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Conditions for Effective Regional Social (Health) Policies:  
The EU and UNASUR Compared



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## **Abstract**

This paper discusses the conditions that are necessary for effective regional social protection policies. Following a presentation of theoretical considerations, it empirally juxtaposes two regional organisations. These include one that is at an embryonic stage of gestation in the South (the Union of South American States or UNASUR), and another that is more advanced (the European Union or the EU). It considers three generic conditions necessary for determining the role of regional organisations in the realm of social policy. These include willingness, acceptance and capacity. To better assess these conditions, it focuses on regional health policies in the EU and UNASUR. The entities in question are selected because they are the most significant regional organisations, both in terms of membership and size, to have an express desire and an ambitious mandate to foster regional health policies. The chapter ends with a discussion of the promise of further research on regional health norms and policies. It argues that stronger social protections are needed at the regional level in tough economic times, as those likely to suffer the most are those who are the least connected to the root causes of the problems.

## Introduction: Regional Social Policy as a Double Edged Sword

It is difficult to elaborate on the development of social policies without alluding to the vital role played by the International Labour Organisation (ILO) in developing the idea of a Social Protection Floor.<sup>1</sup> The ILO has also been at the forefront in articulating a sharper role for regional organisations in the area of social policies. Its commitment to highlight the need for regional integration to be anchored around social policies as tools with which to attenuate the negative effects of economic globalisation burgeoned especially from 2004. In the course of that year the ILO issued a commissioned report that considered the various ways in which regional integration could be used to cushion citizens against the debilitating impacts of economic globalisation. It made clear that it was useful “to build on efforts by regional groupings to promote social cohesion and solidarity among their members.”<sup>2</sup> The document explored some of the merits and benefits of regional social policies including better resilience to outside economic pressures; stronger political weight notably for smaller countries; enhanced regional capacities and better links to the global economy.<sup>3</sup> It was noted in the report that for regional integration to amply be a means through which the adverse effects of globalisation could be diluted, it needed to include socially oriented goals including health disciplines. This social dimension was premised on three bases, to wit, democratic accountability that also comes with participation, monitoring and resource mobilisation. The expectation of the report drafters was that regional institutions would then serve as the generators of a viable dialogue on social policies including health amongst relevant actors. Of crucial importance for the success of such endeavours is political buy-in from member states.<sup>4</sup>

Beyond a rehearsal of what regional entities are doing in response to social needs, a broader debate is initiated in this paper as to the use of regional social policies in times of economic hardship. On the one hand, it is arguable that even though regional entities are engaging in some piecemeal and cosmetic social measures, they ought to not to be doing so. There are several lines of thinking behind such beliefs. Firstly, it is argued that regional entities, such as the EU, add distortions to labour markets and render innovation capabilities hard to achieve within state structures. What is more, it is contended that such policies dampen the zeal for competition, leading people to vote with their feet by relocating in order to avoid blind standardisation and one size-fits all approaches. Given the extent of variation within regions, including within the EU (eg, core-periphery; North-South), it is hard to have or hope for a single standard. Secondly, the approaches of regional entities in periods of crisis hamper the adoption of bold actions necessitated by the very urgency of the situation itself. On such occasions, urgent and speedy steps are needed. However, when nested in regional bureaucracies, fast actions are simply stifled. The processes and procedures within the EU, in its responses to the economic and euro zone crises, are corroborative in this respect. States like those in the EU have actually lost the ability to act promptly on many issues, including social issues, because of boilerplate commitments and expectations shaped in Brussels. These protracted bureaucratic responses do not pass muster in times of crises when urgent actions are needed. On the other hand, individual states are better equipped to act promptly and

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<sup>1</sup> For more on the Social Protection Floor (SPF) see Bob Deacon, *Global Social Policy in the Making: The Foundations of the Social Protection Floor* (Bristol: Policy Press, 2013), at 9, noting that elements of the SPF were first used by ILO officials in 2000 as “social floor of global economy” and “global social floor.”

<sup>2</sup> World Commission on the Social Dimension of Globalisation (WCSDG) Report, *A fair globalisation: Creating opportunities for all* (Geneva: International Labour Organisation, 2004), at 7.

<sup>3</sup> WCSDG Report, *A fair globalisation*, at 71.

<sup>4</sup> WCSDG Report, *A fair globalisation*, at 72-73.

rapidly during such periods. Thus, social policies pushed at the regional level during such times will only serve to slow states' responses that are, intuitively better suited to the concerns of the proverbial "man on the street." Thirdly, what actually matters in times of crises are your own citizens as opposed to adherence to regional fantasies in the form of regional social policies. During such dire economic realities, governments need to dwell on their core; that is to say their own populations. Primary responsibility is owed to national constituencies, and not to some distant socialist orthodoxies crafted in regional bureaucracies. Fourthly, what is key during a crisis period is to look at the core or the root of the problem (for instance, slow growth and persistent unemployment). There has been an exaggerated emphasis on side shows, such as distributing welfare and social security benefits through increasingly regional standards, forgetting that the pie to be distributed has actually been shrinking at an alarming rate. You cannot give what you do not have, so the argument goes.<sup>5</sup> *Nemo dat quot non habet*. If you lack distributive goods, the focus should be on bolstering competitiveness through higher levels of production and innovation. As such, it is arguable that regional entities like the EU and UNASUR should dwell more on economic policy and economic growth, with clear strategies. For instance, by promoting a more conducive environment for business, where productivity can be promoted. With such an approach, people would be less reliant on social cushioning; the sustainability of which cannot be guaranteed in the long term. This is especially so, when the ageing population in developed countries is considered.<sup>6</sup> Beyond the ageing conundrum, however, is the even more salient issue of maintaining the generous welfare systems across European countries. Most of the welfare and health systems in Europe were developed in the 1960s and 1970s, when life expectancy hovered around 60-70 years. This has now increased to around 80-90 years. As many citizens are living better and longer, serious questions must be raised as to the cost of sustaining a system whose extant realities are overwhelming the structures initially put in place to accommodate it. Fifthly, there exists the constant problem of multiplicity of regional organisations, especially in places like Africa and increasingly in South America. Such multiplicity of regional organisations simply enhances the potential for conflicting commitments.

On the other hand, there are also cogent arguments submitted as to why it is, in fact, during difficult economic periods that stronger social policies are needed at the regional level, not only to spur growth but also to reduce the debilitating effects of gross inequalities. Arguments in favour of stronger policies at the regional level include the contention that regional organisations like the EU have an important role in providing better social safety nets in times of crisis. Indeed it can be reasoned that the need becomes particularly pressing when other levels of governance, especially the national and global levels, have failed. Regional entities such as the EU are can be seen as adept at implementing real measures that work. Such measures are distinct from global platitudes that promise much, yet deliver little. What is more, within regions such as the EU, specific practices can be developed that are innovative and can be shared across other regional entities. This is very useful in terms of learning. Secondly, regional organisations, such as the EU, easily embrace change, and tend to engender an element of innovation in terms of management style. Also, regional approaches that are

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<sup>5</sup> Donald G. McNeil Jr., "Global War on Aids Unravelling," *International Herald Tribune* (11 May 2010), at 2 (reporting that the global recessions is making donor countries to tighten their belts and give less. Even Obama administration has frozen the money given for fighting the disease in developing countries).

<sup>6</sup> Project Europe Reflection Group, *Project Europe 2030: Challenges and Opportunities – A Report to the European Council by the Reflection Group on the Future of the EU 2030* (Brussels, May 2010), at 3-5.

coordinated tend to be cheaper, avoiding needless duplication. A good example in this regard is the effort made regionally to engage in joint procurement of expensive pharmaceutical products.<sup>7</sup> This is vital, especially as many brand drug companies tend to be more aggressive in protecting their patent rights as many patent terms are gradually expunged.<sup>8</sup> Thirdly, on a practical note, regional social policies such as the EU's have been vital in terms of providing protections for vulnerable groups and sub-state regions. Regarding regional social policy at the EU level, there are many benefits, particularly for women. Social and cohesion funds have further helped to decrease the gaps between the most and least affluent of the states and sub-state regions. Fourthly, complex issues such as labour markets can only be settled at the regional level (that is, in terms of social protections). What is more, regional organisations also help in terms of information flows within the region, respecting availability of opportunities. As such, through different regional approaches learning is rendered possible and actually proven to be useful. Fifthly, the processes accompanying globalisation have had numerous deleterious effects on many countries, especially landlocked and small (island) states. Regional organisations can have a positive role in reducing the problem of poverty and inequality through solidarity pools. Finally, those who advocate stronger regional measures contend that growth can best be achieved when actions and resources are pulled and pooled at the regional level. When different voices are included, policies will tend to be more effective.

The EU and UNASUR are selected because they are two quasi-continental bodies with the most ambitious mandates and plans in the area of regional health policy, which constitutes the kernel of subsequent analysis. It is true that where one is born still determines life expectancy<sup>9</sup> and the two regions present marked contrasts. In a sense, these contrasts actually justify comparison. Having considered the double-sided nature of regional social policy, especially in the context of crises, the chapter proceeds by mapping the contours of the conditions for promoting regional social policy. These pertain to willingness, acceptance and capacity. This is followed by an examination of the nature of social policy promotion in a specific regional social policy area: health. The subsequent part is an empirical assessment of the degree to which the EU<sup>10</sup> and UNASUR<sup>11</sup> respond to the conditions discussed in part two. It is revealed from a systematic collation that on specific sub-determinants, effectiveness of health policy tends to be more patent in the

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<sup>7</sup> This is so mindful that households in the South spend a healthy part of their budgets on medicines: A Cameron, M Ewen, D Ross-Degnan, D Ball and R Laing, "Medicine Prices, Availability and Affordability in 36 Developing and Middle Income Countries: A Secondary Analysis," 373 *The Lancet* (2009), at pp. 240-249, at 240; Josef Decosas, "HIV Prevention and Treatment in South Africa: Affordable and Desirable," 361 *The Lancet* (April 2003), at p. 1146.

<sup>8</sup> R. Parthasarathy and Heinz Goddar, "Patentability of Pharmaceutical Products in India – The Novartis Case," 40(1) *International Review of Intellectual Property and Competition Law (IIC)* (2009), pp. 38-45; Economist, "Friends for life," *The Economist* (8 August 2009), at 51; Andrew Jack, "Swine flu is 'national emergency' in US," *Financial Times* (26 October 2009), at 9; The Economist, "Something Rotten," *The Economist* (8 August 2009), at 10. Cf. Anita Greil, "Genentech takeover hit Roche profit," *The Wall Street Journal* (4 February 2010), at 24 (noting that although the pharma industry is going through some hard times, the industry remains very profitable with Roche registering profits of 7.37 billion dollars in 2009 even after buying Genentech).

<sup>9</sup> Lawrence Gostin, The Unconscionable Health Gap: A Global Plan for Justice, 375 *The Lancet* (1 May 2010) at p. 1504-5.

<sup>10</sup> Members include: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

<sup>11</sup> Members are Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Surinam, Uruguay and Venezuela.

EU. This generates a wrapping up appraisal of the future patterns for the promotion of regional health norms and policies.

## Conditions for Effective Regional Social Policy

The use of specific conditions and variables as benchmarks to assess policy variance is not new. In EU studies, many authors have sought to gauge the activities of the Union through specific determinants defined to examine the performance of the Union. In recent years, others have mapped out criteria to determine the quality of the actions of regional entities in the realm of security governance. This has been the case of Kirchner and Dominguez, who use the scheme of prevention, coercion, assurance and compellence.<sup>12</sup> For her part, Bradford develops conditions for the percolation of norms, or what she dubs 'unilateral regulatory globalisation' from the EU's perspective. These conditions include market power, regulatory capacity, preference for strict rules, predisposition to regulate inelastic targets, and non-divisibility of standards.<sup>13</sup> In the specific area of health policy, Musungu develops benchmarks to gauge access to affordable healthcare.<sup>14</sup> Kingah and Van Langenhove use the concepts of willingness, acceptance and capacity in their discussions on the determinants of a regional organisation's role in the realm of security.<sup>15</sup> For the first time, this framework of analysis that focuses on these three concepts is extended to the arena of regional social policy.

### Willingness

For regional social policies have the desired effect, certain factors are considered necessary. The first is the need for existing rules and policies that may be encapsulated in regional treaties, protocols, resolutions, declarations or guidelines. However, such norms are dead letters if they are not activated and used. This is where committed and visionary political leadership is vital. These two factors are now addressed in greater depth.

Each and every regional organisation is different, and organisations develop their own initiatives and tools that are tailored to respond to specific needs and challenges. But what underlies the effectiveness of such tools and mechanisms is that they be undergirded by very robust rules and policies. These can be in the form of formal, strict black-letter norms that are binding and are accompanied by clear sanctions in the event of non-compliance. But there are also instances where looser norms or soft law is used through declarations, resolutions or even guidelines that are deployed as indicative or persuasive instruments. Whatever the nature of these, it is vital that the rules and policies are clear, coherent and consistently applied. The importance of clarity cannot be overemphasized. Drafters of such norms duly discharge their tasks when the norms are crafted in language that is not too heavy but which seeks to address challenges in a manner that deals with complex problems in simple, rather than simplistic, ways.

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<sup>12</sup> Emil J. Kirchner and Roberto Dominguez, "Regional organisations and security governance," in *The Security Governance of Regional Organisations* (Emil J. Kirchner and Roberto Dominguez eds., Routledge Abingdon, 2011), 1-23.

<sup>13</sup> Anu Bradford, "The Brussels effect," 107(1) *Northwestern University Law Review* (2012), 1-67, at 10-19.

<sup>14</sup> Sisule F. Musungu, "Benchmarking Progress in Tackling the Challenges of Intellectual Property, and Access to Medicines in Developing Countries," 84(5) *Bulletin of the World Health Organisation* (2006), at pp. 366-370.

<sup>15</sup> S Kingah and L Van Langenhove, "Determinants of a regional organisation's role in peace and security: Comparing the African Union and the European Union," 19(2) *South African Journal of International Affairs* (August 2012), 197-218.

Coherence is also salient. It is a matter of the need for synchrony in the goals that are sought. Efforts to attain decent health levels should not be pursued to the detriment of sterling environmental standards or consumer protection norms. So it is imperative that multiple experts from various departments are consulted when regional social policies and rules are being negotiated. Trade, finance, technology, environmental and even security experts need to provide their inputs, especially from the various national and regional departments. Social policies cannot be developed in isolation. Consistent application demands that there is the willingness to avert discrimination in the application of the standards. This means that like cases are treated accordingly, in a consistent manner. In other words, this entails a strong sense of the rule of law in implementing the disciplines that have been negotiated and accepted at the regional level by the leaders.

The nature of social policy is inherently local and municipal. It is an area with very strong national resonance. Even within given nations, attempts to federalise such policies are often met with firm resistance. This is understandable, mindful that social policies on matters such as health, employment conditions, education, research, consumer protection, and even the environment are aspects whose effects are felt daily at the local levels. As such, an effort to extend such matters to the regional level may verge on effrontery. That is why it takes bold leadership to have a trans-frontier vision in terms of social policies. While it is true that social issues are best handled at the national and even local levels, it is also true that there are certain challenges for which cross border responses, as a resolution, are imperative. Good examples include health pandemics and environmental changes; the effects of which do not discriminate between boundaries. For there to be effective regional social policies in such instances, it is vital that there are visionary leaders who are ready to see the "big picture" and to know that insular and parochial approaches to such challenges will simply not work. The recent challenges faced by the EU's southern members as a result of the influx of migrants are not issues easily addressed by a single country. Leaders need to cooperate and approach the problem as a regional and shared one. Sequestered and isolated actions in the face of such problems only lead to disproportionate debilitating effects in the long run. Visionary leaders that have a regional appreciation of such problems are invaluable for policy effectiveness in this respect. But visionary leadership cannot be limited to national leaders. It also refers to leaders at the regional institutions and in the local governments that are poised and able to define common problems duly. Yet visions can only go so far. Leaders need to be willing to be committed to regional disciplines once these are negotiated and accepted at the regional level.

### **Acceptance**

Even if there is the will to act in terms of norms and visionary leadership in engineering regional social policies, this will not happen if structures are not in place to internalize such regional standards. That is why it is useful to imbue a sense of legitimacy or credibility to the social policy promotion process. This is epitomized by the concept of acceptance. The condition of acceptance is crucial because in its absence, it will be difficult to invoke the possibility of an effective regional social policy. Factors that are vital in terms of acceptance include openness to learn, awareness by a broad spectrum of citizens, the degree of compliance with regional disciplines as crafted, and the propensity for engagement of the regional entity in interactions with global or international socially-relevant institutions.

At the heart of an effective social policy is the openness and willingness of national and local focal points and officials to learn. National focal points need to be the responsibility of persons who are keen and open to embrace the disciplines that are agreed at the regional level. The effectiveness of the regional mechanisms can only be as good as the national focal points that are put in place to ensure the incorporation or the acceptance of the relevant norms and policies. But this is not a one-way street. Regional institutions and those working within them require open minds to receive and interpret those best practices that are worth sharing. This creates an important feedback loop in a useful policy cycle.

It makes no sense to craft regional norms and even have strong focal points at the national levels if these cannot reach the targets that really matter, i.e., citizens. That is why one of the conditions for an effective social policy is necessarily the presence of vital channels that can reach the highest number of citizens, with insights on how their social conditions could be ameliorated. In doing so, it is possible to rely on parliaments, civil society organisations (CSOs), trade unions and above all, epistemic and local communities, as well as the media. If sufficiently representative, parliaments are important in transmitting the concerns of people to executing organs. Conversely, they also transmit information from the instances of governance to the citizens or to their constituents. This applies to national parliaments but also (increasingly) to regional parliamentary assemblies such as the European Parliament. CSOs can relate to social/grassroots organisations and faith-based organisations that play a vital role in the realm of social policies such as health and education. They also include professional groups such as associations of nurses, doctors or teachers. Importantly, CSOs pertain to community and local groups as well as to charities that work directly with the population in assuaging social concerns. Trade unions tend to be insular by definition. However, given their dynamic and active approaches to social issues, they can play a useful role as conveyor belts for the concerns of citizens. Epistemic communities equally have a role in realising effective social policies. Such communities are composed of experts, be they independent or affiliated to think tanks, universities and research institutes. Epistemic communities do not only provide a sense of normalcy or buy-in to topics that are often controversial, but they also help to identify nuances, ambiguities and palliatives to social matters that tend to be complex.<sup>16</sup> In certain local communities, the role of traditional leaders and elders cannot be overstated. More often than not in parts of Africa and the Americas, citizens have to deal with community and traditional leaders as the first port of call. In countries where such leadership is institutionalized, as in Botswana and South Africa, members serve as ample conveyor belts of social concerns both to and from citizens. Finally, the awareness of citizens is shaped for the most part by what emanates from the media. That is why a effective and mature media is vital to probe and to ensure transparency in terms of how social policy is dealt with and promoted. In fact, the media plays the most pertinent and patent of roles to ensure that social policy is promoted.

Compliance by national authorities with regional social rules and policies is a key aspect of social policy effectiveness. It does not only entail that countries sign up to regional treaties and protocols that relate to social aspects. It also demands the existence of robust implementation and monitoring mechanisms that are put in place at the national and regional levels to ensure that regional social policies are truly being promoted and

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<sup>16</sup> Bhaven N. Sampat, "Ensuring Policy and Laws are Both Effective and Just: Academic Patents and Access to Medicines in Developing Countries," 99/1 *American Journal of Public Health* (2009), at pp. 9-16. Cf: Duff Wilson, "Medical Ethics Dispute at Harvard," *International Herald Tribune* 15 (4 March 2009).

implemented. But these have to be complemented by sanctions and rewards for laggards and for good performers. Implementation and monitoring of regional norms cannot only be discharged by regional institutions. They also have to be the preserve of national authorities that are tasked with oversight of social policy at the national and municipal levels. This factor directly impinges on the condition of capacity. This comes down to the fact that, despite the existence of visionary leadership and citizens that are willing to embrace regional social policies, implementation will not happen without the core capacity to realize such regional aspirations through compliance.

The effectiveness of regional social policy can also resonate beyond a given region, in terms of effects or buy-in that can be felt in other regional entities or at the international level within international organisations. A good example in this respect is the influence that the EU has in terms of negotiations within the World Health Organisation (WHO), the World Trade Organisation (WTO) and the UN System as a whole. Another decent example of the EU's positive influence that is appreciated is its use of special prizes in developing countries to promote social causes.<sup>17</sup> In certain respects it seeks to promote the model of its integration in other regions as moniker for the "good life."<sup>18</sup> But the role played by the EU in insisting that developing countries sign up to Free Trade Agreements (FTAs) with TRIPS+ provisions<sup>19</sup> is an example of the negative effects that can be brought to bear on regional social policy by the actions of specific international actors.<sup>20</sup> UNASUR as a block is now taken seriously in negotiations within the WHO and within the WTO. In certain instances whereby international bodies have attracted severe strictures for their performance on specific social (health)<sup>21</sup> challenges, it is expected that regional entities could play a more proactive role.

## Capacity

The capacity of a regional organisation for developing, promoting and implementing effective regional social policy cannot be built on fresh air. This requires investments in specific factors. Such factors include the presence of ably-staffed institutional focal points at the national level. These focal points, often housed in social affairs-related ministerial departments can serve as relay points for regional social policy. Furthermore, robust regional institutions are also important in this respect. Finally, money is needed in shoring up social infrastructure as well as training skilled workers who are crucial to ensure policy effectiveness.

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<sup>17</sup> Kian Ganz, "The lawyer who fought the 377 law and won: Anand Grover," *Legally India* (17 August 2009).

<sup>18</sup> Charlotte Bretherton and John Vogler, *The European Union as a Global Actor* (2<sup>nd</sup> edn., Abingdon, Routledge, 2008), at 223.

<sup>19</sup> TRIPS stands for the WTO Agreement on Trade Related Aspects of Intellectual Property.

<sup>20</sup> Duncan Matthews, "TRIPS flexibilities and access to medicines in developing countries: the problem with technical assistance and free trade agreements," 11 *European Intellectual Property Review* (2005), 420-427, at 420; Sisule F. Musungu, "The TRIPS Agreement and Public Health," in *Intellectual Property and International Trade: The TRIPS Agreement* (Carlos M. Correa and Abdulqawi A. Yusuf eds., 2<sup>nd</sup> edn., New York: Kluwer Law International, 2008), 421-469. For a more detailed discussion on these issues see: Daniel De Beer, *Accès aux médicaments: fin du droit?* (Brussels: VUB PhD Thesis, 2008); Holger Hestermeyer, *Human Rights and the WTO: The Case of Patents and Access to Medicines* (Oxford: OUP, 2008), at 289; Jed Odermatt, "Investigating New Models of Pharmaceutical Innovation to Protect the Human Right to Health," 40(2) *International Review of Intellectual Property and Competition Law* (2009), pp. 173-181, at 177.

<sup>21</sup> Paul Benkimoun and Agathe Duparc, "L'OMS est-elle encore credible?" *Le Monde* (30 April 2010), at 4 ; Nathan Ford and Jean-Michel Piédagnel, "WHO Must Continue its Work on Access to Medicines in Developing Countries," 361 *The Lancet* (2003), at p. 3.

Any allusion to the effectiveness of regional social policy is futile if it cannot be nested within national focal points or units at the national level within ministries and departments that are duly attributed with the task of implementing regional social norms and policies. This may entail the creation of national entities that are filled by well-trained staff poised to serve as conveyor belts of ideas received from the regional entities for direct or adapted adoption at the national level. Useful regional rules and policies may be crafted at the regional level, but these remain only cosmetic relics of futility if they are not understood and transposed into standards that are relevant at the national and local levels.

The second element of capacity pertains to the need and importance of regional institutions that are robust. Sterling regional bodies are needed to ensure coordination and compliance. Such institutions are effective when they are led by skilled individuals who are experienced in the social policy field and who also enjoy unalloyed support from political authorities. Strong regional institutions are best placed to have a cross-sectional canvas of all regional approaches adopted by various states within a given region. This allows such bodies to serve as critical junctions in the circulation of ideas and best practices that have been tested and that work. The most important component in terms of regional institutions is that of good and transparent management, for instance, using effective feedback tools such as scorecards to name and shame laggards. This aspect is quintessential for the success or failure of regional social policy. Those who lead regional institutions need to also have a vision of the entities they run and not only see the outfits as sources of sinecures. This is crucial, and necessitates a system or arrangement where skilled regional staff can be hired from the best and brightest and not solely from the well-connected candidates. Organisations need cultures wherein institutional memory can be preserved. That is why management practices, such as the use of temporary and highly provisional staff may have adverse unintended consequences for regional entities.

Robust regional institutions and leaders can perform well when they are also provided the resources to discharge tasks assigned them in terms of regional social policy effectiveness. Social policies are expensive. Amenities such as decent hospitals and schools take time and money to build. But they also have to be manned by skilled teachers and medical personnel. All of these require money. That is why money is a critical factor for regional social policy diffusion. This is exactly where specific countries within the region prove their mettle as regional leaders or minnows. In the EU context, Germany has been a major contributor to the European project that has a strong social component. Germany is not only keen that the funds are used to sustain the system but it is also mindful to push its own model of socio-economic management which it hopes will be embraced in the EU and beyond. To better understand the importance of regional social policy effectiveness and how relevant it can be, we now turn to the nature of health policy effectiveness.

## The Nature of Health Policy Effectiveness

Effectiveness relates to the power to obtain and generate those results hoped for. In the law of international organisations, it refers more to the realisation of the objectives of the organisation.<sup>22</sup> The plain interpretation of effectiveness of policies may be regarded as the proclivity for policies to produce results that are desired. This is a function of two vital and related factors; namely, the power of rules or policies to produce desired ends, and the feasibility that the power is dependent on the likelihood that its adherents or (in the present instance) member states are able to access, assess and adhere to the policy or norms demands. Canons of effectiveness require that rules and policies should orientate the actions of addressees in a manner hoped for by the architect of the given policy or the maker of a specific rule. In other words, a rule or a policy is only qualified as effective if it is used by its proponent as a tool with which actions can be shaped.<sup>23</sup> As such, it can be asserted that effectiveness is the test of a rule or a policy's factual validity,<sup>24</sup> that is, if validity is construed to entail pull to performance. Effectiveness equally requires that rules and policies be realisable.<sup>25</sup> In this respect even if they are generic, they need to be formulated so as to be implemented.

Policy effectiveness was equally the core content of the Paris Declaration of 2005 that articulated the need for aid to be used in more effective ways. The demands of the Paris Declaration were later renewed in 2008 when international development partners met in Ghana and issued the Accra Agenda for Action, still with the goal of making development policy and aid more effective.

Effectiveness has a rich international genealogy, especially in the realm of development policy. It would be grossly partial to discuss policy effectiveness without alluding to the efforts made at the level of the United Nations from 2000 onward to outline clear development goals that are known as Millennium Development Goals (MDGs). The goals include the eradication of extreme poverty and hunger; attainment of universal primary education; empowerment of women and promotion of gender equality; reduction of child mortality; improvement of mental health; combating aids, malaria and other diseases; ensuring environmental sustainability; and building a global partnership for development. One of the major threads running through all of the goals is arguably decent health care. The fourth, fifth and sixth goals directly allude to health, but the others are also related to health, albeit indirectly. These goals have targets and indicators that allow for a determination of performance and effectiveness of the policies adopted by various governments in realising them.

Until the elaboration of the MDGs and the growth of strong social movements around the world, health policy did not receive the important attention it deserves in foreign policy analysis. This is changing because many policy makers are fast coming to the realisation that health is indeed a vital component of an interdependent world and cannot be

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<sup>22</sup> Mohammed Bedjaoui, "On the Efficacy of International Organisations: Some Variations on an Inexhaustible Theme ...," in: *Towards More Effective Supervision by International Organisations: Essays in Honour of Henry G. Schermers*, Vol I, (Niels Blokker and Sam Muller eds., Dordrecht: Martinus Nijhoff Publishers, 1994), 7-27, at 8.

<sup>23</sup> Cf., Francois Ost and Michel van de Kerchove, *De la pyramide au reseau? pour une theorie dialectique du droit* (Brussels: Faculté Universitaires Saint Louis, 2002), at 329.

<sup>24</sup> Ost and Van de Kerchove, *De la pyramide au reseau?* at 328.

<sup>25</sup> Lon Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964), at 39.

delinked from foreign policy.<sup>26</sup> It is also surprising due to the fact that globalisation has only accentuated the speed at which health challenges are multiplying.<sup>27</sup> Given the nature of health challenges and the need to nest these within core foreign policy analysis, it is arguable that the effectiveness of regional health policy is a field whose time has come.

## Comparing Effectiveness in Regional Health Policy in the EU and UNASUR

As a common market that was initially forged to be an economic community to trade coal and steel, it is apposite to assert that the European Union has made prodigious progress in integrating its members. It is not only the most successful economic integration project in the world, but has gradually built on its prior successes to enhance cooperation in various aspects, including foreign and security policy and increasingly in the field of social policy. Aspects of the Union's social policy, such as health policy, are subject to a specific form of cooperation known as the open method of coordination whereby the Union and Member States share competences in discharging the mandate, and are not wed to strict substantive disciplines. The Union is underlain by very strong precepts and principles, such as the rule of law and human rights. Human rights are a salient dimension of the Union's social *acquis* and its approach to social rights, including access to decent healthcare,<sup>28</sup> cannot be understood without a keen appreciation of the importance attributed human rights within the Union in its Charter of Fundamental Rights. While the EU has an economy that is anchored on neo-liberal foundations, it also has a cherished social system rooted in robust precepts of social democracy. That is why it provides a confluence whereby models of economic liberalism meet social welfare, and through which the provision of health care is approached as a right to which everyone is entitled. It is this unique marriage of ideas and praxes that led commentators such as Rifkin<sup>29</sup> and Judt<sup>30</sup> to extol the promise of the EU, with its robust social moorings. But these voices have not been able to cloud those of skeptics who question the sustainability of the European social and economic model.<sup>31</sup> The social model in particular is targeted for strictures; with a fast ageing population cohort, there are serious concerns about the durability of the European welfare state. Within the EU, critical health challenges that

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<sup>26</sup> Margaret Chan, Jonas Store and Bernard Kouchner, "Foreign policy and global public health: working together towards common goals," 86(7) *Bulletin of the World Health Organisation* (July 2008), at 498; David P Fidler and Nick Drager, "Health and foreign policy," 84(9) *Bulletin of the World Health Organisation* (September 2006), at 687.

<sup>27</sup> Sébastien Guigner, "The EU and the health dimension of globalisation: Playing the World Health Organisation card," in: *The European Union and the Social Dimension of Globalisation: How the EU Influences the World* (Abingdon, Routledge, 2009), at 131-147, at 131.

<sup>28</sup> Cf: Scott Burris, Rita Lazzarini and Bebe Loff, "Are Human Rights Good for Your Health," 358 *The Lancet* (December 2001), at p. 1901.

<sup>29</sup> Jeremy Rifkin, *The European Dream: How Europe's Vision of the Future is Quietly Eclipsing the American Dream* (New York: Putnam, 2004).

<sup>30</sup> Tony Judt, "Future of Decadent Europe," US-Europe Analysis Series, Brookings Institution (February 2006): stating that "Europe today is a compromise caught somewhere between the lessons of memory and the distractions of prosperity, between prophylactic social provisions and the attraction of maximising profit. Like all such compromises, it is deeply contradictory and flawed. But of all the models that are on offer in the world today, it is the one most likely to be well-equipped to face the coming century."

<sup>31</sup> Niall Ferguson, "The end of the euro: How the crisis in Greece could lead to the demise of Europe's most ambitious project," *Newsweek* (17 May 2010), at 25-27; Robert J. Samuelson, "Depression 2010? The crisis in Greece is starting to revive eerie memories of the 1930s," *Newsweek* (17 May 2010); Richard Youngs, *Europe's Decline and Fall: The Struggle against global irrelevance* (London: Profile, 2010), at 153: evoking "precipitous collapse."

could place health systems under strain include non-communicable diseases, cancers, mental health and increasingly, bio-terrorism.

Unlike the EU, that draws its roots from the Treaty of Rome of 1957, UNASUR is relatively young and hopes to be a political assemblage of the Andean Community (CAN) and the Common Market of the South (MERCOSUR), alongside Chile, Guyana and Surinam. It was forged in 2008 out of the remnants of the South American Community (SAC) that was created in 2004 in Cuzco, on the initiative of former Brazilian President Lula.<sup>32</sup> It is not surprising that UNASUR is widely regarded as a tool engineered by Brazil to challenge the US in the Western Hemisphere and also to gradually replace the Organisation of American States.<sup>33</sup> In its interactions with the South, the rich world correctly focuses on aids,<sup>34</sup> tuberculosis and malaria<sup>35</sup> but there are also other neglected tropical diseases causing great havoc in the South, including in UNASUR countries. Home to over one billion people, the nations of UNASUR are affected by a multitude of ailments, including roundworm (ascariasis), whipworm (trichuriasis), hookworm, schistosomiasis, lymphatic filariasis (elephantiasis), onchocerciasis and trachoma.<sup>36</sup> Leaders of UNASUR signalled their deep concern to address these problems by encoding public health as a key plank of UNASUR's treaty framework.

In contrast with the situation in the EU, the human development levels, population size and threats faced in UNASUR in terms of health are very different. In addition, the membership composition in both entities is quite dissimilar. Within UNASUR, there are countries that lean clearly toward liberal economic precepts, even if they preach anti-liberal orthodoxies. These include Brazil and Colombia. But there are other states within the fold, like Bolivia and Venezuela, that are keen to adopt more revisionist policies. In spite of these differences and the differentials in resource constriction as between countries of the EU and UNASUR, a common feature between both entities is their aspiration to enhance cooperation in the area of health. The paragraphs below use the conditions mapped out in part two and apply the same to the specific sector of health in the two regional organisations.

## Willingness

In terms of existing rules and policies, Art. 9 of the Treaty of Lisbon or the Treaty on the Founding of the European Union (TFEU)<sup>37</sup> states, amongst others, that one of the goals of

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<sup>32</sup> Andrés Malamud, A leader without followers ? The growing divergence between the regional and global performance of Brazilian foreign policy, 53(3) *Latin American Politics and Society* (2011), 1-24, at 6.

<sup>33</sup> Christopher Sabatini, Rethinking Latin America : Foreign policy is more than development, *Foreign Affairs* (March/ April 2012), 8-13, at 12.

<sup>34</sup> S Van der Borght, V Janssens, MF Schim van der Loeff, A Kajemba, H Rijckborst, JMA Lange and TF Rinke de Wit, The Accelerating Access Initiative: Experience with a multinational Workplace Programme in Africa, 87 *Bulletin of the World Health Organisation* (2009), pp. 794-798; Peng Jiang, "Fighting the Aids Epidemic: China's Options Under the WTO TRIPS Agreement," 13 *Albany Law Journal of Science and Technology* (2003), 223-248, at 224.

<sup>35</sup> Catherine Vincent, « Dernière ligne droite pour un vaccin antipaludisme, » *Le Monde* (27 mars 2010), at 4 ; Josh Ruxin, Joan E. Paluzzi, Paul A. Wilson, Yesim Tozan, Margaret Kruk, Awash Teklehaimanot, "Emerging Consensus in HIV/AIDS, Malaria, Tuberculosis and Access to Essential Medicines," 365 *The Lancet* (2005), at pp. 618-621.

<sup>36</sup> Peter Jay Hotez, "A plan to defeat neglected tropical diseases," *Scientific American* (January 2010), 90-94, at 90-91.

<sup>37</sup> For analysis of the external fallout of the TFEU see Anthony Luzzatto Gardner and Stuart E. Eizenstat, New treaty, new influence? Europe's chance to punch its weight, 89(2) *Foreign Affairs* (March/ April 2010), 104-119,

the Union shall be to ensure access to decent health services. This article undergirds a myriad of policy papers in which the EU has chiseled the importance of health policy as a shared competence between it and Member States. The full article reads:

In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.

Specifically, Art. 168 of the TFEU is a separate title (XVI) that deals exclusively with public health. It makes clear that a high level of human health protection shall be ensured in all Union activities. This is a clear holistic approach that aims to guarantee the reflection of public health concerns in other policy areas. It further highlights aspects that will be pursued, such as mental health challenges. Resources, it notes, will be summoned to provide responses to health challenges through educational and research programmes. Prevention is also regarded as a key plank of the response strategy to health challenges. It is clearly stipulated that priority will be accorded to early warning and combatting serious cross-border threats to health. Art 168(2) reserves a critical coordination role for the EU Commission in terms of health policy.<sup>38</sup> While the EU institutions such as the Parliament, Commission, Council and Committee of the Regions are all accorded important roles in health policy,<sup>39</sup> the main attributes rest with Member States.<sup>40</sup> These treaty provisions are actually a sequel to more detailed policy statements adopted by the EU in the realm of health. In 2006 the Council adopted a statement on common values and principles in EU health systems. This effort continued in 2007 as the Council also embraced a health strategy white paper known as *Together for Health* that has been operational since 2008. In UNASUR, the Constitutive Treaty describes universal access to social security and health services as one of its specific goals in its Art. 3(j). This is important, and it is not by chance that the drafters merged social security and health within the same provision. The real question, however, is not that of existing rules and policies in this case. These exist in both regions. However, there are stark differences in terms of provision of services. In South America, levels of inequality are amongst the highest in the world, with a crass marginalisation of indigenous communities in many countries.<sup>41</sup> But from a strict legal perspective, one can argue that the drafters of UNASUR's treaty tend to be more ambitious in their promise of a blanket universal access to health services. Increasingly, every country and region will also have to grapple with health challenges that are engendered by new developments, such as the impact of climate change.<sup>42</sup> Such problems, distinctively, have a regional resonance and single nations will not be able to deal with them. To have treaty provisions that address these will be important but inadequate. That is why bold political leadership will be salient in addressing common future challenges.

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at 118 (noting that with the adoption of the TFEU there is now no excuses for institutional paralysis and the EU needs to look now beyond itself to see how it can help better solve international problems).

<sup>38</sup> Article 168, Consolidated Version of the Treaty on the Functioning of the European Union, OJ EU, 30.03.2010, C 83/47.

<sup>39</sup> Article 168(5), TFEU.

<sup>40</sup> Article 168(7), TFEU.

<sup>41</sup> Carlos M. Vilas, *Turning to the left? Understanding some unexpected events in Latin America*, 9 *Whitehead Journal of Diplomacy and International Relations* (2008), at 115-128, at 118.

<sup>42</sup> Lindsay F. Wiley and Lawrence O. Gostin, "The International Response to Climate Change: An Agenda for Global Health," 302(11) *Journal of American Medical Association* (September 2009), 1218-1220.

On visionary leadership, there has been a committed effort by top officials from the EU Commission to ensure that there is a single health space within the Union. Important strides have been made in this respect, both in words and deeds. Even if buy-in from some of the capitals remains weak, there is a strong commitment from certain political circles to ensure a single health space in Europe whereby insurance benefits would be easily transferrable and where patients can forum shop from amongst the most cost-effective pools of health service provision. This approach is aided by the successes already registered in terms of free movement of factors of production within the EU. In South America, there has been a strong tendency in the past for states to look inward, despite rhetoric celebrating the benefits of integration.<sup>43</sup> In recent years, and until his death, President Chavez of Venezuela sought to rally South America toward a more revisionist path. But leaning on UNASUR, former President Lula of Brazil demonstrated astute leadership in rallying South America to confront common challenges in spite of diverging ideological proclivities.<sup>44</sup> They have also walked the talk by creating important regional outfits to oversee the implementation of a region-wide health policy. This is an important first step, with countries such as Brazil clearly in the lead. The activism in Brazil on this issue cannot be disconnected from its constitutional norms. Art. 196 of the Brazilian Constitution states that health care is the right of all citizens and the duty of the state to ensure that it is respected.<sup>45</sup> Under Federal Laws 8080/90 and 8142/90, the state has an obligation to provide medicines to all those who are in need. This has had an important effect on Brazil's commitment and vision in terms of better regional health norms and policy. The challenge for any regional entity on such issues is the commonplace disconnection between the wishes of political authorities and realisable actions. It is one thing to have political ambitions in terms of a common health space. But actually delivering it within a context of very different health systems facing varied realities and challenges is a difficult task.

## Acceptance

The openness to learn is vital for regional health policy effectiveness. It means the propensity of actors to receive and incorporate the views received either from the regional institutions or from the various national focal points. This can be facilitated by exchanges of personnel, as well as the organisation of periodic professional workshops or seminars that are meant as conduits through which best practices can be shared. Within the EU there are important lines and channels of communication that exist between the regional entity and the various national authorities. This means that buy-in of policy ideas tends to be a leitmotif in many policy processes. This often operates through consultation and impact assessments, for which the EU Commission is well known. There are also important lines of exchange between the Commission and the various national health departments. During recent scares concerning H1N1 virus and the identification of strands of horse meat in wrongly-labelled processed food products, there was a constant effort by the Commission to liaise with all the national health agencies of the countries that were most concerned, including Germany, the Netherlands and Romania. In

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<sup>43</sup> Jason Pierce, "A South American Energy Treaty: How the Region might attract foreign investment in the wake of resource nationalism," 44 *Cornell International Law Journal* (2011), 417-440., at 418.

<sup>44</sup> Frank Braun, Brazil exercises the option to say 'no', 15(2) *Brown Journal of World Affairs* (Spring/ Summer 2009), 239-245, at 239.

<sup>45</sup> Brazil, "Access to Medicines and Intellectual Property in Brazil: A Civil Society Experience, in Ford Foundation and ABIA," in *Intellectual Property Rights and Access to ARV Medicines: Civil Society Resistance in the Global South: Brazil, Colombia, China, India and Thailand* (Brazilian Interdisciplinary AIDS Association/ ABIA: Rio de Janeiro, 2009), pp 12-54, at 17.

UNASUR, there is also a strong effort made to create and sustain such channels of information. Within the region the Health Council plays an important role, more so because of the strong inter-governmental nature of the organisation. The secretariat in Quito is still a young entity and there are no indications that it might exert a stronger influence on its members in future. However, through bodies such as the Health Council and the South American Institute of Health Governance (ISAGS), there have been important efforts made to share and exchange best practices in health within the region. In both entities, efforts at more effective health policies are being fostered, even if the intergovernmental nature of governance within UNASUR tends to increase leg time for policy impact. With new modes of communication technology being developed, it is expected that interactions between actors in the health sector at the regional level will expand and be broadened for both regional organisations.

For health policies to be successful, there must be buy-in from citizens.<sup>46</sup> Citizens across many countries tend to be inward looking in terms of various activities taking place in neighboring nations in the social fields. This proclivity for insularity and for sticking with the familiar can be mitigated by greater engagement of the publics in various countries. Parliaments, CSOs, trade unions, epistemic/ local communities and the media have a vital role to play. In the EU, both national parliaments and the European Parliament play an important role in terms of health policy. Parliaments have taken the executives to task on utility of specific health initiatives. They have also been able to question the executives as to specific actions taken or acts of omission. CSOs are very active in the EU, and through their advocacy activities they help to inform, clarify and question certain health related actions that are adopted at the EU level. Entities such as Health Action International (HAI) and *Médicins Sans Frontiers* are examples of such groups. Trade unions and epistemic communities equally play a role in shaping and diffusing health policy to their members. The role of the media cannot be over-emphasized. It is through media and press outlets such as *Euro News* and *European Voice* that important pieces of information are disseminated to the public, thereby ensuring ample impact. The role of the media is now being complemented for the greater part by the strong influence of social media. Through Facebook, Twitter, Google+ and even LinkedIn, as well as various blogs, individuals now have the capacity to challenge and spread the word on regional health policy. In UNASUR, national parliaments are also active, but the regional parliamentary body in La Paz has yet to find its feet. CSOs, including faith based organisations, in this region are gaining momentum in the realm of health. Such groups have played an important role in influencing the actions of governments, who in turn have jointly influenced WTO and WHO discussions in terms of access to medicines; especially of neglected diseases and for the benefit of neglected populations. Brazilian CSOs like the AIDS Prevention Support Group (GAPA) in São Paulo and the Brazilian Interdisciplinary AIDS Association (ABIA) in Rio de Janeiro have been important actors.<sup>47</sup> Trade unions, epistemic and local communities have also gained traction in making their voices heard on health matters, thereby helping to scrutinize regional health initiatives. So too has the media played an important role in the region, highlighting the dangers of diseases such as dengue and Chagas. Health is actually one of the rare areas that could

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<sup>46</sup> Nicholas D. Kristof, "Winning the worm war," *International Herald Tribune* (2 May 2010), at 7.

<sup>47</sup> Brazil, "Access to Medicines and Intellectual Property in Brazil: A Civil Society Experience, in Ford Foundation and ABIA," in *Intellectual Property Rights and Access to ARV Medicines: Civil Society Resistance in the Global South: Brazil, Colombia, China, India and Thailand* (Brazilian Interdisciplinary AIDS Association/ ABIA: Rio de Janeiro, 2009), pp 12-54, at 17.

help activate a sharper sense of citizenship rights in South America.<sup>48</sup> In both regions there are ample mechanisms to ensure that citizens are aware of regional health policies on the one hand, and on the other hand that they can also be in a position to question such policies.

In terms of compliance with regional disciplines, health policy in the EU is embedded in the open method of coordination. This means that states have the competence and mandate to deal with health challenges in ways that they judge fit. As such, compliance with regional norms greatly varies from one state to the next. However the EU Commission plays an important role in ensuring that even for the minimal standards adopted, states are up to speed in fulfilling their health obligations and that regional norms are adhered to. This approach is adopted by the Commission with the realisation that within a regional entity of free movement of factors, such factors also move with health problems and that the solutions to these also have to be trans-boundary.<sup>49</sup> In UNASUR, regional norms are adopted by leaders and ministers. The ministers, through the Health Council or the Council for Social Development, have the duty to implement the standards adopted. The decision-making mode within UNASUR is still very loose, partly because it builds on regional entities that were already in place. The entity is firmly inter-governmental and nations remain entrenched in their national approaches to common challenges.

Do the regional entities project their model and approaches to other regions and do they seek to influence international institutions? Mindful of the fact that certain international organisations can themselves be weak in monitoring states,<sup>50</sup> regional entities have a key role in this regard in the realm of health. Through the Commission, the EU has been keen to highlight the benefits of its model and approaches to other regional entities. One of the ways it has done this has been through its regional indicative support programmes for specific regions of the South. These policies are often encapsulated in specific regional strategy papers. It also has considerable influence within international institutions that are relevant in terms of health policy. It is member in the WTO, observer in the UN and also participates in the WHO as an observer. It extended special assistance to the WHO in its efforts to address the avian<sup>51</sup> and swine flu viruses.<sup>52</sup> On vital issues such as access to medicines, the Union used its position to influence the final outcomes in terms of the Doha Declaration on TRIPS of 2001<sup>53</sup> and the subsequent TRIPS related decision and amendment of 2003 and 2005 that created conditions for greater access to medicines for

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<sup>48</sup> Pia Riggiozzi, "Regional Health Governance in South America: Redefining regionalism and regional responsibilities," Doctoral School Lecture, Quito, August 2012, at 28.

<sup>49</sup> Jeffrey Sachs, "Health is a key to development," *The ACP-EU Courier* (March/April 2002), at 3: noting that pathogens need no passport.

<sup>50</sup> Lawrence Gostin, "Fighting the Flu with one hand tied," *The Washington Post* (1 May 2009).

<sup>51</sup> Commission Staff Working Document on Support to Third Countries to Fight the Influenza (H1N1) Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, SEC(2009) 1192 final, Brussels, 15 September 2009, at 2.

<sup>52</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Pandemic (H1N1) 2009, COM (2009) 418 final, Brussels, 15 September 2009, at 9.

<sup>53</sup> For a less upbeat take on the impact of the Doha Declaration: Peter Rott, "The Doha Declaration – good news for public health?" 3 *Intellectual Property Quarterly* (2003), 284-311, at 285. Cf. Markus Nolf, "Compulsory Patent Licensing in View of the WTO Ministerial Conference Declaration on the TRIPs Agreement and Public Health," 84 *Journal of the Patent and Trademark Office Society* (2002), pp. 134-147, at 135.

patients in poorer countries.<sup>54</sup> But the EU has also come under scrutiny for its links with and sterling support to the pharmaceutical sector in an effort to make developing countries and regions adhere to tougher intellectual property disciplines.<sup>55</sup> For its part, UNASUR has not so much influenced other regions as it has used health diplomacy in a strategic manner in its engagement with international institutions such as the WTO and the WHO. Health diplomacy has become an important aspect of UNASUR, and certain leaders in countries such as Brazil and Bolivia take this very seriously. UNASUR members have not only sought to influence debates within international organisations on issues of access to medicines,<sup>56</sup> but they have been keen to highlight the importance of neglected diseases and neglected populations that are common within the region of Latin America.<sup>57</sup> Former President Lula of Brazil notably adopted a strong position in defence of the interests of poorer nations on these issues.<sup>58</sup> Within South America, Argentina, Brazil and Peru were amongst the developing countries that resisted the inclusion of TRIPS in the Uruguay Round negotiations.<sup>59</sup> Regional health policy regimes can actually help strengthen weaker international ones. Gostin and Taylor argue that global health law has a number of structural inadequacies and inherent problems. These include vague standards, ineffective monitoring, weak enforcement and what they call a “statist” approach that fails to adequately collate or draw together the diverse inputs of various actors.<sup>60</sup> The contention here is that ample regional norms and policies can help to remedy this structural flaw, thereby enhancing the acceptance of regional health policies.

## Capacity

The ability to deliver on regional health policy is directly related to the capacity of the national health units to embrace and integrate regional health standards into the national systems. That is why it is vital that national focal points are designated to serve as

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<sup>54</sup> For a more critical view on the utility of these measures see Rochelle Cooper Dreyfuss, TRIPS Round II – Should Users Strike Back? 71 *University of Chicago Law Review* (2004), 21-35, at 29 (questioning the rationale and benefits of TRIPS for users). See also Gemma O’Farrell, “One Small Step or One Giant Leap Towards Access to Medicines for All,” 6 *European Intellectual Property Review* 211-215 (2008), at 2012 (noting the cumbersome nature of the system created by the decision and amendment); Ruth L. Okediji, “Securing Intellectual Property Objectives: New Approaches to Human Rights Considerations,” in *Casting the Net Wider: Human Rights, Development and New Duty-Bearers* (Margot E. Salomon, Arne Tostensen and Wouter Vandenhoele eds., Antwerp: Intersentia, 2007), pp. 211-242, at 213 (discussing the inadequacy of the Doha Declaration as a diffusion mechanism for the benefit of those in need). See especially Joseph E. Stiglitz, *Making Globalisation Work* (London: Penguin, 2006) (stating that: “As they signed TRIPS, the trade ministers were so pleased they had finally reached an agreement that they didn’t notice they were signing a death warrant for thousands of people in the poorest countries of the world”).

<sup>55</sup> Richard D. Smith, Carlos Correa and Cecilia Oh, “Trade, TRIPS and Pharmaceuticals,” 373 *The Lancet* (2009), at pp. 681-691, at 687.

<sup>56</sup> Bridges, “Participants satisfied with progress in WHO talks on bolstering medical innovation,” 11 (39) *Bridges Weekly Trade News Digest* (14 November 2007); Bridges, “TRIPS Council once again marked by divisions over disclosure amendment,” 12(10) *Bridges Weekly Trade News Digest* (19 March 2008).

<sup>57</sup> Neglected diseases and populations are those that attract the least proportions of R&D money: Sebastian Mallaby, “Medicine for the poor: A patently simple idea,” *Foreign Policy* (May/June 2007), at 37; Sarah Boseley, “Tests start on pill that could lengthen millions of lives,” *The Guardian* (29 September 2008), at 10; David W. Opderbeck, “Patents, Access to Medicines and the Innovative Game,” 58(2) *Vanderbilt Law Review* (2005), pp. 501-554, at 502-503.

<sup>58</sup> BBC, “Brazil to break aids drug patent,” *BBC News* (2007).

<sup>59</sup> Ellen F.M. ‘t Hoen, *The Global Politics of Pharmaceutical Monopoly Power: Drug Patents, Access, Innovations and the Application of the WTO Doha Declaration on TRIPs and Public Health* (Diemen: AMB, 2009), at 10.

<sup>60</sup> Lawrence O. Gostin and Allyn L. Taylor, “Global Health Law: A Definition and Grand Challenges,” 1(1) *Public Health Ethics* (2008), pp. 53-63, at 61.

conveyor belts in terms of implementing the common health standards as agreed to at the regional level. The health policy of a region tends to be a reflection of the combination of responses to the national health realities. So if the national health units are weak, it is unrealistic to expect that the regional entity will diverge from such problems. In the EU, the national ministries and various health agencies play an important role in implementing the policies and standards that are adopted by the EU institutions. Health units across Western Europe are advanced and given the welfare state traditions of most of the countries, a large part of national budgets is dedicated to health services in these countries. The administration of health is also well developed and embedded. This means that the transmission of regional standards into national norms tends to be quicker than in UNASUR, where issues of personnel and infrastructure challenges are still common, in spite of the strides made in recent years in countries such as Argentina, Brazil and Colombia to address shortfalls in health infrastructure.

Within the EU, there are important health institutions. Besides SANCO or Directorate General for Health and Consumers in the Commission that oversees health policies, there are also specific agencies such as the European Medicines Agency (EMA) that plays an important role in sanctioning regional health-related policies. Also important at the EU level are the EU Public Health Executive Agency (PHEA) and the Observatory for Health Systems (OHS). It is noteworthy that even if regional bodies are strong, their efforts can often be frustrated due to the fact that health is a shared competence where Member States still have dominant leverage. This is not facilitated by the fact that various states have different health systems and respond differently to various aspects of health challenges.<sup>61</sup> In UNASUR, the Health Council is the key driver of regional health policy. But there is also ISAGS that is a leading regional intergovernmental outfit active in developing ideas and coordinating efforts of national health institutes.

The EU dedicates a part of its budget to health issues. This is different for UNASUR. These disparities are also reflected in the ratios of skilled health personnel to patients. It is hard to sell regional health standards if the upstream resources are not evident in terms of health personnel and health infrastructure.<sup>62</sup> In the EU, the budget for the Commission for 2012 was 147 billion Euros. Of this amount, 0.1 percent is geared toward improving the health sector. As a percentage, this is marginal but it is significant given that health actions at the regional level are specifically complementary. Since 2008, and for the multiannual plans of the Union, 321 million Euros has been directed toward common regional health projects. But money for health related projects is also sourced through other budget lines, including R&D, as well as environmental allocations. In terms of personnel, the EU also has a stronger base. For instance, DG SANCO alone has 738 administrative and assisting staff members. This dwarfs the figures for UNASUR, with only a handful of personnel in its entire secretariat. Concretely, in terms of skilled health personnel, the differences are also significant. For instance, according to data from the WHO and the Kaiser Family Foundation (KFF), for 2012, doctor/ patient ratio in the EU stood at 3.2/1000. The figure for nurses was 12.5/1000. As is the case in most

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<sup>61</sup> See Bill Batchelor, Patent Attack – The EC Sector Inquiry’s Interim Findings, 5 *European Intellectual Property Review* 212-215 (2009), at 212.

<sup>62</sup> Bebe Loff and Mark Heywood, Patents on Drugs: Manufacturing Scarcity or Advancing Health? 30 *Journal of Law, Medicines and Ethics* (2002), at 621-631, at 628.

developing countries where shortages in health personnel are acute,<sup>63</sup> UNASUR countries are also grappling with this challenge. Regional average ratios currently hover at around 1.5/1000.

**Table comparing effectiveness in regional health policy in the EU and UNASUR**

<b>Conditions</b>	<i>EU</i>	<i>UNASUR</i>
<i>Willingness</i>		
1. Existing rules/policies	Arts. 9; 168 TFEU	Art 3(j)
2. Visionary/ committed political leadership	Latent	Patent
<i>Acceptance</i>		
3. Openness to learn	Patent	Latent
4. Awareness of the citizens	Patent	Patent
5. Compliance with regional disciplines	Patent	Latent
6. International engagement (influence)	Patent	Patent
<i>Capacity</i>		
7. Presence of institutional focal points	Patent	Latent
8. Robust regional institutions	SANCO, EMA OHS, PHEA	Health Council, ISAGS
9. Money for health infrastructure/ personnel	Patent	Latent

**Conclusion**

Regional social policy can be considered a double-edged sword. In times of economic turbulence, the temptation can be to scale back such policies. Yet it is exactly in such contexts when the opportunities to broaden the social protection base for the benefits of such policies and measures have to be seized.<sup>64</sup> It is during such periods that social infrastructure has to be fortified, because in many instances, those who bear the brunt are the most despondent. They are also those who, for the most part, did not cause the crises and economic turmoil in the first place. Regional social policy cannot be crafted in isolation from industrial policy or trade policy. That is why a holistic approach is very important. What this chapter has done is to map out some of the contours of the conditions that account for the effectiveness of regional social policy. It did this by focusing on a specific policy field: health; and in given regional blocks: the EU and UNASUR. Health is a vital area and no country can single handedly grapple with specific kinds of health problems nations are facing, including transmissible viruses.<sup>65</sup> Collective actions, especially at the regional level, are salient. The conditions of diffusion treated include willingness, acceptance and capacity of the regional entities studied. These are

<sup>63</sup> Kathryn Senior, Wanted: 2.4 Million Nurses, and That’s Just in India, 87 *Bulletin of the World Health Organisation* (2009); WHO Regional Office for Africa, Health-for-all Policy for the 21<sup>st</sup> Century in the African Region: Agenda 2020, AFR/RC50/8REV.1 (2002).  
<sup>64</sup> Jason Tockman, The rise of the pink tide: Trade integration and economic crisis in Latin America, 10 *Georgetown Journal of International Affairs* (Summer/Fall, 2009), 31-39, at 31.  
<sup>65</sup> Richard Smith, Health and Development: Toward a Matrix Approach – Book Review, 87 *Bulletin of the World Health Organisation* (2009); Nsongurua J. Udombana, The Right to Health and the MDGs: Confronting HIV/AIDS in Africa, in *Casting the Net Wider: Human Rights, Development and New Duty-Bearers*, 353-370 (Margot E. Salomon, Arne Tostensen and Wouter Vandenhoele eds., Antwerp: Intersentia, 2007), at 365.

further analyzed under nine sub-conditions. Availability is not accessibility.<sup>66</sup> That is why constant efforts at the regional level are crucial to ensure that those most in need are not neglected. Given the specificities of the health threats facing the EU and UNASUR, it is revealed that both entities have made ample progress in the area of regional health policy even if the performance of UNASUR appears weaker mindful of its inchoate nature.

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<sup>66</sup> Holger Hestermeyer, *Human Rights and the WTO: The Case of Patents and Access to Medicines* (Oxford: OUP, 2008), at 9.

