

DEMOCRATIC NORMS AND REGIONAL STABILITY PANEL DISCUSSION AN INTRODUCTION*

The following three brief articles raise and address fundamental questions about the role of democracy at the regional and international levels. They examine the current status of democracy and the suggested “right to democracy” at international law, particularly in the Americas context. Developed from papers presented at a panel entitled “Democratic Norms and Regional Stability: Global Challenges and Responses in the Americas,”¹ these three pieces examine the current role of democracy in the region, including the role of the Inter-American Democratic Charter. The latter document, paralleled by provisions in the *Charter of the Organization of American States* and resolutions of the Summit of the Americas process, allows the Organization of American States (OAS) to decide whether a national political transition is democratic or non-democratic.

Such heightened regional support for the protection of democracy is exciting. But the suitability of third party decisions regarding national political transitions remains controversial. As can be imagined, the idea of a regional organization passing judgment on the nature of a state’s fundamental political processes—with the possibility of imposing sanctions—may be worrisome for more than dictators. As suggested by the articles that follow, the question of whether there exists an “unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state,” is more difficult, and at times more problematic, than one might expect.

Timothy Rudy in his article analyses the provisions of the Inter-American Democratic Charter that will be used to address such questions. Rudy explains the origins of the Charter, which was adopted unanimously by the Member States of the OAS on September 11, 2001, and some of the controversies regarding its provisions. Importantly, Rudy suggests that although the Inter-American Democratic Charter may have originated as a non-binding resolution of the General Assembly, as suggested by commentary from the Inter-American

* Dr. David S. Berry is a Lecturer at the Faculty of Law of the University of the West Indies, an Advisor to the Attorney General of Barbados on matters of international law and recently was appointed as an ICSID arbitrator. The views expressed herein are the author’s own and are not to be attributed to any Caribbean state or other entity.

1. This panel was convened at the *Ninety-ninth Annual Meeting of the American Society of International Law*, on March 31, 2005, in Washington, D.C.

Juridical Committee it constitutes an authoritative interpretation of a binding treaty—the *Charter of the Organization of American States*. Further, as noted by David Berry in his piece, the robust use by the organs of the OAS of another non-binding General Assembly resolution—the American Declaration on the Rights and Duties of Man—may foreshadow a strong interpretive role for the Inter-American Democratic Charter, one with potentially profound implications for the development of Inter-American human rights law as a whole.

The article by David Berry develops this analysis of democratic norms in the Americas by critically examining two fundamental components of democracy or the suggested “right to democracy.” These two components are, firstly, the collection of substantive rights and norms that guarantee a meaningful democratic system and, secondly, the procedural mechanisms and requirements for making democratic choices. Berry suggests that examples from the Americas and Caribbean of the implementation of the Inter-American Democratic Charter, and democratic norms more generally, reveal problems regarding respect for both substantive and procedural democracy. Using the ouster of President Aristide from power in Haiti in 2004 as a focal example, Berry argues that in dealing with the Haitian situation the OAS significantly failed to uphold the *substantive* notion of democracy guaranteed by the Inter-American system. In contrast, in their reaction the Member States of the Caribbean Community (CARICOM) robustly attempted to ensure the preservation of substantive democratic norms and values in Haiti, but failed to uphold the requirements of *procedural* democracy in CARICOM’s own voting practices.

Stephen Schnably further develops this critical analysis by examining the meaning of the phrase “unconstitutional alteration” contained in the Inter-American Democratic Charter. Schnably suggests that the term “unconstitutional” requires an interpretive frame of reference, but notes that there is no universal or global constitutional norm from which all constitutions can be judged. Nevertheless, relying entirely upon the internal constitutional norms of a particular state is also problematic, since in the context of the Inter-American Democratic Charter the adjudicator will not be a national actor, but the organ of a regional organization. Such adjudication requires a full and sophisticated understanding of the state’s constitutional system, and one can question whether OAS Member States meeting at the Permanent Council or General Assembly level will be willing or able to achieve this understanding.

In sum, these three articles explore the democratic possibilities

raised by recent developments in the Inter-American system, including the Inter-American Democratic Charter, and at the same time highlight some of the potential difficulties associated with these developments. As suggested by Rudy, the Inter-American system is rapidly evolving. As suggested by these three articles, the development of the democratic norms of the Americas will continue to pose new and exciting questions and challenges.