

## STRENGTHENING CORE VALUES IN THE AMERICAS: REGIONAL COMMITMENT TO DEMOCRACY AND THE PROTECTION OF HUMAN RIGHTS

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It is often asserted in discussions like this one concerned with national sovereignty in an age of regional integration that since the end of the cold war the Inter-American system has been strengthened by shared values about the importance of democratic political systems, human rights and liberal economic models. At this conference we are poised to explore the depth and permanence of the American nations' commitment to these core values. Indeed, every panel is linked to the one or more of these themes. The current and future effectiveness of the OAS cannot be examined without considering increased regional confidence that states will retain democratic political systems. Nor can the regional impact of problems caused by the growth in drug trafficking be addressed without considering associated human rights and economic issues. Even topics like trade, environmental protection, intellectual property, and extradition cannot be addressed meaningfully apart from these foundational concerns.

In our remarks, neither my ASIL co-organizer Dean Zamora nor I will attempt to anticipate all the interconnections or conclusions likely to be drawn during these two days of dialogue. Instead it is our intent to tackle the underlying question. My remarks will focus on democracy and human rights — which I regard as not two separate themes, but one complex one. Dean Zamora will address questions relating to economic integration and the entrenchment of liberal economic values in the Americas.

If too often honored in the breach, throughout the hemisphere there has been nearly two centuries of consensus that democracy is the best way to ensure individual liberty and justice, and the protection of basic human rights. While promotion of democracy was not among the original purposes in the OAS Charter, the right to political participation was embedded in the Ameri-

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can Declaration on the Rights and Duties of Man which was adopted alongside the Charter in 1948.<sup>2</sup> Article 20 of the American Declaration provides, "Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free." The American Declaration also includes other core political rights including the right to freedom of expression, freedom of association, freedom of peaceable assembly, and access to the courts to ensure respect for political rights.

A decade later the members of the OAS, in the wake of the emergence of the Castro regime in Cuba, declared in Santiago that "harmony among the American republics can be effective only insofar as human rights and fundamental freedoms and the exercise of representative democracy are a reality within each one of them."<sup>3</sup> The Declaration of Santiago enumerated a partial list of the principles and attributes of the democratic system in this hemisphere. First on the list was the *rule of law* assured by the separation of powers and control of the legality of governmental acts by competent organs of the state. This was followed by *free elections*; the incompatibility with democracy of the exercise of power without a fixed term and with the manifest intent of perpetuation; respect for human rights; effective judicial procedures; *freedom of information and expression*; and the importance of strengthening and developing economic structures to achieve *just and humane conditions for their peoples*.<sup>4</sup>

The Santiago Declaration underscored that its purpose was to permit national and international public opinion to gauge the degree of identification of political regimes and governments with democratic principles and thereby contribute to the eradication of dictatorship, despotism, or tyranny.<sup>5</sup>

In 1985, as country after country throughout the region cast off repressive, rights abusing military dictatorships and returned to popularly elected civilian governments, the OAS amended its Charter to include among the purposes of the organization the promotion and consolidation of representative democracy.<sup>6</sup> In that same document, The Protocol of Cartagena de Indias, the OAS members further declared in Article I that "Representative democracy is an indispensable condition for stability, peace and development in the region."<sup>7</sup>

2 OAS Off. Rec. OEA/Ser.L/V/II. 23, doc. 21, signed May 2, 1948.

3 Final Act, Fifth Meeting of Consultation of Ministers of Foreign Affairs Res. I and VIII, at 4-6, OEA/Ser.C/II.5, 1959.

4 *Ibidem*.

5 *Ibidem*.

6 OAS General Assembly Document OEA/Ser.P, AG/doc. 16 (XIV-E/85) rev. 2, Feb. 26, 1986.

7 *Ibidem*.

In this post-Cold war era when, as Thomas Carothers characterizes it, democracy has become a “policy nostrum”,<sup>8</sup> policy-makers most often promote democracy as the best means to prevent interstate war. If, in our increasingly border-porous world now transected not only by multinational corporations and global capital markets but by the mass media, NGOs and transnational issue networks, preventing interstate war seems out-dated as the primary reason for promoting democracy, it is even more so in the Americas, where, despite occasional border skirmishes, major inter-state conflict has been avoided for decades.

Here the most important reason for establishing and maintaining democracy has long been understood. In 1961, when it established the Alliance for Progress, the OAS declared:

“Free men working through the institution of representative democracy can best satisfy man’s aspirations, including those for work, home and land, health and schools. No system can guarantee true progress unless it affirms the dignity of the individual which is the foundation of our civilization”.<sup>9</sup>

Still, there is much in the recent work seeking to explain why democracies do not go to war with one another that sheds light on why democracies are the best political vehicles for ensuring the protection of basic human rights and meeting basic human needs.

In a 1993 study, *Grasping the Democratic Peace*, Bruce Russett posits that both normative and structural considerations restrain how democracies behave.<sup>10</sup> Normatively, in successful democracies the citizenry shares a belief in the existence and effectiveness of the rule of law as the best and only means to resolve conflict. Even those in the opposition or otherwise lacking power share a belief that they will be treated fairly, that their voices, if they choose to raise them, will contribute to the policy debate, and that real remedies are available to them if they are shut out. Moreover, those in power assume and respect the loyal intentions of those not in power. In successful democracies there is little reason for governmental opponents to choose insurgent action since peaceful means for expressing opposition views—whether through the ballot box, the legislative opposition, or the courts—are available.<sup>11</sup>

With respect to structural or institutional considerations, Russett’s research reinforces the theoretical ideas of Immanuel Kant that political structures that include a division of power, checks and balances, and an open and public

8 Carothers, Thomas, “The Democracy Nostrum,” 11 *World Policy Journal*, núm. 3, p. 47, Fall 1994.

9 Declaration and Charter of Punta del Este, OEA/Ser.H/XII.1, rev. (Eng.) August 1961.

10 Russett, Bruce, *Grasping the Democratic Peace*, Princeton University Press, 1993.

11 *Ibidem*.

political discourse, make it difficult for democratic leaders to move their countries towards war.<sup>12</sup>

These structural and institutional constraints play central roles in the protection of human rights and the meeting of basic human needs in domestic contexts. Systems of checks and balances, open public debate with ample room for opposition voices to be heard, and the regular risk shared by all politicians of being booted from office by a dissatisfied electorate, are the best checks on brute assertion of power by a political cadre or branch of government.

Shared norms and similar political institutions also bode well for regional cooperation to achieve the purposes of the OAS Charter. In recent years there has been an expansion of rhetoric affirming the regional consensus around democracy. This new rhetoric is significant not only because it firmly commits the region to active promotion of democracy,<sup>13</sup> but because it sets the stage for regional institutional action to ensure the continuity of democratic political institutions in OAS member states.

At its Twenty-first General Assembly in Santiago held in 1991, the OAS passed Resolution 1080 which created an automatic procedure for convening the hemisphere's foreign ministers in the event of a coup d'état or other interruption of the legitimately elected government of a member state "to look into the events collectively and adopt any decisions deemed appropriate."<sup>14</sup>

The following year, in Washington D. C., the members agreed to further amend the OAS Charter by inserting a new article giving the General Assembly the power to suspend from membership by a two-thirds vote a government that overthrows a democratic regime.<sup>15</sup>

In 1993 the OAS adopted the Declaration of Managua which declares the OAS mission not simply to defend democracy when it is attacked but "to prevent and anticipate the very causes of the problems that work against democratic rule."<sup>16</sup>

<sup>12</sup> *Ibidem*.

<sup>13</sup> The preamble to the Santiago Commitment to Democracy and the Renewal of the Inter-American System, OEA/Ser.P/AG doc.2734/91, adopted June 4, 1991, provides: "[R]epresentative democracy is the form of government of the region and ... its effective exercise, consolidation, and improvement are shared priorities."

<sup>14</sup> OEA/Ser.P/AG/doc.2739/91 rev. 1 (Resolution 1080), adopted June 4, 1991.

<sup>15</sup> Protocol of Amendments to the Charter of the Organization of American States, "Protocol of Washington," May 15, 1949, P. A. U. L. T. S. 31, adopted at the Sixteenth Special Session of the General Assembly, Dec. 1992.

<sup>16</sup> Protocol of Amendments to the Charter of the Organization of American States "Protocol of Managua," May 15, 1949, P. A. U. L. T. S. 31, adopted at the Nineteenth Special Session of the General Assembly, June 1993.

Since 1991, the regional commitment to take action to prevent the collapse of democracy has been tested four times. In three cases—those of Haiti, Peru and Guatemala—the hemisphere's foreign ministers convened to adopt measures to restore democracy.<sup>17</sup> Most recently, when democracy in Paraguay was threatened, the OAS sent Secretary General Gavia to Asuncion to demonstrate hemispheric support for President Wasmosy and the constitutional government.<sup>18</sup>

Despite undisputed hemispheric consensus that democracy is the best means to achieve such regional goals as the protection of human rights, economic development, and liberalization of trade, and despite the new consensus that the hemisphere must act collectively to prevent the collapse of democracy, there remains a high level of regional discomfort about defining democracy.

As recently as 1994, after recognizing how much regional consensus had been achieved with respect to the value of democracy and the need for inter-governmental action to protect it, Acting OAS Secretary General Christopher Thomas declared, "There is no universally valid concept of democracy" and made a plea that work ensue to achieve a regional definition.<sup>19</sup>

For someone like me, whose career has been spent in academia and non-governmental work to protect human rights, it is not difficult to describe what a democracy is: In a democracy, the protection of human rights and the prevention of governmental tyranny are ensured through political processes and institutions that provide the broadest possible opportunities for political participation. The tyranny of the majority is prevented by a normative framework and supporting legal institutions that check any impulses of the majority to trample the rights of minorities or others not in power. This description does not preclude the possibility that rights abuses will happen in democracies. But when they do, there are mechanisms that can be triggered to hold those responsible accountable and to provide reparation to victims.

While we strive to have our influence, intergovernmental decisions are not made by people like me. They are made by representatives of sovereign states who bring with them to the negotiating table historical experience, their own state interests, and many other competing political concerns. To ensure that they will be respected as truly representative of inter-governmental consensus, their decisions are usually made by consensus. That consensus seems to come

<sup>17</sup> See Cerna, Christina M., "Universal Democracy: An International Legal Right or the Pipe Dream of the West," *27 NYU J Int'l Law and Politics* 289, Winter 1995.

<sup>18</sup> Hakim, Peter, "Good News From Paraguay: A Coup d'Etat Falls Flat," *Christian Science Monitor*, May 30, 1996.

<sup>19</sup> Thomas, Christopher R., "The OAS at a time of change in the Americas," *International Defense Review*, Dec. 31, 1994.

most easily when the principles are so broadly drawn that there is ample room for domestic interpretation, or when the action required is to be directed towards narrow, time-bound circumstances that can be managed effectively by those with appropriate technical expertise. While consensus on complex themes is not impossible, witness for example the elaborate normative and institutional framework developed by the OAS for the protection of human rights, it rarely is achieved with ease.

In the case of democracy, the historical and political forces pushing against the momentum for greater clarity of meaning are powerful. Indeed they have their roots in the foundational tension in international law between inter-governmental cooperation and the inherent right of states to protect their sovereignty. Thus in 1985, when the OAS amended its Charter to include the promotion and consolidation of representative democracy, it qualified its commitment with the phrase "with due respect for the principle of non-intervention."<sup>20</sup>

These forces also have roots in historic intra-regional tensions between the United States and the other OAS member states for which memories of unilateral U. S. encroachment into the sovereign domain of other states, often for less than noble purposes, are difficult to forget. Indeed, it has taken years for democracy's legitimacy to rebound from the reductionist taint placed on it by the Reagan administration which, in an effort to distinguish itself from the human rights identified Carter Administration foreign policy, grasped "democracy" as a rhetorical alternative. But when it came to the application of that policy, all a state had to do to win praise from the Reagan White House for being democratic was to hold one not-too-corrupt election.

But given the political and economic forces that today are transforming our hemisphere, and the meaning of sovereignty in the region, further hesitancy to achieve a meaningful regional definition of democracy does not make sense. Even if there cannot yet be "universal" consensus, the relative homogeneity of the region, the already solidified consensus on human rights norms, and other sovereignty-busting policy choices such as the reduction of statism in the management of national economies, coupled with the important interests at stake make achieving consensus on democracy imperative.

When I say important interests are at stake, I do not just mean that the OAS needs clearer guidelines to determine when to take action. Rather, as Professor Thomas Franck points out, by keeping consensus on meaning overly broad and agreement on the scope of action extremely narrow, states that are

<sup>20</sup> See *supra*, note 5.

“democratic” in name only benefit from undeserved legitimacy. They face no pressure to make sure all the components of democracy are in place, that human rights are fully respected, or that the basic needs of their poorest citizens are met before all else.<sup>21</sup> A time when nearly half the region’s population is unable to provide for their most basic human needs<sup>22</sup> is no time to let states easily off the hook, particularly since states without a full panoply of democratic release valves are more likely to suffer internal strife in times of economic hardship.

Moreover, as has been observed so often in the development of binding human rights norms, clear articulation of principles does not just make it easier to recognize violations. It also give states something to strive for —something which, very often—, they do strive for.

Finally, consensus on core values can strengthen regional problem-solving capacity. An increasingly interdependent region needs to develop the strong bonds of trust and mutual respect necessary to act resolve crises and solve chronic problems. This can best be accomplished when all states in the region both adhere to common values and are open to and subject to regional mechanisms designed to ensure that those values are upheld.

It is opportune at this meeting of Mexican and U. S. lawyers and policy-makers to remark on what steps the United States and Mexico should take to strengthen democracy and human rights domestically and throughout the region.

While hardly perfect, domestically U. S. democracy functions fairly well. There is a strong and established tradition of the rule of law assured by the separation of powers and the subordination of the armed forces to elected civilian authorities. The political process is transparent and non-exclusive, even if a majority of Americans distrust and avoid it. The picture is more mixed when it comes to respect for human rights and the state’s commitment to meeting the basic needs of its poorest people. Most Americans enjoy respect for civil and political rights though there are still strong discriminatory tendencies that make African-Americans, Hispanics and other minorities vulnerable to official abuse. There also is significant political momentum to turn back the clock on the rights of persons accused of crime and incarcerated persons, particularly those on death row. There has been even greater decline in the commitment to protect economic and social rights. Decreasing political willingness to provide for the basic human needs of our poorest residents

21 Franck, Thomas M., “The Emerging Right to Democratic Governance,” 86 *Am. J. Int’l L.* 46, 1992.

22 See *supra*, n. 18.

—particularly children— is further entrenching and increasingly marginalizing the U. S. underclass.

Judicial procedures have proven sufficiently resilient to survive recent major embarrassment, but their efficiency is badly eroded. As a result, they provide a slow check on majoritarian tyranny such as the wave of anti-immigrant sentiment that is gripping much of the population and a frightening proportion of those holding political power.

On the international front, despite an increasingly cooperative attitude, the United States continues to maintain a double standard when it comes to opening itself up to the scrutiny of regional human rights bodies. The most significant new signal the United States could send that it is truly committed to bolstering democratic values throughout the region would be for it to ratify, without unnecessary reservations, the American Convention on Human Rights, and to accept the compulsory jurisdiction of the Inter-American Court of Human Rights.

Mexico still has a long way to go before democracy is fully consolidated. There is yet no clear separation between the government and the PRI, nor is a sufficient system of checks and balances in place. Although the 1994 Presidential election was reasonably clean, allegations of electoral fraud in state and local elections continue to haunt political life. Corruption and impunity remain urgent problems. The criminal justice system and the courts are rife with problems of abuse, bureaucratic inefficiency, lack of strict regard for due process, and lack of accountability. The armed forces have problems with corruption and strict adherence to standards for the protection of human rights. While subordinate to civilian authorities, they are almost entirely exempt from civilian review, and do they take kindly to efforts of their own members who press for accountability. As for economic and social rights, Mexico is still a poor country and many of its citizens are in need. Improvements will hinge on economic recovery which in turn is dependent on the strengthening of democracy and civil and political rights.

On the other hand there has been much recent progress in Mexico. Most extraordinary is the enormous growth and sophistication of those sectors of civil society dedicated to the promotion of democracy and the protection of human rights. These unstoppable domestic forces reveal the power of democracy in action and give rise to hope that the difficult problems still ahead will yield to popular insistence that they be remedied.

Another cause for optimism is Mexico's increasing embrace of international cooperation as a means of solving its own and regional problems. Mexico's invitation to the Inter-American Commission on Human Rights to conduct an



on-site visit was an important signal of the confidence it places in inter-governmental activity. It would be an even more significant signal if Mexico were to accept the compulsory jurisdiction of the Inter-American Court of Human Rights.

With this cautiously optimistic prognosis for democracy and the protection of human rights in two states in the Americas, I now turn the program over to Dean Zamora to consider the impact on national sovereignty of regional economic integration in the Americas.