

## DEMOCRACY IN THE AMERICAS

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In 2005, over one billion people voted in national elections throughout the world ranging from El Salvador, Panama, and the Dominican Republic to Palestine and Germany. In 2006, elections took place in twelve Latin American countries alone. Democratic elections at the global level have become increasingly the rule rather than the exception—a far cry from a couple of decades ago.

Why is democracy more prevalent now than in the past? First, with the spread of globalization, it is virtually impossible today to keep massive human rights violations a secret or recognize a dictatorship free of scrutiny and pressure. The globalization of news media means that people around the globe learn quickly when a human rights tragedy is occurring.<sup>1</sup> In addition, globalization has empowered an emerging global civil society and a network of active NGOs. In the words of Richard Falk, globalization has created new opportunities to challenge the State “from above and below.”<sup>2</sup> The United States administration’s idea that democracy in the Middle East or in hostile nations is the best insurance against terrorism gave democracy a renewed saliency in the global agenda, even though 9/11 had the initial effect of giving so-called “hard security” threats like terrorism precedence over “soft security” challenges like democracy and human rights.

Second, the end of the Cold War opened a great opportunity to promote the rule of law and democracy without the suspicions or obstacles of the past. During the East-West conflict, the external promotion of democracy was

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1. The Internet in particular has made it possible to gather and disseminate information quickly, especially for NGOs. See, e.g., Human Rights Watch: News Releases, <http://hrw.org/doc/?t=news>.

2. Richard Falk, *Interpreting the Interaction of Global Markets and Human Rights*, in GLOBALIZATION AND HUMAN RIGHTS 61 (Alison Brysk, ed., 2002).

viewed as a motive for “hidden agendas,” rather than the actual pursuit of the rule of law; containment of communism was replaced by the “enlargement” of a community of democracies. Furthermore, the post-cold war was marked by the United Nations Security Council’s willingness to address transborder conflicts with domestic roots, such as democracy-related crises or humanitarian conflicts that were avoided in the past under a narrow interpretation of the principle of non-intervention in sovereign affairs.<sup>3</sup> Finally, the Security Council took on humanitarian crises by creating international criminal tribunals for the former Yugoslavia<sup>4</sup> and Rwanda<sup>5</sup> in 1993 and 1994 respectively. This trend continued with the agreement on the establishment of a Special Court for Sierra Leone, concluded in 2002 between the U.N. and the Government of Sierra Leone, to prosecute persons bearing the most responsibilities for serious violations of international humanitarian law and domestic law committed in that country.<sup>6</sup>

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3. The restoration of the democratically-elected government in Haiti in 1994 is a case in point. In Resolution 940, the U.N. Security Council reaffirmed that “the goal of the international community remains the restoration of democracy in Haiti and the prompt return of the legitimately elected President, Jean-Bertrand Aristide” and authorized a multinational force under unified command and control to restore the legitimately elected President. S. C. Res. 940, ¶ 8, U.N. DOC.S/RES/940 (July 31, 1994).

4. “The International Criminal Tribunal for the former Yugoslavia (ICTY) was established by Security Council resolution 827. This resolution was passed on 25 May 1993 in the face of the serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, and as a response to the threat to international peace and security posed by those serious violations.” International Criminal Tribunal for the Former Yugoslavia, ICTY at a Glance, General Information, <http://www.un.org/icty/glance/index.htm>.

5. “Recognizing that serious violations of humanitarian law were committed in Rwanda, and acting under Chapter VII of the United Nations Charter, the Security Council created the International Criminal Tribunal for Rwanda (ICTR) by resolution 955 of 8 November 1994.” Int’l Crim. Tribunal for Rwanda General Information, <http://69.94.11.53/ENGLISH/geninfo/index.htm> (last visited Apr. 19, 2007).

6. After the president of Sierra Leone wrote to Kofi Annan:

asking the international community to try those responsible for crimes committed during the country's violent conflict. . . . the UN Security Council adopted Resolution 1315 on 14 August 2000 requesting that the UN Secretary General start negotiations to create the Special Court. On 16 January 2002, an agreement establishing the Court was signed between the Government of Sierra Leone and the United Nations.

The Special Court for Sierra Leone, Basic Facts Pamphlet, <http://www.sc-sl.org/basicfacts/pamphlet.pdf>. “It is mandated to try those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.” About the Special Court for Sierra Leone, <http://www.sc-sl.org/about.html>.

## THE RIGHT TO DEMOCRACY IN THE AMERICAS

I have postulated that the Organization of American States (“OAS”) “Santiago Commitment to Democracy” declaration,<sup>7</sup> and Resolution 1080<sup>8</sup> gave rise to a new norm of international law of the Americas: the right to democracy;<sup>9</sup> that is, the formal recognition that democracy can and should be defended through collective, peaceful action, including through sanctions. The right to democracy was incorporated into the democratic clauses of the Mercosur economic bloc in the 90’s,<sup>10</sup> but was formalized in the OAS Inter-American Democratic Charter, approved in Lima on September 11, 2001.<sup>11</sup> Article 1, reads: These advances made by the OAS allowed for the transformation of democracy from a moral or rhetorical prescription into an international legal obligation backed by action.

The challenge is how to extend the idea of democracy as a legal obligation worldwide. The good news is that initiatives such as a concert of democratic Parliaments at the world level<sup>12</sup> have emerged while, in parallel, the U.N. reform process begun in 2005 with the Outcome Document of the Summit of Heads of State and Government<sup>13</sup> produced several democracy enhancing-reforms.

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7. Organization of American States, Declaration of Santiago on Democracy and Public Trust: A New Commitment to Good Government in the Americas, at 4-5 available at [http://www.oas.org/xxiiiga/english/docs/agdoc4224\\_03rev3.pdf](http://www.oas.org/xxiiiga/english/docs/agdoc4224_03rev3.pdf).

8. Organization of American States, *Representative Democracy*, AG/RES. 1080 (XXI-O/91), available at <http://www.oas.org/juridico/english/agres1080.htm>.

9. On the “right to democracy” see Heraldo Muñoz *Collective Action for Democracy in the Americas*, in HERALDO MUÑOZ AND JOSEPH TULCHIN, *LATIN AMERICAN NATIONS IN WORLD POLITICS* 17-34 (Westview Press 1996).

10. In “response to the political crisis in Paraguay in 1996 when, faced with the threat of a military takeover of Paraguay’s government, the four Mercosur presidents met and approved the ‘democratic clause,’ establishing respect for democratic institutions as a required condition for membership in Mercosur.” Stephen P. Sorensen, *Open Regionalism or Old-Fashioned Protectionism? A Look at the Performance of MERCOSUR’s Auto Industry*, 30 U. MIAMI INTER-AM. L. REV. 371, 377 (1999).

11. Organization of American States, Inter-American Democratic Charter, Art. 1, Sept. 11, 2001, [http://www.oas.org/charter/docs/resolution1\\_en\\_p4.htm](http://www.oas.org/charter/docs/resolution1_en_p4.htm). “The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.” *Id.*

12. See, e.g., the Inter-Parliamentary Union (IPU), <http://www.ipu.org/English/home.htm>, and the e-Parliament, <http://www.e-parl.net>; see also in this volume Robert C. Johansen, *The E-Parliament: Global Governance to Serve the Human Interest*, 13 WIDENER L. REV. 319 (2007) (discussing the e-Parliament project to link national parliamentarians by way of the Internet).

13. 2005 World Summit Outcome, G.A. Res. At 1 ¶ 1, UN. GAOR, 16th Sessl, 8th plen. Mtg., U.N. DOC. A/RES/60/1 (Oct. 24, 2005). <http://daccessdds.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf>.

First, the U.N. Human Rights Council<sup>14</sup> was established to replace the sixty-year-old Commission on Human Rights that had become discredited because of its politization. Second, a Democracy Fund was created by U.N. Secretary General, Kofi Annan, to promote democracy-enhancing projects throughout the world.<sup>15</sup> Third, and most importantly, the 2005 Summit Outcome Document endorsed the concept of “responsibility to protect,” so as to guard populations from “genocide, war crimes, ethnic cleansing and crimes against humanity.”<sup>16</sup> This responsibility lies first and foremost with each individual State; but, in case of failure or unwillingness to act, such responsibility should be exercised by the Security Council.<sup>17</sup> Thus, the responsibility to protect concept has entered the realm of international law and could be understood as an international obligation.

Another example of action on behalf of democracy is the Community of Democracies launched in Warsaw, Poland in June 2000.<sup>18</sup> For the first time, a global gathering of more than one hundred governments committed to democracy came together to develop and pursue a common agenda. This gathering of diverse States adheres to a core set of democratic principles and supports cooperation among democracy worldwide<sup>19</sup> through “good governance.”<sup>20</sup> Good governance, as defined by the Seoul Plan of Action, entails three elements: to promote the rule of law, to alleviate poverty and to promote economic growth, and to “build[ ] and sustain[ ] a strong political party system and a healthy civil society.”<sup>21</sup> Though not all members of the Community adhere in practice to these democratic standards, the group’s existence is a step in the right direction.

The Third Ministerial Conference of the Community, held in Santiago, Chile, in April 2005, advanced in the creation of four working groups to followup on the democratic commitments made.<sup>22</sup> Also, each regional group

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14. See UN Human Rights Council, <http://www.ohchr.org/english/bodies/hrcouncil/>.

15. See U.N. Foundation: The UN Democracy Fund (2006), [http://www.unfoundation.org/features/un\\_democracy\\_fund.asp](http://www.unfoundation.org/features/un_democracy_fund.asp).

16. 2005 World Summit Outcome, *supra* note 13, at 30, para. 138.

17. *Id.* at para. 139.

18. Final Warsaw Declaration, Toward a Community of Democracies, Ministerial Conference, June 27, 2000, [http://www.demcoalition.org/pdf/warsaw\\_english.pdf](http://www.demcoalition.org/pdf/warsaw_english.pdf).

19. *Id.* at 2-3.

20. Seoul Plan of Action, Democracy: Investing for Peace and Prosperity, Second Ministerial Conference of the Community of Democracies, Nov. 12, 2002, [http://www.demcoalition.org/pdf/SEOUL\\_PLAN\\_OF\\_ACTION.pdf](http://www.demcoalition.org/pdf/SEOUL_PLAN_OF_ACTION.pdf).

21. *Id.* at 3-5.

22. The Community of Democracies, 2005 Santiago Ministerial Commitment *Cooperating for Democracies*, at 11-22, [http://www.demcoalition.org/pdf/santiago\\_commitment.pdf](http://www.demcoalition.org/pdf/santiago_commitment.pdf). The four working groups are: the Working Group on Democratic Governance and Civil Society; the Working Group on Poverty, Development, and Democratic Governance; the Working Group on Regional and Interregional Cooperation for Democratic

of countries of the Community of Democracies determined specific sets of commitments to achieve within their respective geographic areas.<sup>23</sup>

#### THE TROUBLES OF DEMOCRACY IN THE AMERICAS

Despite the fact that almost all of Latin American nations now live under elected civilian governments, democracy is in trouble in the region. The fragility of present-day democracies can be perceived in coup attempts during the last decade against elected civilian presidents in Argentina, Ecuador, Guatemala, Venezuela, and Paraguay. Moreover, the classic military coup has given way to a different phenomenon.

In Peru, democratically-elected President Alberto Fujimori staged a “self-coup” against Congress and the Courts in 1992, after which he pressured for constitutional reform to allow for his reelection. Fujimori was finally forced to seek refuge in Japan after a surge of democratic mobilization led to an interim constitutional government, and later to the democratic election of President Alejandro Toledo, followed by elected President Alan García. In neighboring Ecuador, the Congress, wielding constitutional arguments, removed democratically-elected President Abdallah Bucaram in February 1997; his successor, Jamil Mahuad, did not complete his presidential term in office as he was toppled in January 2000 by a coalition of Indian groups and military officers, ultimately being replaced, constitutionally, by his Vice-President Gustavo Noboa. Afterwards, the elected President, Lucio Gutierrez, was also removed by social mobilizations and replaced by his Vice-President. In December 2001, Argentina’s President Fernando de la Rúa was forced out of office and replaced by four successive presidents leading to democratic normalization in May 2003, when Nestor Kirchner was elected to the highest office. Bolivian President Gonzalo Sanchez de Losada was ousted in October 2003 by a popular revolt, was succeeded constitutionally by his Vice-President, Carlos Mesa, who in turn was replaced by his Vice President, Jorge Quiroga, leading to the 2006 election of Evo Morales, the first Bolivian president of Indian origin.

While it is true that none of the preceding situations wound up in a complete breakdown of democracy and that most saw constitutional rule restored, they unveiled the existence of formidable tensions and weaknesses affecting democratic rule in the region. To name but a few: widespread government and private sector corruption, grave socio-economic inequities, ineffective political institutions, growing crime and violence, shortsighted political leadership, and lack of accountability. At present, the real challenge may be to curtail “illiberal democracies,” as Fareed Zakaria has called those democratically elected governments that ignore constitutional limitations to

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Governance; and the Working Group on Promoting Democracy and Responding to National and Transnational Threats to Democracy. *Id.*

23. *Id.* at 12-15.

their own authority and even act against the basic freedoms and rights of their citizens.<sup>24</sup> “Delegative democracies,” in the words of Guillermo O’Donnell, are certainly better than dictatorial regimes of the past, but they are still “very far from the boring beauty of consolidated democracies.”<sup>25</sup>

Another perilous situation is that of “self complacent democracies”; those too-confident democratic regimes that have experienced longevity and are backed by a strong national tradition of openness and pluralism, but now face stagnation or setbacks in civic commitment and participation, or are not responding adequately to the demands for change. The sharp decline in voter participation in presidential elections in Costa Rica is a case in point.<sup>26</sup>

Poll after poll in Latin America demonstrate that the electorate is disenchanted with politics and politicians. Citizens increasingly prefer to express themselves “directly” on public affairs, circumventing the traditional instruments of political representation such as political parties or even Congress. That growing numbers of citizens, particularly the youth, are apathetic and refuse to participate not only in civic affairs, but also in major elections; people do not trust their Courts, their police, or their parliaments.<sup>27</sup>

Disenchantment with politics in Latin America is aggravated by the perception that the large economic groups and the mass media wield an exaggerated influence.<sup>28</sup> Television coverage is now action-oriented, emphasizing simple and direct messages, thus tending to further devalue political debate. Disenchantment with politics could lead to populism, and populism to democratic reversals.

The problems of democracy in the region were well reflected in the UNDP report *Democracy in Latin America: Towards a Citizens’ Democracy*, issued in April 2004.<sup>29</sup> The report highlighted that just 43% of Latin Americans were fully supportive of democracy, while 30.5% expressed ambivalence and 26.5% held non-democratic views, according to opinion surveys conducted for the report in eighteen countries in the region.<sup>30</sup> More than half of all Latin Americans (54.7%) said they would support an “authoritarian” regime over “democratic” government if authoritarianism could “resolve” their economic problems.<sup>31</sup> It

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24. Fareed Zakaria, *The Rise of Illiberal Democracy*, FOREIGN AFF., Nov./Dec. 1997, at 22.

25. Guillermo O’Donnell, *Delegative Democracy*, 5 J. DEMOC. 55 (1994).

26. Voter turnout hovered around 81% throughout the 1960’s, 70’s, and 80’s, but declined to 70% in 1998 and 60% in 2002. International Institute for Democracy and Electoral Assistance (IDEA), Country View - Costa Rica, [http://www.idea.int/vt/country\\_view.cfm?CountryCode=CR](http://www.idea.int/vt/country_view.cfm?CountryCode=CR).

27. See Heraldo Muñoz, *Toward a regime for advancing Democracy in the Americas*, in JORGE I. DOMÍNGUEZ, THE FUTURE OF INTER-AMERICAN RELATIONS (Routledge, 2000).

28. United Nations Development Program, *Democracy in Latin America*, at 154-56, 159-60, available at <http://democracia.undp.org/Informe/Default.asp?Menu=15&Idioma=2>.

29. *Id.*

30. *Id.* at 134.

31. *Id.* at 131.

is also noteworthy that the first generation of Latin Americans to come of age in functioning democracies has experienced virtually no per capita income growth and, moreover, has witnessed widening, world-record disparities in the distribution of national income.<sup>32</sup> In 2002, 218 million Latin Americans had incomes below the poverty line.<sup>33</sup>

We can take some comfort in the “Latinobarómetro” poll conducted in eighteen countries across the region, published by *The Economist* on December 7, 2006, which showed that 58% of respondents agreed that democracy was the best system of government, up five percentage points from 2005.<sup>34</sup> Such increase in the appreciation for democracy was probably due to economic recovery following the 1998-2002 stagnation period in Latin America.<sup>35</sup> Perhaps part of the problem is that in the Latin American region, we have put excessive emphasis on the “input side” of politics, especially in enhancing elections, political parties, parliaments and civil society, but have neglected the “output side,” including the policy results of democracy itself. In short, democracy must deliver to its citizens in order to endure.

#### STRENGTHENING DEMOCRACY IN THE AMERICAS

There are three international components that should be developed to contribute to strengthening democracy in the region: first, democracy *promotion*; second, *prevention* of democratic breakdowns; and, third, *reaction* against undemocratic actions.

A priority area is the promotion of democratic values and practices. The OAS, its political organs, the Secretary General, along with other international organizations and non-governmental groups, should work together to design programs to assist political parties, parliaments, judicial powers, and government, as well as to promote cooperation in institutional and electoral areas, among others. The Unit for the Promotion of Democracy (“UPD”) of the OAS,<sup>36</sup> and the Democracy Fund at the UN, should continue to explore new roads and new partners that would help democratic culture to take root in our countries. In addition, civic participation in public affairs should be stimulated to re-enchant vast sectors of our societies with the democratic ideal and avoid dictatorial regimes. A strong civil society is an antidote to authoritarianism.

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32. *Id.* at 42-43.

33. *Id.* at 39. This constituted 42.8% of the total population.

34. Latinobarómetro Report 2006 at 72, available at [http://www.latinobarometro.org/uploads/media/Latinobar\\_metro\\_Report\\_2006.pdf](http://www.latinobarometro.org/uploads/media/Latinobar_metro_Report_2006.pdf).

35. See Economic Commission for Latin America and the Caribbean, Executive Summary of Economic Survey of Latin America and the Caribbean, 2003-04, [http://www.eclac.cl/publicaciones/xml/8/15398/lcg2255\\_i\\_ES.pdf](http://www.eclac.cl/publicaciones/xml/8/15398/lcg2255_i_ES.pdf).

36. See Organization of American States [OAS], *Promotion of Representative Democracy*, OAS Doc. No. AG/RES. 1401, XXVI-0/96 (June 7, 1996), <http://www.oas.org/juridico/English/ga-res96-1401.htm>.

A second area for work is the prevention of antidemocratic practices, such as vote manipulation, electoral fraud, or political violence. These are real problems that affect many of our societies and require that organizations such as the OAS or the U.N. provide regular assistance and, in particular, engage in concerted action with non-governmental groups. The crucial contributions of the U.N. Electoral Assistance Department in the October 2004 elections in Afghanistan<sup>37</sup> and the 2005 elections in Iraq<sup>38</sup> are appropriate examples.

In the face of possible institutional ruptures, we should anticipate crises. Therefore, "early-warning mechanisms" might be established. The OAS, according to its rules and resources, could carry out such task.<sup>39</sup> Prevention efforts should be made also when dialogue among key political actors breaks down in countries in transition to democracy. We should promote more ad-hoc efforts at diplomatic mediation. Preventive diplomacy is much better than engaging in preventive war. International support for processes of national reconciliation, dialogue, and the settlement of deeply-rooted conflicts would be an activity of enormous importance for the UPD. Also, encouraging interaction between civilians and the military to reaffirm civil constitutional authority is an important preventive mechanism. The promotion of reconciliation in post-conflict societies is a key challenge, and in this area the newly-created U.N. Peacebuilding Commission<sup>40</sup> could play a significant role.

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37. "The UN Assistance Mission in Afghanistan . . . played a significant role in making sure that the 2004 landmark elections were peaceful and credible, notwithstanding the difficult conditions in the country. . . . The Mission also played a central role in resolving complaints raised by opposition candidates, some of whom had questioned the legitimacy of the election results." The United Nations Peace Operations, Year in Review 2004, Building Peace Through Electoral Support, [http://www.un.org/Depts/dpko/dpko/pub/year\\_review04/ch6.htm](http://www.un.org/Depts/dpko/dpko/pub/year_review04/ch6.htm).

38. "The UN electoral team provided logistical, financial and technical assistance to the Independent Electoral Commission of Iraq, and also coordinated international electoral support. The United Nations is currently assisting [Iraq's parliament] and the Government in establishing a professional and independent permanent electoral commission." U.N. Dep't of Political Affairs, *Working for a Peaceful, Secure, Prosperous Iraq*, <http://www.un.org/Depts/dpa/iraq.html>.

39. See, General Secretariat of the Organization of American States, *Request for Proposal, bid No. 09106, for Development of an Early Warning System for the General Secretariat of the Organization of American States* at 4 (July 20, 2006), available at [http://www.oas.org/OASpage/bid/2006/BID0906\\_02eng.doc](http://www.oas.org/OASpage/bid/2006/BID0906_02eng.doc). ("[T]he OAS Early Warning System would serve to provide information and recommendations to the decision making bodies of the OAS as to the most appropriate level of assistance (local, national, regional), and it would also identify which actors, institutions or structures the political actions should seek to influence.")

40. See United Nations Peacebuilding Commission, <http://www.un.org/peace/peacebuilding/>.

The Peacebuilding Commission will marshal resources at the disposal of the international community to advise and propose integrated strategies for post-conflict recovery, focusing attention on reconstruction, institution-building and sustainable development, in countries emerging from



Lastly, we should continue to improve and fine-tune our reaction in defense of democratic regimes. Declarations and resolutions of the OAS or U.N. bodies are significant, beyond a doubt. Suspension as contemplated in the OAS Washington Protocol is even more important.<sup>41</sup>

The international community has a central role in aiding democracy. But, in the last analysis, democracy in any country depends on its own leaders, political parties, business people, workers, and civil society in general. "Because democracy inherently involves self-determination and autonomy, outside efforts to nurture it must be restrained, respectful, sensitive and patient," as Abraham Lowenthal wrote in his edited volume *Exporting Democracy*.<sup>42</sup> Our efforts should be modest and realistic: to nurture democracy, to address its greatest weaknesses, to enlarge democracy by concentrating on policy outcomes that benefit the human development of the majorities, and to improve the international mechanisms for the promotion of democracy, for the prevention of breakdowns and to timely respond to eventual collapses of democratic rule.

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conflict. The Commission will bring together the UN's broad capacities and experience in conflict prevention, mediation, peacekeeping, respect for human rights, the rule of law, humanitarian assistance, reconstruction and long-term development.

*Id.*

41. Protocol of Amendments to the Charter of the Organization of American States "Protocol of Washington," at Art I., <http://www.oas.org/juridico/english/treaties/a-56.html>.

A Member of the Organization whose democratically constituted government has been overthrown by force may be suspended from the exercise of the right to participate in the sessions of the General Assembly . . . and any other bodies established. [ ] The power to suspend shall be exercised only when such diplomatic initiatives undertaken by the Organization for the purpose of promoting the restoration of representative democracy in the affected Member State have been unsuccessful[.]

*Id.*

42. Abraham Lowenthal, *Learning from History, in* EXPORTING DEMOCRACY: THE UNITED STATES AND LATIN AMERICA 262 (Johns Hopkins Univ. Press, 1991).

