner” stigma as a principle of transformation of the asymmetries between the countries.

With the universal citizenship, we pursue to expand the political community notion with the purpose of guaranteeing the rights of every person, regardless their condition of immigrants or their place of birth (Larrea, 2013:152). It is true that the application of this principle in the country has not been exempt of serious practical problems given that it demands recognition from the majority of States for an effective exercise of this right. Therefore, the country raised to the UNASUR the constitution of the “South American

Citizenship” regardless of the creation of a human rights mechanism. The Ecuadorian initiative was collected in the Constitution Treaty of the South American organization through the declaration of “its determination to build a South American identity and citizenship” (Preamble), and subsequently, in the VI Summit of Heads of the State and Government celebrated in Lima in 2012 where it was approved the creation of a South American social forum and a Group Work aiming to implement the articles of the Constitutive Treaty concerning the common rights of the South American citizens, and as last instance, to promote the emergence and recognition of a South American citizenship.

#### **4.4 Rethinking the integration: new, not that new and old processes**

It is difficult to establish a conclusive balance of the integration process, given the extreme instability of the current South American political scenario submitted to constant changes which are frequently vertiginous and unthinkable. However, it can be admitted that the aspiration to create a sub-regional organization that exclusively devotes itself to the elaboration of public politics and legislative initiatives to promote respect to the human rights in South America in a most efficient way, has little by little been relegated to finally culminate in this sort of limbo where many of the most important concerns have been waiting for an extraordinary event that brings them again into the political agenda of the States. This situation is explained if some of the factors mentioned in the previous chapter are considered; probably the most determinant among them is the fact that despite the early institutionalization created around UNASUR, the South American international alternative was not consolidated in front of the already existing organizations or in front of others that have emerged with force in the last two years, as for example the Pacific Alliance.

This last process, among diverse analytical perspectives, foresees that the Latin-American integration continues being a challenge for the real politics and that there are some alternatives to rethink organizations and mechanisms with more efficacy in the current multipolar world. At least three options remain for the debate in the regional

agenda. To start closing the reflection of this thesis, the question of whether UNASUR can still be the means to reach a new form of regional integration, despite the evident limitations that are registered in the last years, will first be discussed. The other remaining question is about the future that seems to be opening regarding the renewed proposal of the FTAA materialized in the Pacific Alliance<sup>33</sup> and mainly focused on the commercial and financial integration but having few possibilities of being formed as an alternative to the institutional structure of the OAS. Additionally, the very recent success of the CELAC that was reached in the Summit of the Havana<sup>34</sup> creates optimism to think again of a regional integration which is not contaminated with all the suspicion and resentments that the OAS mechanisms provoked. This section reviews these three alternatives for the Latin American political and cultural integration.

#### **4.4.1. Is the South American project still the way?**

The jealousy and mistrust that the Pacific Partners feel about delegating the leadership of the integration process to a giant as Brazil and the fears of competing with rules that favor the economies that have taken certain forefront in the productive diversification as in the case of the majority of countries from the Atlantic coast, seem to have generated a slowdown in UNASUR. In addition to this –maybe more strongly- the hesitancy that Brazil shows to assume the responsibilities derived from leading a new block in the formation of the multipolar world.

This perception appeared because South America has features of an international political differentiated subsystem regarding the dispersion that is found in the wide Latin

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<sup>33</sup> It was formed by Mexico, Colombia, Peru and Chile; Panama was later integrated as an observer. It was created on April 28<sup>th</sup>, 2011, through “The Lima Declaration”. It defines its objectives in terms of “Building a participative and consensual area of deep integration to advance in a progressive way to the free circulation of goods, services, capitals and persons. To impulse a major growth, development and competitiveness of the economies of the member countries, [...] and to transform itself into a platform of political articulation, of economic and commercial integration and of projection to the world with special emphasis on the Pacific-Asia (<http://alianzapacifico.net/>)

<sup>34</sup> That occurred on January 2014, with the presence of presidents and representatives from 33 countries.

American territory not to say in the entire continent<sup>35</sup>. The persistent recuperation of the Bolivarian project of the Latin America unity pushed forward by Venezuela, Bolivia and Ecuador seems to confirm this perception, even though it displaced somehow the existent political trust on the unquestionable leadership that Brazil exercised in Mercosur. Faced to the leadership of the Venezuelan president Hugo Chávez, the actions carried on by Itamaraty to boost the South American alternative through UNASUR were pretty moderate. It is more upsetting the present lack of decision of Brazil regarding the head-on challenge of the economic integration that comes from the Pacific Alliance as an alternative to the MERCOSUR<sup>36</sup>.

The obvious wear of the inclusive force, that at the beginning came from Venezuela, after president Chávez's death, which is aggravated because of the increasing economic and political difficulties that currently beset Maduro's government, seems to show the political limits where the Bolivarian project has arrived.

The same dilemma is present in the commercial field, because the alternatives that the globalization offers contribute to aggravate the economic rivalries among the South American countries. In the current panorama, a convergence between the countries of the CAN and those of MERCOSUR is unlikely because the majority of the first group (with exception of Colombia) show a great economic regression in relation with the development reached by the countries that integrate the Atlantic block of MERCOSUR.

However, as an alternative integration proposal, UNASUR still stands as a receptive organization for some of the initiatives of the States that are part of it. Although the

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<sup>35</sup> "These characteristics have much to do with the geography, the neighborhood and the history, and today they are also related with certain shared resources and with the proximity of its markets. Such similarities result in an agenda of dominant issues –political, economic and social- which reflects problems and common opportunities and which frequently requires of collective answers" (Félix Peña, 2009).

<sup>36</sup> For left-wing analysts, this hesitation comes from the fact that the PPT Government has not been able to reconcile the two opposite and radical views concerning the South American integration into a unique project: "... it is obvious that in the Brazilian government both tendencies co-exist: one, moderate Latin-America that succeeded as never before under Lula's government; and another that believes that the Brazilian future splendor goes through an intimate association with the United States and, partly, with Europe, and that it recommends to forget its disruptive neighbors. This current still does not become hegemonic in the interior of the Planalto Palace, but without doubt, today it finds many more receptive ears than before" (Atilio Borón, 2013).



same wariness persists from the old integration process, the difference is that UNASUR is more than a *simple* commercial opening. Despite the ideological discrepancies regarding the governments' orientation, mega-projects that cover all the sub-region persist. One is the regional physical infrastructure for the integration. Another is the energetic development that groups the countries for their financing and execution; an appropriate field can be found in the efforts to find a model for an alternative energetic development: the Brazilian experience on biofuels can open an extended field of cooperation among the South American countries. In the same way, it is important the potential that the South American countries possess of crude oil, gas and nickel for the creation of a common strategy to take advantage of the natural resources sustained on their rational use. Another important factor is the knowledge and capacity interchange that facilitates a competitive access of the countries to the international market; at this point, we cannot stop relying on the role that the Brazilian Cooperation Agency plays with its long experience in technical cooperation programs concerned with the improvement of the traditional products quality as well as the introduction of new others. Equally strategic is the National Bank of Economic and Social Development (BNDES). This institution offers funding lines so that the Brazilian companies make, expand and modernize the physical and service infrastructures in those countries (Pérez Guillermo, 2010; Bruckmann Mónica, 2012). As it can be observed, these areas to potentiate UNASUR depend –in a good extent- on Brazil's adoption of a more decisive attitude regarding the regional integration and that the other countries of the region overcome their fear –not entirely unjustified- of the South American giant.

If there are still spaces left in relation to the economy in order to continue rethinking the South American integration, a significant difference can be marked in the goals achieved within the framework of the regional cooperation to give a solution to conflicts between countries or inside the own South American States. The function of the Río Group of exercising a collective mediation in the dilution and solution of conflicts that involved countries of the region was a determining factor to give solution to the conflict between Ecuador and Colombia because of an attack to a FARC's camping in Angostura. On September, 2008, the UNASUR summit in Santiago mediated in the internal conflicts that affected the Bolivian democracy, and even, the internal unity of this country; this

clearly confirmed the message that all the democratic problems in a South American country concern to all the rest, and transmitted the idea that they are prepared and willing to assume their collective responsibilities in the region (Félix Peña, 2009). Similarly, as it was mentioned before, UNASUR made a clear declaration regarding the 30S in Ecuador, and probably it was very helpful to stop Great Britain from entering by force in the Ecuadorian embassy in London in the case of Julian Assange who was bestowed diplomatic refuge in 2012.

Nevertheless, this criteria coincidence was fractured before the court trial that caused the destitution of the Paraguayan ex-President Fernando Lugo; UNASUR could not maintain the unity, and the Pacific block quickly changed its opinion in spite that a unanimous resolution had been reached in UNASUR. In the same way when comparing past events, UNASUR has been very ambiguous expressing its support to President Maduro in front of the delicate political and social situation lived in Venezuela since middle February, 2014. However, this fact could respond to several political factors rather than to the fragmentation of UNASUR: in one side, countries like Brazil, Chile and Ecuador were with political situations that did not favor the beginning of a regional lobby to support a neighbor President; on the other side, since the sickness of that moment President Chávez, Maduro has demonstrated to be a controversial figure who does not have the massive support that his predecessor did; the weakness of the XXI century socialism, once the enthusiasm finished, does not permit that any country of the region wants to risk its international credibility to support President Maduro.

Likewise, despite that the sub-region has declared in favor of Argentina and against Great Britain in the case of the Malvinas, position that will hardly get a short-term result, at any moment, it was proposed that UNASUR mediates in the differences between Peru and Chile in relation to the uses of maritime spaces which finally was solved by the Tribunal of the Hague. This could be due to two factors: none of the two countries thought that their neighbors wanted to mediate in this situation or that they will not be fair. In any case, this situation shows that UNASUR is not always in political conditions to solve the differences in the region.

The opened expectation about the possibilities that UNASUR will build a collective leadership with an effective capacity to solve conflicts in the region was quite affected by the suspension of Paraguay as an active partner of Mercosur. Nevertheless, it is possible to recover the strong political profile that was reached with the objective of establishing a more democratic institutionalism in the South American countries with spaces for the participation, consultation and dialogue between the States and the civil society. The path covered by Uruguay, Chile, and once more, Brazil in this process of searching more participative societies, shows spaces for the South American community to progress.

#### **4.4.2. The Pacific Alliance and the Inter-American System**

The ambition of weakening the national frontiers limited by political, linguistic and cultural identities to be integrated to a more extended territory, first through shared markets and then through common political organizations to integrate an even more global world, has questioned the traditional idea that people had about Latin America. On one hand, who historically adheres to the Pan-Americanism reiterates the impossibility that regional projects like UNASUR and MERCOSUR will consolidate in the future and they encourage the recovery of Pan-Americanism and its political integration mechanisms such as the OAS insisting at the same time on the need of building free trade regional spaces to be integrated to the global market.

This perspective shows a marked pessimism about the possibilities of building alternative organizations because they consider that Latin America was always a set of nations confronted by different interests and its unity was a frustrated dream. They hold that the integration with United States will open ways that will permit its transformation into real modern nations.

“The Latin American democracy of the XXI century carries unending obstacles and the solution to its problems does not lie on the revolutionary method of the past, but on emphasizing the institutional reforms of the present; between these two extremes lays the true “struggle for the spirit of Latin America” (Michael Reid, cited by Jorge Volpi, 2009: 52-53).

The Mexican intellectual Jorge Volpi asked “What is Latin America like today?” Then he replied that for those who take back the Pan-American alternative, Latin America is not a reality, but a geo-politic invention whose content cannot signify the same for the IDB, the OAS or other international organizations as for the black people and indigenous who live there and never participated in its invention. The Mexican continues that the region has been seen at the same time as an indispensable portion of Occident and as a lost territory for Occident itself. In this last regard, Samuel Huntington assured that in *The clash of civilizations* (1996) as in *Who are We?* Latin-America is not part of Occident and for this reason it is not reliable for United States, unlike other more distant territories like Australia, Nueva Zeeland or even South-Africa (Volpi, 2009: 54-55).

In other words, they support that Latin America is not a political construction that could give a real content to the future international relations in a more globalized world. Jorge Volpi considers that the old separation between the Anglo-Saxon America and Latin America gradually weakens in our days while the trade relation world shows an increasingly economic unity among United States, Canada, Mexico, and in less extent, with Central America and the Caribbean (without Cuba), and it constantly gets away from South America and its integration mechanisms leaded by Brazil or Venezuela.

That leads the author to ask “What about if Latin America does not exist anymore?” (Ibid: 55). In the last decades, he states, that the causes of decomposition from a sometime relative homogeneous region were accumulated and that today it has been definitely fragmented. And in other part of his text he supports:

“...nothing of what distinguished Latin America in the XX century remains. The dictators and guerrillas left; the magic realism and our tropical exoticism have lost their attractiveness; the cultural exchanges among our countries have turned irrelevant; the ups and downs of the democracy have standardized us to boredom. Let’s ask ourselves [...] what do we exclusively share the Latin Americans? The same things as ever: the language, the catholic traditions, the roman right, some customs of uncertain indigenous or African origin, and the wariness now transformed in jokes and in humorous phrases about Spain and United States. Is it everything? After two centuries of independent life, it is everything?” (Ibid: 85).

For this approach of the international relations, Bolívars’ dream today is only a “hilarious insomnia” provoked by geo-political phenomena that were unforeseeable in the last century. Nevertheless, the supporters of the Pan-Americanism sustain that

another Latin America has emerged which was formed through the emigration. The population from Latin American origin in the United States is over 40 million of inhabitants and for the year 2050 that population will get close to 100 million (Volpi, 2009: 141). To everyone's surprise, we would have to rely on a new reality to rethink the international relations with the rest of the world. Volpi does not hide his enthusiasm: "United States is already, to say it at once, a part of Latin America [...] The weight of Latin Americans from the United States will just grow in the following years; this growth will be so important not to only influence in the politics of its host country but in the politics of the countries from where they were forced to abandon" (Ibid: 141-143).

If we rely on the international relations interpreted from this current of thought, alternatives like the UNASUR will not have any support in the present formation of the international context; this is why the motivation that moved the Ecuadorian Carlos Larréategui to recover the OAS mechanisms could be very licit:

"With precipitation and lightness, the Heads of the State of UNASUR went to the sudden call of Ollanta Humalla, temporary president of the group, with the purpose of legitimizing the questioned triumph of Nicolás Maduro and of covering up the abuses committed during the election campaign and the announcement of the results [...] the UNASUR has made it clear that his actions are not based on democratic principles and values [...] it has ended like a sad club of cronies that evades the debates and dissents, and dismisses democratic legal arguments at the moment to protect one of his companions. It happened with Zelaya and Lugo and now with Maduro [...] Faced to the reiterated failure of the regional organizations created with improvisation, idealism and a lot of ideology, it is suitable to rethink of the OAS as a regional forum that can be rescued and boosted to retake its essential mission" (El Comercio, Wednesday, May 1th, 2013).

In conclusion, based on this approach, in a globalized world where the migration and the commercial and financial relations have broken the historical frontiers between the Anglo-Saxon and the Latin world, the Bolivarian project today does not have any handhold as horizon to define the international relations because only a little bit is left from the Latin America dreamt by Bolívar. Consequently, the already existing leading organizations of Inter-American relations, like the OAS and the Inter-American System of Human Rights among the most important, must be strengthened, and organizations like the recently created UNASUR must be placed in its real ideological dimension.

Maybe a significant conclusion for those who advocate for the strengthening of the Pan-American System in the framework of a globalized world comes from a commercial side: They support that the Inter-American economic relations have a model already proved by the FTA signed by Mexico, Canada and United States and that other countries of the region have already adhered to. In this regard, the bet for the integration of the Pacific economies could be the winner horse of the investors who want to be present in the emergent countries, statement that is held by a recent analysis (“Latin America is not Brazil: the Pacific Alliance applies as the new Dorado (Golden)” <http://bit.ly/1aWrI9I>). That is why the phantom of the FTAA floats in the environment, another analyst states<sup>37</sup>.

The advantages of the Pacific Alliance lay on the interregional character of the integration agreement. The block enjoys a privileged position which opens trading ways to various continents, especially to Asia. “It was born with the purpose of encouraging the regional integration as well as a major growth, development and competitiveness of the economies while they compromise themselves to gradually progress towards the objective of reaching the free circulation of goods, services, capitals and persons” (Latin America is not Brazil..., cit.).

Retaking the analysis of the visible obstacles which slowed down the progress of the MERCOSUR as a South American economic integration alternative, it can be stated that the Pacific Alliance obviously offers a more secure perspective for the Pacific Basin economies that are involved<sup>38</sup> [6]. Mexico, Colombia, Chile and Peru have consolidated

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<sup>37</sup> Félix Peña highlights the advantages of the new block in front of MERCOSUR with the following information: “The Pacific Alliance which was born with the Lima’s Declaration on April, 2011, is a commercial block integrated by Chile, Colombia, Peru and Mexico (Panamá and Costa Rica are observer countries). According to the postulates, it seeks “the formation of a deep integration area in the framework of the Latin American Pacific arc to advance progressively to the free circulation of goods, services, capitals and persons”. The block formed a market of 200 million of inhabitants. The total internal products of the members represent more than a third of the internal product of Latin America and more than 50% of the trade of the region with the world, about US\$900.000 million in 2011. According to information of the WTO, the countries of the Pacific Alliance exported all in all about US\$445.000 million in 2010, almost 60% more than the sales of MERCOSUR in the same year” (2013).

<sup>38</sup> The references to elaborate this paragraph are the articles written by Ecuadorian journals like *Hoy* and *El Comercio* along the months when the international conflict generated by the American journalist Edgar Snowden was debated. See the collective article “Today’s Analysis” on Friday, June 14<sup>th</sup>, 2013, as well as the opinions of the columnists Gonzalo Maldonado Albán in *El Comercio* on Sunday, July 7<sup>th</sup>, 2013, and Sebastian Mantilla Baca in *El Comercio*, on Wednesday, August 21<sup>th</sup>, 2013. At the time, Mantilla’s article

models based on the liberation of the markets and it becomes difficult to progress in integration agreements with countries based on protectionist schemes as those from the Mercosur. Furthermore, Ecuador itself has its own clearly defined model of development because of the State active participation in the economic as well as in the social fields and has prioritized the negotiation of a commercial trade with the European Union as a preliminary step to continue its insertion in the Mercosur. Under these considerations, the most probable future is that the Pacific Alliance and Mercosur remain as opposed models for the economic and financial integration, even though projects as the already mentioned, of common infrastructure, mining field, and alternative energies, can establish bridges of cooperation, and even more, of integration of the South American countries.

In the political area, another reality is presented in relation with the future of the political organizations of the Pan American System based on the United States model of hemispheric democracy. The feeling of the majority of those who favored the persistence of a superior instance for the defense of the human rights such as the Inter-American System is based on the profound mistrust on Latin American systems of justice. They support that daily justice regarding human rights and political guarantees do not exist or it is implemented only for a few people since it remains submitted to political pressures; it can only be implemented through extra-legal procedures that are managed by those who should combat the transgressions to the State of rights. Citing Norberto Bobbio, Volpi writes that “there is no democracy without the recognition and protection of the human rights”; consequently, he concluded that the “weakening of the institutions that guarantee their *effective* respect ends up destroying democracy” (Volpi, 2009: 98-100).

In a much more extended field, Bobbio’s reflection about the present mistrust on democracy is born due to the growing difficulties of the democratization process in the diverse state systems, capitalism and socialism, during the whole XX century. The history of the Soviet Union, China, Cuba and other socialist states showed the failure of the construction of a socialist democracy under a unique one-party regimen. But also

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has as main source the article “Liberty’s lost decade” which was published in the British magazine *The Economist* in the edition of the first week of August, 2013.

Bobbio extends his criticism to the advanced capitalist societies, “where the economic power is more and more concentrated; the democracy despite the universal suffrage, the formation of mass parties, and a fairly high degree of political mobilization had not been able to maintain their promises that were mainly focused on three categories: participation, control from the bottom and freedom of dissent” (Bobbio, 1977: 45).

The situation is more complicated in Latin America, since according to most critics in the region, it was only achieved:

“an imaginary democracy, a system that only theoretically –on the paper- prescribes the free suffrage, the power division, and a long list of elemental rights, but in fact it is dominated by the will of only one warlord, of one party or of one group; although there is a legal system, the individual guarantees are systematically forgotten or violated, where the states of exception become the rule and where the votes are undertaken as civic farces aimed to legitimate a beforehand constituted power” (Volpi, 2009: 93).

This “perverted democracy” is configured along the Latin American history and during the construction of its States since the Independency. It was characterized by a strong central power sometimes concentrated on a foreign monarch –as Maximiliano in Mexico or the new Brazilian empire governed by the Portuguese king’s son- other times in a creole dictator “of moustache and boots”, and more recently, in a large list of dictators defenders of the “free world” and financed by the CIA, or in the model of “popular democracy” controlled by Castro’s brother in Cuba, as Volpi caricatures it (Ibid: 92-93).

Nowadays, this position has extended to a wide sector of opinion, which strongly criticizes the governments that question the system established by the OAS. The Inter-American System of Human Rights was created so that the citizens had a place to go when they are victims of the abuses of the Government or the State; the columnist of *El Comercio* Lolo Echeverría expressed: “When the authoritarian governments manage justice as it has occurred with the dictatorships of the Southern Cone, the IACHR is the only hope”. His argument states that “the supremacy of the fundamental rights is above the rulers’ will” (*El Comercio*, March 17<sup>th</sup>, 2013).

With the purpose of recovering the distinction noted in the first chapter, it can be affirmed that the supporters of the current Inter-American system are based on the rights classification, appealing to moral arguments as well as to legal arguments. Initially, it



can be easily recognized that they support moral arguments, similar to those of the liberal rights that were recognized in the Declaration of the Independence of the United States, in the French revolution, and of course in the United Nation Charter of 1948. On the other hand, the argument of the cited journalist highlights the suitability of the legal legislation recognized by the Inter-American System as an appropriate system of real and operative regulations.

Before the controversy that was caused by the OAS Extraordinary General Assembly carried on March, 2013, to discuss the Ecuadorian questioning to the Inter-American Commission of Human Rights, in an interview granted to the Argentinian journal, Page 12, the Portuguese sociologist Boaventura de Souza Santos expressed his resistance to such reforms:

“position that is supported by particular active countries whom I support in multiple aspects to their governments: Brazil, Ecuador, Venezuela and Argentina. But in the case of the IACHR, I am firmly on the side of those who fight against the initiative of those governments and for the maintenance of the current statute of the Commission”,

and he formulated a call to those governments to abandon the reform project, highlighting the prestige and the effectiveness that the Inter-American system of human rights have applied to its actions.

The sociologist concluded with an alert about the recommendations that could be made by the Permanent Council of the OAS as he considered that this has a probable purpose of limiting the power of the IACHR to inquire the States for the human rights violations (*De Souza, 2012*).

The Inter-American Commission cannot be evaluated independently from the fact that it is an entity of the American States Organization and that the OAS in its origin and historical development has been closely linked to the United States' interests. Therefore, the people who support the IACHR under the wing of the OAS appeal to the Pan-American history, stating that despite the experimented difficulties along its existence, the more suitable organizations to achieve the integration objectives will continue to be those of continental vocation. For this position, the persistence on the mechanisms that are exclusively regional would show incomprehension of the current world tendencies.

#### 4.5. From UNASUR to CELAC

The questioning to the Inter-American system developed in the previous paragraph, because of its close relationship with the OAS and because of the strong influence of the United States, becomes very appropriate to rethink the integration. The evident decline of the OAS contaminates all the Pan-American organizations with the scraps of having been the mechanisms through which the United States exerted the protection of its geopolitical interests in the old bipolar world and in the current attempt to preserve its hegemony. This history also reduces the margin of action of the Pan-American organizations.

Pan-Americanism is sustained on the political and economic power of the United States to define the course of the international relations. Even though a half century ago many American leaders and analysts had predicted the decadence of the United States world's leadership, those premonitions were superseded and have always revived the image of a country able to stand up again to fulfil its historic destiny of "world police" or of "model of universal democracy". Nevertheless, today the sensation that it is not like this is increasing: in view of the persistent economic crisis and the military failures in Afghanistan and Iran in the 2008; the *National Intelligence Council* recognized that the American potency is on decline and that it is getting close the transference of wealth and power from Occident to Orient. This idea of emergence of a different world from the one that existed in the XX century is founded in an accumulation of symptoms of weakness in the power of the first world:

"Washington loses arbitrage in the World Trade Organization, it is isolated when it has to vote on the recognition of Palestine in the UNESCO and in the negotiations about the weather, and it lets the United Kingdom and France headship Libya's intervention. Even Latin America, that has traditionally been United States' back yard, chooses leaders that reject its influence" (*El Atlas de le Monde Diplomatique* IV, 2012: 96-97).

These difficulties to hold its hegemony are the symptoms of the emergence of a multipolar world. The emergence of countries from the old "third world" that dispute the economic predominance, that start to talk with their own voice, and that demand being listened in the international forums, together with the huge growth of a country as China that comes from the collapse of the socialist world, shows the reconfiguration of the

world's scenario; some analysts support that it is necessary to overcome the Euro-Centric vision as well as its civilization model. (The *Historic Atlas of Le Monde Diplomatique*, 2011: 92-93; Bruckmann, 2012: 1).

These new centers of power begin to rely on the presence of an autonomous Latin America, as an effective zone of decision in the international relations. Barack Obama, still as a candidate, had promised a new era of mutual concern and respect, but as president he shows that the cooperation and collaboration of Washington with Latin America is important only when it is about stopping China's competition, which seriously threatens to become the principal trade partner of the region.

The integration alternative in a multipolar world is a propitious space to retake the boost of the political and diplomatic integration that was born in South America through UNASUR, but now it is extended to the entire region. If the indecision of leaders as Brazil and the discrepancies between economic alternatives postpone UNASUR consolidation, the original objective of boosting the political and diplomatic conciliation today seems to be transferred again from the sub-region towards the Latin American group with the recent CELAC Summit in Havana. The presence of Cuba and almost all its members could be the main guarantee to promote democracy and the fundamental rights in an OAS without United States and Canada which is the characteristic that distinguishes the CELAC. Based on these antecedents, the fact that United States has not signed San José's Pact provides arguments to those who criticize the IACHR and foster the future progress of CELAC if it effectively becomes the alternative Latin American organization.

It is also appropriate to begin the reconsideration of the individual rights in a multipolar society, since the capacity of the States has grown immensely in order to coerce its citizens as well as to protect themselves from the citizens' control, as Edgard Snowden's surprising revelations about the United States espionage demonstrate. The governing class of this nation exacerbated the trauma of September 11 to create a deliberate dilemma between the individuals' freedoms and the national security. The "war against terror", that was initiated by Reagan's administration and potentiated by W. Bush Jr., has seriously injured the freedoms that were guaranteed by their Constitution,

under the excuse of protecting the national security; nobody doubts now that what is behind is the great economic interests. Barack Obama continued with this line of action in Iraq and Afghanistan and Guantanamo, which included torture methods and massive murders; in the internal sphere, he implemented an abusive enlargement of the public frontiers at the expense of the private sphere.

The expansion of telecommunications, especially the appearance of social networks, has made impossible to hide uncomfortable truths. The leaks that were produced by Snowden affected not only the political sphere, but also the private one, since they revealed that millions of private communications that were legally protected by confidentiality were intercepted. This reveals that the paradigm of the State security has cracked the guarantee of the individual rights. The State arbitrariness affects not only the United States citizens, but also the European, and there is always evidence that the Latin Americans are also affected.

The concern reaches another dimension of the individual freedoms and the State power. It is not legitimate that phone calls and emails are intercepted by State security members. The safeguarding of security does not justify keeping a legal system that hurts the citizens' freedom. The legitimacy of the State rights to keep information that can be confidential is unquestionable, but there is no reason to cover up or to hide power abuses. Neither can it be thrown out the fact that the leaks are occasionally necessary for the democratic practice when they discover acts of corruption of public officers or violation of human rights. As always, the issue of limits between individual and collective freedoms is a complex topic which is difficult to identify.

Besides the arguments that were discussed throughout this work, the distance between the countries and the interests of powers like the United States's, will provide the Latin American countries enough independence to debate the State new role in front of freedoms. To what extent is it possible to distinguish the limits between opinion and information? Or, to what extent do the citizens have the right to think differently from the truths that are proclaimed by the State or by the power group? Also, to what extent is there the need to preserve the problems from the separation of powers? These are

problems that must be debated in mechanisms that have the opportunity to be released in spaces like the CELAC.

To conclude this fourth chapter, the possible leading role that some Latin American countries might have to potentiate a renewed integration based on the political collaboration for the protection of the social rights in the context of the new conditions that the XXI century offer will be analyzed.

We will get started with the country that has the historic privilege of being the first nation in the world that incorporated the State obligation of protection and non-violation of the social rights in its Constitution. Mexico is the key to articulate the Pacific Alliance integration strategy, but its role to boost the diplomatic political orientations is quite deteriorated nowadays due to internal conflicts that weaken the role that this country played in the Latin American politics since the revolution in the beginning of the XX century until the sixties. Now it is still hit by drug-trafficking, by the breakdown of the State role which is harassed by the chieftainship of PRI and PAN and of the current mafias that have been able to enter in the political parties and in the State institutionalism.

Venezuela also seems to have lost its great leading continental role that had shown no too long ago. This is maybe the more polarized country in Latin America and it is the scenario of an acute political, social and economic crisis. The legitimacy of Maduro's Government is questioned; the currency depreciation carries an unmanageable inflation reviving the situation of previous decades, which produces social violence. Argentina, even though in Kirchner's times some important popular concessions took place, faces again the classical tensions of its economy: very high inflation, exchange and fiscal imbalance.

However, in the other nations of the sub-continent, it is not possible to talk about going back to the past, even though the frequent protests of social movements in most of South America would seem to be symptoms that the political stability of the last decades is teetering. Considering the changes that have taken place in the first decade of the XXI century, they seem to show the social and political strength of some sub-continental

countries. In the last decade, the South American societies changed so quickly that the governments had problems to keep the rhythm, as it was often commented by political analysts. The government at national, state, and local level must become more and more efficient to satisfy the people's demands in today's interconnected world, where the expectations keep growing, but they are conducted by ways that tend to broaden the democratic participation.

Brazil is the most visible example of the previous statement. Along the two of Lula's mandates, millions of people got out from poverty, climbed the social scale, and enlarged the "middle-class militia". The demonstrations lighten the reality of a wide sector of the Brazilian people who got out from poverty but who do not find a large-scale infrastructure of public services to satisfy their growing demands: education and public health are degraded and a transportation system is quite precarious. Chile also shows a similar profile: the demonstrations do not obey to social mobilization against the autocratic governments, but to the uneasiness produced by public policies that stress the inequalities. Mainly the students' demands, that call for free and quality public education, changed the Chilean political panorama towards a constitutional reform that eliminates forever whatever is left from Pinochet's dictatorship; this was the central content of the proposal that allowed Michelle Bachelett's reelection.

If this uneasiness is analyzed, a substantial difference from the past revolts is found. The street demonstrations do not represent the traditional protest against the autocratic leaders, but now, a large middle-class asks for the enlargement of the public services (roads, transportation, quality education and health), quality of life (clean air, citizen security, access to cultural goods, broadening of rights (women, youngsters, sexual diversity). Many political analysts insist that the demonstrations are evidence of the government failure; on the contrary, the reduction of poverty in the last years took place under a scenario of stability that was reached thanks to fundamental reforms based on social policies that were better aimed to popular classes. The dimension of the protests may also reveal the improvements to conquer social rights and it can foresee a new horizon to define the Latin American integration dream, under the leadership of governments like Brazil, Uruguay and Chile of Bachelett.

A final reflection about the political discussion in Ecuador follows. With the pragmatic style that President Correa imposed to his economic model, the Ecuadorian economy and society also accumulated important changes that, according to some critics, have moved at a rather slow rhythm. Nevertheless, for his opponents he has accumulated mistakes and deceits and a conspiratorial silence that keeps open the possibility of taking actions that will affect the permanent interests of the country.

The Government believes that the changes have been carried out with the necessary strength to achieve what has been proclaimed by its main objectives: to level inequality in Ecuadorian society and to progress by changing the productive matrix without applying shock policies as the neoliberal style or packages that are typical in times of crisis.

The radical leftist politicians disqualify the intensity and the direction of the transformations that are considered little effective to modify a traditional society and economy that are submitted to centuries of colonial and neo-colonial domination. They mainly question the supposed continuation of the predominant extractive model that has prevailed in Ecuador since the sixties. A current that favors a similar route as the Pacific Alliance supports that Ecuador is going on a mistaken path which has also been chosen by Venezuela, Bolivia and Argentina: mistrust about the opportunities that globalization opens for them to grow under the power of the foreign investment engaged with clear policies, free trade agreements, opening to markets and flexible exchange rates (Lolo Echeverria, *El Comercio*, Saturday, February 8<sup>th</sup>, 2014).

Faced to these queries, the political focus of the Ecuadorian Government seems to respond to a slow rhythm, without improvisations and haste; for this reason, only the necessary changes should be adopted, so that the economy is not struck by hasty transformations of the current relations. The consolidation of public policies of health, education, energy, transportation, security that did not have a sustainable intervention from the State in the past, shows the step from a non-institutionalized country towards a strong leading one, able to reorganize the social institutions.

Regarding the discussion of human rights, a valid concern for Alianza Pais policies appears: the historical confrontation between the State and the individual rights. That is to say, the question whether the State is above the citizens' rights based on the argument of the need to guarantee the collective rights and the social justice. In addition, an even more disturbing issue is that in Latin-America, some democratic States deny in practice what they proclaim; if everyone has the right to give an opinion, to protest, and even, to rebel against the law and unfair regimes, it is not appropriate to rule certain forms of thought repression, and worst, the criminalization of the social demonstration.

The Ecuadorian Government disregards the restraint that was shown in the changes of the economical organization regarding the human rights and the construction of more democracy. The exercise of the rights cannot be carried out in a hurry as the radical critics claim; neither can be based on arbitrariness or irresponsibility. This implies restraint and as a limit that is always present, respect to the individual rights.



## CONCLUSIONS

The first chapters of this thesis focused on the hypothesis that, beyond the debate between natural law and positive law, the recognition of human rights is a result of key moments in history and socio-political vindications. In other words, whether there is a natural law which makes all human beings right holders or not, it was necessary that people underwent certain changes to try to create a different reality. Modern history is full of those moments.

For example, the recognition of human rights as we know them now was possible through the formation of the modern state, which was closely linked to the human condition and the creation of new individual rights against absolute monarchies. Thus, as demonstrated in the first two chapters of this thesis, the English Bill of Rights, the French Revolution, and the independence of the United States and other American colonies, were not only a process of transfer of power or the constitution of national states, but they were closely linked to the vindication of human rights related to liberalism.

Accordingly, human rights in principle arose from the need to differentiate and set limits between individuals and states. In societies where the ultimate goal is the state, it is natural that the need to protect individual liberties arises over time; therefore, the criticism of monarchies resulted in the criticism of the state as an institution; thus it is linked to the vindication of individual rights and freedoms, that is, the rights of non-interference, also known as civil and political rights or first generation rights.

The vindication of these rights may be appreciated again in the later history, at the time of establishment of the United Nations and the Universal Declaration of Human Rights, which aimed to take on the atrocities perpetrated by the fascist regimes during World War II. It can also be appreciated in Latin America, in the rise of Pan-Americanism which reached its peak in the American Declaration of the Rights and Duties of Man (ADRDM), the establishment of the Organization of American States (OAS), and the American Convention on Human Rights.

From the political point of view, the Pan-American process was linked, as demonstrated in the second chapter, to the Monroe doctrine, which suggested that any interference in the Americas by a non-American state would be taken as an act of aggression against the United States. Obviously, this political strategy was based on economic interests and supremacy and hegemony of power.<sup>39</sup> However, the defense of human rights in this system is an innovative event in the international order, especially considering the fact that the ADRDM represents the first international agreement on this issue: It occurred before the Universal Declaration of Human Rights. However, it is important to note that the first of these declarations is not legally binding, so it is actually just a theoretical proposal.

Either way, the Inter-American Human Rights System, which is binding but is not composed of all the members of the OAS, followed a long and complex process of consolidation because of the need to curb abuses perpetrated by dictatorships and repressive governments in Latin America at that time. At this point, it is important to recognize that this thesis has deliberately avoided an analysis of the benefits gained through the Inter-American Human Rights System. Far from being a mistake, this is due to the lack of legal status of this paper since it does not focus on the analysis of benefits or threats of the IAHRs or an alternative counterproposal, but on the analysis of the international system and the political moment undergone by Latin America when such system was constituted; from this point it is necessary to study the political aspects occurring in the emerging world order and modern Latin America.

Going back to the history of human rights which is the history of modern states and the emerging world order, one of the biggest dilemmas of today draws on life conditions. If the first human rights vindications were based on the protection of life and individual freedoms, after the Industrial Revolution the society was concerned about the kind of life people would have. From a contemporary perspective it was logical that this concern would arise: by the nineteenth century -when the Industrial Revolution ended- the individual rights like the right to property, the right to life, and the right to freedom were

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<sup>39</sup> Given this statement, it is possible that the critics of Pan-Americanism must have criticized American imperialism, as well. However, as discussed in the second chapter, the U.S. position was not to allow new attempts of colonial expansion in the Americas, either from Europe or any other power.

all well entrenched in our society and in political life; however, the economic growth resulted in group of people featuring class separation, where access to property and the right to liberty and life were subject to the social stratification the individual belonged to. In other words, there were civil and political rights, but they could not be granted to the broad mass of workers in the same way as the smaller political and economic elites.

This issue was debated during the Cold War. The two blocks -communism and capitalism- differed on what rights should be protected, and in a way they were both right. Communism, in reality, did not build democratic or equal societies; the rights to life and liberty were often restricted to the loyalty to the state -which actually had control over all aspects of society- and the ruling political party. The extreme liberalism, conversely, does not guarantee equal rights but rather produces strong social differences between working classes and economic elites, and even more in other groups like the unemployed people, ethnic minorities, and informal sectors. These differences, as observed in the last two chapters, have been worldwide reflected among raw-material producers against countries whose economies are based on the development of technologically processed products.

This subject has been widely discussed in the United Nations, which at first issued the Universal Declaration of Human Rights -the first mandatory international instrument on the subject- and later, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. The latter, called second generation, represent the ability of individuals to effectively exercise first generation human rights. From this perspective, there is no hierarchy in human rights because in practice the right to life or liberty would not be guaranteed if real conditions were not guaranteed simultaneously to ensure that these rights can be exercised. As discussed in the first chapter, the problem is that while civil and political rights imply the non-interference of the state, the latter mean provision; as a result, the problem is that nobody knows who should protect these rights; above all, nobody knows who should support them economically.

As mentioned previously, a big part of the UN activities deals with this issue: the agenda of the Economic and Social Council and its committees, it aims to solve economic

differences between the members of the organization to ensure better living conditions for all of them. However, there are no solutions to this problem up to now. The governments of the 21<sup>st</sup> Century Socialism, studied in the last chapters of this thesis, support their speech, ideology, and actions based on this issue. You cannot speak of equal opportunities if all people do not have the same living conditions. The right to development includes the protection of the right to health, education, work, and property. By assuming that it is the obligation of the states to ensure these conditions, not all states are in the same position at the moment of defending the rights of their people. In international affairs, the solution would be to create a more balanced international system where all states are in the same political and economic conditions.

The end of the Cold War, involved -temporarily- the supremacy of the United States and its ideology. Thus, as shown in this paper, the concepts of economy, democracy, and human rights society suggested by the United States were accepted as the only truth. International organizations like the UN, the World Bank, the IMF, and the OAS enacted these truths, strengthening the unipolar world system, and thus, the overall U.S. hegemony.

However, some frictions began to appear soon. In human rights terms this is reflected in two aspects: on one hand the previously mentioned differences in the conditions of states to guarantee human rights at an internal level, supported by their levels of economic development and consequently its political importance in the international order; on the other hand, cultural differences which argue that the difference in value systems do not allow the creation of an international system controlled by dominant ideologies, nor the unification of human rights. According to this second school of thought -called moral relativism- each culture should establish, based on their own values, the rights to be protected. This issue was often dealt with throughout this thesis; for instance, the fourth chapter mentions that those who advocate the creation of new organizations aiming the protection of human rights argue that when the law, taken as a universal principle, wants to analyze a specific case within a state, it often happens that the political, cultural, and social context of the country is not considered. It is true that each culture is unique and it should protect its value system to ensure that they will not get lost in a cultural

unification as a result of globalization; however, from my point of view, there are some basic rules that cannot be violated in the name of relativism moral or the political context. This is supported by the fact that the political context is not but a mere circumstance, something temporary which will change over time. The application method may vary in order to achieve a certain goal, but fundamental rights on behalf of a political moment or a cultural value cannot be given up at all, especially if the country which defends moral relativism is a member of the United Nations and therefore has ratified the Universal Declaration of Human Rights in the exercise of its sovereignty.

As a result of these reviews, a multipolar world similar to that outlined by Huntington in “Clash of Civilizations” emerges, where not only states are part of the international scene, but they share the limelight with new players in the global order. Among these emerging actors we find international and supranational organizations, NGOs, companies, and transnational corporations, a more informed civil society with higher levels of participation through social media networks. On the other hand, we also have common problems that require joint actions to find solutions, such as global warming, human trafficking, drug trafficking, terrorism, hunger and malnutrition, poor health and education systems, among others.

Accordingly, the formation of blocks by countries is natural, and -contrary to what Huntington pointed out- even desirable. Although the supporters of the clash of civilizations may argue that a multipolar order with regional organizations grounded in their value systems has actually been formed, in my opinion, integration movements are not backed up by cultural values but by similar conditions and problems of the countries which support such models of development. However, in fact, they often end up using these international forums as a platform to promote their interests and ideals to confront countries or organizations politically and economically stronger in order to be a counter-hegemonic power.

In this context, organizations such as UNASUR, ALBA, and CELAC are born in Latin America. However, as discussed throughout the third chapter, these organizations are not strong enough to be active actors in a multipolar world. Excessive formation of regional integration organizations in Latin America is due to different factors, often

contradictory. All these factors were analyzed in the second and third chapters of this thesis; however, it is worth to make a quick analysis of them: first, their faith in integration and international cooperation; second, their mutual distrust and their inability to cede sovereignty in favor of a larger project, plus the need of a regional leadership competition. This was aggravated by trade competition due to the similarities of their markets and productive infrastructures and the emergence of caudillism and the excessive weight of the political discourse given to regional organizations.

As explained above, in a multipolar world, states are frequently losing leadership and power in favor of emerging players. In this scenario, a state which -because of its location conditions, its technological, economic, or military power- is at a disadvantage against a stronger state -in one or all of these aspects- and it also loses power in favor of new players, it only has two options: either to admit it is weak and lose its ability to act in the international scene, or to interact with countries that are in the same condition. As seen in the last three chapters of this thesis, this perspective has always been present in Latin America, and has been reborn vigorously in the late twentieth century with the 21<sup>st</sup> Century Bolivarianism.

In contrast to this factor, we have to mention the historical distrust between Latin American countries. Such distrust is not restricted to the countries of the region, but to any external interference in their territories. This meant the need to prioritize regional interests over national ones. As a result, economic, territorial, or politically stronger countries have tried to take advantage of each integration process, without actually supporting them. Venezuela's Chavez deserves special attention in this topic because he was often interested in achieving effective regional integration by supporting all types of initiatives. His methods to make integration go ahead included a strong political, diplomatic, commercial, and cooperative management. However, to paraphrase Lord Palmerston, Venezuela had no permanent friends, it only had permanent interests. Despite his strong commitment to integration, it is clear that President Chavez, like Brazil, Mexico, or the U.S. itself, pretended to create a political platform which would enable him achieve his objectives in the regional and international scenes.

At that time, the integrationist aspirations of Chavismo progressed well, but they were quickly decelerated by the factors discussed above, and they also faced their biggest challenge after the loss of the regional leader who always supported them. The death of President Chávez clearly reflects one of the biggest challenges for regional policy, both internally and externally: overcoming caudillismo and its consequent excessive concentration of power in a single leader. Additionally, there is a need to support regional integration by means of more stable long-term factors, such as the search for common interests or shared solutions to common problems; however, this integration should not be mainly based on a political discourse that will last as long as the governments of each country last. Within these areas, for instance, the social debt in Latin America could be the main force for regional integration to overcome this historically old problem.

Finally, I would like to end these conclusions in the same way I started working on this paper, but this time I have to make an observation that could be taken as a warning. The recognition of human rights is a result of key moments in history and socio-political vindications; therefore, they are susceptible to defend the interests of political or economic groups. As a result, sometimes what is pursued is not the protection of human rights per se, or their recognition, but only hidden political interests behind the human rights discourse.

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