



DEMOCRACY
COALITION
PROJECT

*International Mechanisms
for Protecting Democracy*

Theodore J. Piccone



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INTRODUCTION

As a matter of international relations, states have largely resolved the question of how to define “democracy.” In June 2000, 110 governments adopted the Warsaw Declaration at the first Community of Democracies Ministerial Meeting. Later that year, the United Nations General Assembly approved a Resolution on Promoting and Consolidating Democracy. These documents and others reflect a global consensus around the meaning of democracy: periodic multiparty elections that are free and fair, respect for fundamental civil and political rights, universal and equal suffrage, an elected parliament, an independent judiciary, a free press, civilian and democratic control of the armed forces, and transparent and accountable governance. This unheralded achievement in international norm-setting should put to rest any doubt that democratic principles, like human rights norms, are universal.

The critical challenge now is for governments to make these norms effective by developing and applying “democracy clauses” – multilateral mechanisms for protecting and defending democracy when it is unconstitutionally interrupted or threatened by autocratic rulers. In fact, many states have accepted a variety of such “democracy clauses” in international legal, political, trade, and economic agreements, thereby creating a web of overlapping instruments that could be deployed depending on the circumstances. These democracy clauses were born out of a shared desire by governments to lock in the democratic gains of the 1990s and prevent the inherently destabilizing effects of a return to autocratic rule. Together, they reflect a new international norm: Once established, the people’s right to live under democracy shall not be reversed, and attempts to do so obligate other governments to help restore democracy to that country. In practice, however, governments have not demonstrated the political will to apply this new norm, except in compelling circumstances.

The following comprehensive review of democracy clauses found in the charters of regional organizations and other multilateral agreements reveals a number of common features. They typically articulate a set of shared democratic principles, establish a trigger point for common action when democratic rule is illegally overthrown, and spell out a process for multilateral response, with a range of possible outcomes. The lowest common denominator for such collective responses is condemnation of the illegitimate act, coupled with the threat of suspension of a government’s membership from the particular regional organization or of economic benefits. The more detailed democracy clauses call for a range of increasingly tough measures, from recall of ambassadors, appointment of special envoys, and other diplomatic measures, to visa restrictions on coup-plotters, arms embargos, and freezing of assets. The majority of such democracy clauses, however, are political commitments rather than formally binding obligations under international law, making enforcement problematic.

Given the variety of circumstances in which a disruption of democratic rule may occur, states have sought to strike a balance between designing a tool blunt enough to deter outright coups, yet flexible enough to have some influence on the ground as erosions of democratic rule take place. A model democracy clause, for example, would permit a timely threat to coup-plotters that they will be punished politically and economically if they take power by force. If a democratically elected government is nonetheless overthrown, a model democracy clause would allow for an escalating series of carrot-and-stick measures that could be implemented depending

on whether a government is making or blocking demonstrable progress toward restoring democratic rule. An effective democracy clause would also insist on clear deadlines and benchmarks for returning the country to democracy. It would include an independent monitoring body with an in-country presence that would be authorized to track the errant government's behavior and to make recommendations to the other states for appropriate action.

In our increasingly interdependent world where internal political turmoil poses real dangers to other states, the community of democratic states has a vital interest in further expanding both the number of states subject to democracy clauses and the circumstances in which they apply. Such an interlocking network of democracy clauses would have the effect of significantly increasing the cost of an illegal disruption of democratic rule and encouraging coordinated efforts toward democracy's restoration. Ultimately, establishment of a global democracy clause, through the Community of Democracies for example, would facilitate greater coordination across regions, help establish clear benchmarks and avoid conflicting approaches to the offending government.

In organizations or agreements where democracy clauses do not yet exist, democratic governments should build consensus among the participating states in favor of defining democracy as a core value of their relations with each other. On this foundation, a democracy clause could be adopted as a logical step in advancing their mutual interest in protecting democracy as a political system. There is also a need to strengthen those democracy clauses already in place, particularly through the development of early warning procedures to head off democratic crises before they occur. The creation of independent bodies with a mandate to monitor adherence to democratic norms among participating states and to decide whether a breach of democracy has occurred is long overdue. Such independent monitors would lend greater credibility to the process and potentially spur more concerted efforts to put teeth in these democracy clauses and facilitate the return to democratic rule.

In the following pages, I will describe and compare the key elements of democracy clauses that currently exist in regional agreements around the world. Based on that analysis, I will offer a model democracy clause that tries to reflect and integrate best practices in this evolving field of international relations.

SUMMARY OF EXISTING DEMOCRACY PROTECTION MECHANISMS

The Americas

Organization of American States (OAS) and Summit of the Americas¹

Since the earliest days of the Pan American Union at the end of the 19th century, governments of the western hemisphere have sought to define democratic political values as a mark of their common identity and defense. In practice, however, rhetoric has far surpassed reality, as demonstrated by the continent's cycle between weak constitutional democracies and military dictatorships, alternations that have carried virtually no penalty from neighboring states.² No effort was made to articulate a common commitment to representative democracy as the desired form of government until the Charter of the Organization of American States (OAS) was approved in 1948.

After the end of the Cold War, as military governments in Latin America were replaced by elected civilian leaders, governments in the hemisphere developed an operational mechanism, Resolution 1080 (also known as the Santiago Resolution), to respond to interruptions of democratic rule. Resolution 1080 states that “in the event of any occurrences giving rise to the sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically elected government,” the OAS secretary-general is instructed to call for the Permanent Council to convene immediately. The Permanent Council would, within the framework of the OAS Charter, examine the situation, and decide whether to convene an Ad hoc Meeting of the Ministers of Foreign Relations or a special session of the General Assembly, all of which must take place within a ten-day period. If convened, the ministerial assembly would then adopt “any decisions deemed appropriate, in accordance with the Charter and international law.” During the 1990s, OAS governments put Resolution 1080 into practice during constitutional crises in Haiti, Peru, Guatemala, and Paraguay.

A year after Resolution 1080 was approved, the OAS member states codified its essential elements by adopting the Washington Protocol to the OAS Charter, which directly conditions a government's membership in the organization to its adherence to democratic rule. The Washington Protocol amended Article 9 of the Charter, which now states:

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, the Meeting of Consultation, the Councils of the Organization and the Specialized Conferences as well as in the commissions, working groups 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.

¹ All states of the western hemisphere excluding Cuba.

² Indeed, in some instances, antidemocratic forces were encouraged and aided by external actors from within and outside the hemisphere.

The OAS Charter further states in its preamble that “representative democracy is indispensable for the stability, peace and development of the region” and that one of the essential purposes of the OAS is to “promote and consolidate representative democracy, with due respect for the principle of nonintervention.”³

While the anti-coup provisions of Resolution 1080 and the Washington Protocol passed the test as an effective deterrent to military seizures of power, they failed to address the type of “creeping coup” or erosion of democracy so evident during the regime of Alberto Fujimori in Peru. Fujimori’s successful attempt to run for a third term in 2000, which most observers considered unconstitutional, and other anti-democratic actions surrounding the election, led to a crisis of legitimacy in Peru and a critical test for OAS governments. A series of ad hoc measures were taken to monitor developments on the ground, including an electoral observation mission, led by former Guatemalan Foreign Minister Eduardo Stein. Stein concluded that the electoral process for the first round of the presidential elections was “by international standards...far short of what could be called free and fair,” and determined that the second round would be similarly marred by irregularities.

Elections, nonetheless, proceeded without OAS monitoring, leading opposition candidate Alejandro Toledo to withdraw from the race, and Fujimori was sworn into office for a third term. Amid calls for non-recognition of the elections, the OAS adopted a compromise resolution at the OAS General Assembly in Windsor, Canada, in June 2000 establishing a special mission to facilitate dialogue toward “strengthening democracy in Peru.”⁴ The subsequent fall of Fujimori on corruption charges led to a successful transition from interim President Valentin Paniagua to elected President Alejandro Toledo in 2001. The OAS’s uneven response to the political crisis in Peru, however, coupled with serious doubts about the regime of Venezuelan President Hugo Chavez, sparked a revived effort, led by the new Peruvian government, to shore up the region’s mechanisms to deal with erosions of democratic rule.

To this end, at the third Summit of the Americas⁵ in April 2001 in Quebec City, the heads of government agreed to extend the OAS Charter’s suspension clause to their own summit meetings. The Quebec City Summit democracy clause establishes that “any unconstitutional alteration or interruption of the democratic order in a state of the hemisphere constitutes an insurmountable obstacle to the participation of that state’s government in the Summits of the Americas process.” While largely symbolic, the Summit democracy clause further tightened the web of agreements in the region that committed governments to isolate undemocratic regimes.

More important, the heads of government in Quebec City instructed their foreign ministers to “prepare an Inter-American Democratic Charter to reinforce OAS instruments for the active defense of representative democracy.” In the span of just several months, OAS governments drafted and approved the Inter-American Democratic Charter, which, despite its name, does not have formal treaty standing.⁶ Nonetheless, in its totality, the Democratic Charter

³ OAS Charter as amended, Article 2(b).

⁴ For more information on the electoral crisis in Peru, see Perina, Ruben, “The Inter-American Democratic Regime: The Role of the OAS in Promoting and Defending Democracy,” in Protecting Democracy: International Responses, (forthcoming, Lexington Books).

⁵ The Summit of the Americas is a forum for the 34 democratically-elected heads of state and government from the Americas.

⁶ The Democratic Charter was adopted unanimously on September 11, 2001, in Lima, Peru, shortly after the terrorist attacks on the United States.

is another step toward devising an inter-American system for preventing and responding to breakdowns in democratic governance.⁷

The Democratic Charter states that the “peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.”⁸ This language breaks new ground by expressing democracy in traditional human rights terms, similar to the right to democracy language approved by the United Nations (UN) Human Rights Commission in 1999 and 2000.⁹ It also refers to governments’ obligation to promote and defend democracy, phrasing intended to cover actions before *and* after a disruption in democratic rule whether at home *or* abroad. Notably, the Democratic Charter preamble says that “cooperation between American states *requires* the political organization of those states based on the effective exercise of representative democracy” (emphasis added). OAS member states thereby expressed a willingness to extend democratic conditionality not only to membership in the OAS but to their bilateral relations as well. A logical corollary of this principle is that a rupture of democracy in one state, including through badly flawed elections, would require all other OAS member states to suspend bilateral cooperation with the illegitimate government. However, no regional rules exist that spell out exactly how governments should adjust their bilateral relations with an illegitimate regime, leaving application to an ad hoc and unpredictable process in the hands of each state.

Notably, the Democratic Charter devotes significant attention to designing new mechanisms to respond to the steady erosion of democratic conditions before the onset of a full-blown crisis. These include:

1. A member state may request assistance of the secretary-general or Permanent Council when it considers that its democratic political institutional process or its legitimate exercise of power is at risk. (Article 17)
2. When situations arise in a member state that may affect the development of its democratic political institutional process or the legitimate exercise of power, the secretary-general or the Permanent Council may, *with the prior consent of the government concerned*, arrange for visits or other actions in order to analyze the situation. The secretary general will submit a report to the Permanent Council, which will collectively assess the situation and, where necessary, may adopt decisions for preservation or strengthening of the democratic system. (Article 18, emphasis added.)
3. In the event of an unconstitutional interruption of the democratic order, or an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state, any member state or the secretary- general may request that the Permanent Council convene immediately to undertake a collective assessment of the situation and to take such decisions as it deems appropriate to foster

⁷ For a comprehensive discussion of the Democratic Charter’s history and potential advantages and pitfalls, see the eight collected articles presented in Canadian Foreign Policy/La Politique étrangère du Canada, Vol. 10, No. 3 (Spring 2003).

⁸ Inter-American Democratic Charter, Article 1.

⁹ UN Commission on Human Rights Resolution 1999/57 of April 27, 1999; Resolution 2000/47 of April 25, 2000.

- restoration of democracy (e.g., diplomatic initiatives, including good offices). (Article 20)
4. If diplomatic initiatives prove unsuccessful or the urgency of the situation so warrants, the Permanent Council shall immediately convene a special session of the General Assembly, which shall adopt decisions it deems appropriate. (Article 20)
 5. When the General Assembly special meeting determines that there has been an unconstitutional interruption of the democratic order of a member state, and that diplomatic initiatives have failed, it shall suspend said member state from the OAS by a two-thirds affirmative vote. (Articles 21, 19)

While on paper the new charter presents a variety of tools for OAS governments to employ, in practice governments have been unwilling to take any steps toward developing an effective early warning mechanism that does not depend on the invitation of a member state to take effect. In light of recent events in Venezuela both before and after the April 2002 coup against President Chavez, there is clearly the need for such a mechanism. During this time, multiple signs of democratic distress—attacks on the media, violations of the constitution, interference with labor union elections, manipulation of quasi-autonomous agencies like the ombudsman’s office, and so on—were evident, yet no preventive multilateral measures were taken that could have put pressure on Chavez to invite an OAS fact-finding mission. Instead, the domestic political turmoil was allowed to build until civil protests grew violent. A right-wing coalition of businessmen and military officers seized power and declared the constitution void. This forced governments in the region to invoke the anti-coup provisions of the Democratic Charter and demand the restoration of Chavez, despite his own questionable actions.

Chavez’s return to power has further polarized the situation, with government and opposition forces threatening violent action, and renegade military officers publicly demanding his resignation. OAS Secretary General Gaviria, former U.S. President Jimmy Carter and others have devoted considerable personal attention to the task of encouraging dialogue, and OAS governments have offered assistance and support to the national dialogue process. OAS governments, however, have largely failed to demand follow-up monitoring or mediation of the situation,¹⁰ as was done in the case of Peru in 2000, where the OAS facilitated negotiations between the Fujimori government and the opposition. Domestic political forces, meanwhile, have shifted energies toward carrying out a national referendum on Chavez’s rule which, if successful, should lead to a constitutional transfer of power.

While OAS governments have not yet developed strong multilateral responses to erosions of democracy, alternative avenues of redress do exist. For example, individuals who are victimized by political repression can bring cases to the inter-American human rights system. Under the treaties and agreements of the inter-American system, individuals may file complaints of violations of human rights, including civil and political rights, with the Inter-American Commission on Human Rights (IACHR), with appeal to the Inter-American Court of Human

¹⁰ See OAS Resolution AG/Res.1 XX/X-E/02. After months of stalled negotiations, a new “Group of Friends,” composed of Brazil, Chile, Spain, United States, Mexico and Portugal, was created outside OAS channels to foster dialogue and galvanize international support to a peaceful, democratic solution to the impasse.

Rights. In addition, the IACHR may undertake fact-finding missions to examine the general human rights situation, but only at the invitation of the member state.

Both mechanisms proved important in calling attention to repressive measures undertaken by the Fujimori government in Peru. They also proved important in Venezuela where President Chavez was forced, after the coup of April 2002, to accept an IACHR fact-finding delegation, an inquiry that had been delayed for over two years. Proponents of more effective responses to erosions of democracy in the region are beginning to discuss the idea of expanding the mission of the IACHR, or establishing a similar body, that could address more systemic democratic transgressions before they erupt in a constitutional crisis. But governments are unlikely to take the first step toward a more robust democracy clause on their own.

Another key test of OAS governments' willingness to strengthen the collective defense of democracy will come during final negotiations for a Free Trade Area of the Americas (FTAA) in 2004-05. A democracy clause integrated in the FTAA agreement would constitute a major breakthrough in putting real teeth into the region's otherwise comprehensive set of democracy clauses.

*Southern Cone Common Market (Mercosur)*¹¹

Mercosur is an association of states formed initially around a common external tariff. Over time, it has reached common positions on the defense and support of democracy. In June 1996, Mercosur members adopted a democracy clause known as the Ushuaia Declaration, which commits members to apply joint sanctions against any disruption of democratic institutions. The "full existence" of democratic institutions was made a requirement for participation in Mercosur. This clause was applied within hours of an attempted military coup in Paraguay in 1996, and, in combination with other pressures, it effectively thwarted antidemocratic forces from gaining power.

Mercosur's democracy clause is one of the earliest versions of an increasing trend toward conditioning economic and trade preferences to a government's adherence to democratic norms. Arguably, this proved decisive in the Paraguay case, which depends a great deal on its neighbors for its economic livelihood.

*Andean Community*¹²

The Andean Community, an association of states in South America organized as a trade and customs union, incorporated concern for democracy into its founding principles in 1998, when the Andean Community presidents jointly declared that the body is a "community of democratic nations" whose principal objectives include the consolidation of democracy and the rule of law. In June 2000, the Andean Community members endorsed a democracy clause in the form of a new Additional Protocol to the Cartagena Agreement, which establishes that the full

¹¹ Brazil, Argentina, Paraguay, and Uruguay; Bolivia and Chile are associate members.

¹² Peru, Bolivia, Venezuela, Colombia, and Ecuador.

effectiveness of democratic institutions and the rule of law are an essential condition of political cooperation and integration. The Protocol establishes democracy as a requirement for membership in the Andean Community, and further commits member states to make adherence to democracy a condition of their agreements with third parties. The Additional Protocol will take effect once instruments of ratification are deposited with the Andean Community's secretary-general.

The Andean Community's democracy clause is designed to operate like other similar mechanisms. In situations that could be considered a rupture of the democratic order in any member state, the other member states will consult and determine if the events do constitute a rupture and adopt measures to facilitate the prompt restoration of the democratic order (Additional Protocol Article 4). Measures to be considered include:

1. Suspension of a member's participation in the Andean system of integration,
2. Suspension in projects of international cooperation developed by the Andean states, and
3. Suspension in other organs of the community, including access to facilities or loans from Andean financial institutions.

Thus, like Mercosur, the Andean Community has agreed that punitive financial and economic measures can be taken when democracy is overturned. With both the Andean Community and Mercosur, however, the events that actually would trigger punitive action are left open to interpretation and in practice most likely would be interpreted narrowly, given the serious economic consequences that would flow from a coup-like overthrow of democracy. No significant action, for example, was taken during the Venezuela crisis other than expressions of support for a return to constitutional rule. More important, neither the Andean Community nor Mercosur democracy clauses consider the question of how to handle erosions of democratic rule.

The Commonwealth

The Commonwealth of Nations¹³ (Commonwealth), composed of governments associated with the British crown, has developed a strong set of general principles and mechanisms related to the defense of democracy that, in practice, have shown mixed results.

The 1971 Declaration of Commonwealth Principles expresses a commitment to individual liberty, equal rights, and the inalienable right of citizens to participate by means of free and democratic political processes. These same principles were reaffirmed 20 years later in the Harare Declaration of 1991.¹⁴ In Harare, Commonwealth heads of government also agreed that a government wishing to join the Commonwealth for the first time must be a sovereign nation; have had a constitutional association with an existing Commonwealth member; and comply with Commonwealth values, principles, and priorities, as reaffirmed in the Harare Declaration. They also pledged to work together to promote these fundamental political values and to concentrate their work, *inter alia*, on democracy, democratic processes, and institutions that reflect national circumstances, the rule of law, independence of the judiciary, just and honest government, and fundamental human rights. They invited nongovernmental organizations and the Commonwealth Parliamentary Association to participate in promoting these objectives as well.

In 1995, Commonwealth heads of government adopted a formal democracy clause in the Millbrook Commonwealth Action Programme on the Harare Declaration. The Action Programme states that, in the event a government is perceived to be clearly in violation of the Harare Declaration, particularly in the case of an unconstitutional overthrow of a democratically elected government, appropriate steps should be taken to encourage the restoration of democracy within a reasonable time frame. Notably, the Commonwealth democracy clause authorizes a collective response to a much broader range of democratic violations than just a coup, as seen in its strong reaction to the 1995 execution of opposition activists in Nigeria by Sani Abacha's regime.

Over time the Commonwealth governments have developed a mechanism designed to act quickly in response to a variety of democratic crises. A Commonwealth Ministerial Action Group (CMAG) was established in 1995 and empowered to deal not just with coups but with any serious or persistent violations of the Harare Declaration principles. The CMAG is convened by the Commonwealth's secretary-general and composed of the foreign ministers of eight countries.¹⁵ The CMAG acts as a standing ministerial committee charged with assessing the nature of an

¹³ Antigua and Barbuda, Australia, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, Cameroon, Canada, Cyprus, Dominica, Fiji Islands, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, New Zealand, Nigeria, Pakistan (suspended in 1999 due to military coup), Papua New Guinea, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Swaziland, The Bahamas, The Gambia, Tonga, Trinidad and Tobago, Tuvalu, Uganda, United Kingdom, United Republic of Tanzania, Vanuatu, Zambia, and Zimbabwe (suspended in 2002 due to flawed elections).

¹⁴ The exact language of the Harare Declaration states: "we believe in the liberty of the individual under the law, in equal rights for all citizens regardless of gender, race, colour, creed or political belief, and in the individual's inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives."

¹⁵ As of October 2002, the members of the CMAG were Australia, the Bahamas, Bangladesh, Botswana, India, Malta, Nigeria, and Samoa.

infringement and recommending measures for collective action aimed at the speedy restoration of democracy and constitutional rule. The Commonwealth secretary-general is empowered, acting on his own request or at the request of a member government, to bring the situation in question to the attention of the CMAG, which would then include it in its work program. This feature, which empowers the secretary-general to initiate a process of inquiry into a particular country situation, sets the Commonwealth apart from most other multilateral institutions with a democracy clause.

Another important feature of the Commonwealth democracy clause is the menu of specific steps considered “appropriate” for action when democracy is interrupted. These steps, which allow Commonwealth governments to fashion a collective response tailored to the particular situation, include:

1. Immediate public expression by the secretary-general of the Commonwealth’s collective disapproval of any such infringement of Harare principles.
2. Early contact with the de facto government, good offices, and appropriate technical assistance to facilitate early restoration of democracy.
3. Encouraging bilateral demarches by members.
4. Appointment of special envoys, as appropriate.
5. Stipulation of two years as the time frame for restoration of democracy, if elections cannot be held within six months.
6. Exclusion of the government concerned from ministerial-level meetings of the Commonwealth.
7. If acceptable progress is not recorded within two years, suspension of participation at all Commonwealth meetings and of Commonwealth technical assistance.
8. Consideration of other steps, including limitation of government contacts, people-to-people measures, trade restrictions, and suspension from the Commonwealth.

In 1997, Commonwealth heads of government applied the democracy clause adopted in Millbrook to the case of Nigeria, then ruled by military strongman Sani Abacha. It suspended Nigeria’s membership and empowered CMAG to invoke Commonwealth-wide implementation of the following measures: visa restrictions on members of the Abacha regime and their families; withdrawal of military attachés; cessation of military training; embargo on export of arms; denial of educational facilities to members of Nigerian regime and their families; a visa-based ban on all sporting contacts; a downgrading of cultural links; and a downgrading of diplomatic missions. If, after one year, Nigeria had not completed a credible transition to a democratic government, heads of government agreed to consider Nigeria’s expulsion from the Commonwealth as well as a mandatory oil embargo, a ban on air links, and freezing of financial assets and bank accounts in foreign countries of members of the regime and their families.

The Commonwealth took a milder approach to the coup in Fiji in 2000. George Speight and a group of elite soldiers seized the Fijian Parliament building in May and held Mahendra Chaudhry, the country’s first ethnic Indian prime minister, and other ministers hostage at

gunpoint for 56 days. With the elected government under siege, the military leadership seized power, abrogated the Constitution, and installed Laisenia Qarase, a former banker known for his support for Speight's anti-Indian views, as prime minister. The new administration, backed by the military, struck a deal with Speight to end the siege of Parliament in return for implementing his agenda (i.e., political and economic supremacy for ethnic Fijians). Australia, which took a leading role in responding to the crisis bilaterally and through the Commonwealth, and New Zealand eventually pressured the military to arrest Speight on charges of treason.

During this period of upheaval, the Commonwealth suspended Fiji in June 2000 but failed to call for the reinstatement of Mahendra Chaudhry. Instead it called for fresh elections in August 2001. Despite numerous flaws and abuses, the Commonwealth's observer team certified those elections as "free and fair." At its meeting in December 2001 in London, the Commonwealth Ministerial Action Group lifted Fiji's suspension. Qarase was then accepted as Fiji's democratically elected leader at the Commonwealth's summit in Brisbane, and Australia and New Zealand subsequently dropped their sanctions. This prompted some critics to complain that the Commonwealth had applied a double standard by allowing Speight and Qarase to run in the 2001 elections. Speight, however, subsequently pled guilty to treason and was sentenced to prison for life.

In the case of Zimbabwe, the Commonwealth governments, led by the United Kingdom and Australia, have been engaged in an ongoing effort to pressure President Robert Mugabe to cede power through free and fair elections. The attempt has backfired, however, amid open disagreements between Zimbabwe's African neighbors and the rest of the Commonwealth. For example, in September 2001, the CMAG brokered an agreement with Zimbabwe on issues of land reform and respect for the rule of law, which the Mugabe government has failed to uphold. In early February 2002, Britain tried but failed to win support for action to suspend Zimbabwe from the Commonwealth, which chose instead to express "deep concern" over the mounting violence and intimidation.

The real test of the Commonwealth governments' ability to use the Harare principles to pressure Mugabe, however, came after the elections in March 2002, which many independent observers considered seriously flawed. After initially signaling acceptance of Mugabe's victory, South African president Thabo Mbeki and Nigerian president Olusegun Obasanjo shifted their positions and joined the Commonwealth consensus to suspend Zimbabwe from membership. Nonetheless, Mugabe has managed to split the external opposition to his undemocratic rule by wrapping himself in the mantle of pan-African solidarity against the neocolonial powers that, he claims, care only about the white farmers who are losing their land. Ongoing repression of the political opposition, including torture, denial of food aid to opposition strongholds, and harassment of journalists, human rights defenders, and others, has not provoked a concerted Commonwealth response beyond suspension, despite the myriad tools available and agreed on by its members, including Zimbabwe.¹⁶ Disputes within the Commonwealth have continued to hamper efforts to agree on a collective strategy to foster the return of democracy to Zimbabwe.

¹⁶ In a September 2002 meeting of the Commonwealth troika to review the decision to suspend Zimbabwe, South Africa and Nigeria successfully put off any further action against Mugabe for another six months. Subsequently, Commonwealth Secretary General Donald MacKinnon announced that the consensus among Commonwealth governments was in favor of a continued suspension through December 2003. In the meantime, efforts on the part of the leaders of Australia, Malawi, South Africa and Nigeria have failed to broker a compromise between Mugabe and the opposition.

Europe/North America

North Atlantic Treaty Organization (NATO)

Although founded in 1949 as a military alliance of democracies,¹⁷ NATO does not have a formal democracy clause designed to protect democracy from unconstitutional threats. It has, however, accepted democracy as a condition of membership, and could, in principle, use this requirement to threaten or withdraw membership of member regimes that come to power undemocratically.

In a 1995 Study on NATO Enlargement (the key document guiding the expansion project), member governments cited support for “democratic reforms, including civilian and democratic control over the military,” as a means to reaching NATO’s traditional objective of enhanced stability and security for all countries in the Euro-Atlantic area. The Membership Action Plan (MAP) for new applicants has five chapters, the first of which—political and economic issues—requires candidates to have stable democratic systems, pursue the peaceful settlement of territorial and ethnic disputes, have good relations with their neighbors, show commitment to the rule of law and human rights, establish democratic and civilian control of their armed forces, and have a market economy.

In November 2000, the NATO Parliamentary Assembly passed Resolution 301 on NATO Enlargement, which called on the NATO Council to “issue no later than during its Summit meeting in 2002 invitations to NATO accession negotiations to any European *democracy* that seeks membership in the Alliance and that has met the criteria for NATO membership as established in the Alliance’s 1995 Study on NATO Enlargement” (emphasis added). This call was reiterated at the 2001 Vilnius Spring Session, where a Declaration on NATO Enlargement reaffirmed the right of any European democracy to pursue membership in the NATO Alliance.

In addition to ongoing monitoring of candidate countries’ progress on civilian control of the military and other democratic reforms, NATO governments have established a precedent for using military force to promote a transition to democracy, as demonstrated in the case of NATO involvement in Kosovo and the former Yugoslav Republic (FRY). The heads of state and governments participating in the NATO Council meeting in Washington, D.C. (April 23–24, 1999) issued a statement describing the Kosovo crisis as a fundamental challenge to the values for which NATO has stood since its foundation: democracy, human rights, and the rule of law. The statement also noted that the objective of a free, prosperous, open, and economically integrated southeast Europe cannot be fully assured until the FRY embarks on the transition to democracy. It expressed the council’s support for the objective of a democratic FRY that protects the rights of all minorities and promised to work for such change through and beyond the conflict.

The NATO governments’ decision to condition future membership of aspiring states to their fulfillment of a range of democratic criteria has helped stimulate democratic reforms in central and eastern Europe. Although it has not adopted a specific mechanism for dealing with a

¹⁷ The preamble to the Washington Treaty (1949) binds parties to “safeguard the freedom, common heritage and civilization of their peoples, founded on the principles of democracy, individual liberty and the rule of law.”

sudden interruption of the democratic process in a member state, NATO remains the only military alliance in the world founded on the principle of collective defense of democracies.

Organization for Security and Cooperation in Europe (OSCE)

The 1975 Helsinki Final Act, the founding document of the OSCE (formerly the CSCE), declared “[r]espect for human rights and fundamental freedoms including freedom of thought, conscience, religion or belief” to be among its ten founding principles. By 1990, OSCE governments recognized that “pluralistic democracy and rule of law are essential for ensuring respect for all human rights and fundamental freedoms,”¹⁸ and every subsequent OSCE declaration and agreement has endorsed explicit commitments to democracy. In the Charter of Paris of 1990, for example, OSCE member states enshrined the principle of adherence to democracy and human rights as a condition of membership. A year later, signatories issued a communiqué committing them to vigorous support for democratically elected governments in danger of being overthrown.

Specific commitments on democratic practices have been codified in at least 15 different OSCE agreements under the rubric of “the Human Dimension.”¹⁹ Significantly, the concluding document of the 1991 Moscow Human Dimension Conference declared that “the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned.”²⁰ A specific example of this interventionist approach is the unique provision that every OSCE member state must “invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings.”²¹

OSCE’s democracy clause can be found in two mechanisms intended to enforce states’ compliance with their OSCE commitments relating to the human dimension: Permanent Council resolutions and Implementation Review Conferences.

1. Permanent Council Resolutions. The Concluding Document of the Follow-up Meeting (Vienna, 1989) established the OSCE as a forum for bilateral discussions of member states’ adherence to their human dimension commitments. This protocol, first known as the Vienna Mechanism, was expanded in 1991 at the OSCE Human Dimension Conference in Moscow, and was revised further in Rome in 1993 and in Budapest in 1994.

Five means of raising concerns over a state’s implementation of its human dimension commitments were devised. Each process involves the dispatch of an OSCE investigative mission

¹⁸ CSCE, “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE,” May 29, 1990, Preamble.

¹⁹ OSCE, “OSCE Human Dimension Commitments: A Reference Guide” (Warsaw: ODIHR, 2001).

²⁰ CSCE, “Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE,” October 15, 1991, Preamble.

²¹ CSCE, “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE,” Article 8.

to the state in question, followed by a response determined by the Permanent Council.²² Notably, each process must originate with a state, not with the OSCE secretariat itself, but does not depend on an invitation of the target member state:

1. Any state may request a mission for itself.
2. Any state may request that the OSCE ask permission to send a mission to another state.
3. Any six states may initiate a mission if a request has been placed through the OSCE and no mission has formed.
4. Any ten states may initiate a mission if they recognize a “particularly serious threat.”
5. Any state may request that the Permanent Council initiate a mission.

On paper, the above procedure gives governments a wide variety of tools for protecting democracy from autocratic forces. In practice, however, these components of OSCE’s democracy clause have rarely been invoked.

2. Implementation Review Conferences. The Prague Summit of 1992 established biannual Implementation Review Conferences to foster ongoing dialogue on OSCE human dimension commitments. These four-day meetings invite governments, nongovernmental organizations, and individuals to raise concerns and propose resolutions to the challenges of consolidating effective democratic practices. Additional one-day topical Supplementary Meetings convene three times each year, and a four-day Human Dimension Seminar meets each spring. These conferences are supported by the Office for Democratic Institutions and Human Rights (ODIHR), based in Warsaw.²³ Established in 1990, it is the OSCE body primarily responsible for ensuring states’ compliance with OSCE human dimension commitments. ODIHR facilitates limited-term election monitoring and special projects as well as conducts routine monitoring of human dimension conditions in member states.

Reports and experience from all these endeavors form the basis of the ongoing review conferences. The agenda at these meetings, however, rarely addresses the transgressions of specific states and instead focuses on common challenges, further emaciating the OSCE’s potential role as an enforcer of human dimension norms. Even the OSCE itself admits that the Implementation Review Conferences have become a substitute for the more formal Permanent Council resolution mechanism which has “practically fallen into abeyance.”²⁴

²² For the last decade, the OSCE has adopted the practice of forming “long-term missions” in response to instability in member states. These ad hoc missions work with the government in question and “are intended to strengthen a state, and more specifically its internal capacity for conflict resolution.” They thereby circumvent the formal penalty procedures of the Moscow Mechanism, relieving states of the responsibility to confront one another. Between 1992 and 1999, the Permanent Council dispatched 13 such missions. See Flynn, Gregory and Henry Farrell, “Piecing Together the Democratic Peace: The CSCE Norms and the ‘Construction’ of Security in Post-Cold War Europe,” International Organization, vol. 53, no. 3 (Summer 1999), pp 505-535.

²³ Information on ODIHR available at: www.osce.org/odihhr.

²⁴ OSCE, “OSCE Human Dimension Commitments: A Reference Guide,” p. xviii.

European Union (EU)

The European Union (EU) has established strong commitments to defend and promote democracy both within the union and in its relations with nonmember countries and organizations. These commitments are established in two key documents: the Treaty on European Union and the Charter of Fundamental Rights.

The Treaty on European Union entered into force in 1993, and was amended in Amsterdam in 1999, with further amendments adopted in Nice, in 2001.²⁵ Over time, as European integration has progressed and with enlargement of the union's membership eastward looming large, the EU Treaty has grown stronger, especially with respect to democracy as a condition for membership and participation in the EU. Article 6 of the treaty succinctly states the defining characteristic of the community: "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States." Article 49 makes respect for the principles presented in Article 6 a central criterion for EU membership. In practice, EU member states have considered membership in the Council of Europe and ratification of the European Convention on Human Rights a prerequisite to eligibility for EU membership.²⁶

Article 7 of the EU Treaty establishes a mechanism by which the European Council may determine the existence of "a serious and persistent breach" of Article 6 and impose penalties. Like the Commonwealth democracy clause, the EU mechanism authorizes action in response to a wide variety of circumstances going well beyond the onset of a coup.²⁷ The Treaty of Nice (2001) alters this provision by providing for two separate means of determining whether a breach of Article 6 has occurred: a four-fifths majority vote of the European Council or a unanimous decision of the heads of state. Both processes require the assent of the European Parliament; however, whereas the Parliament may suggest such action to the Council, the heads of state act only on proposals from either the European Commission or one-third of the Council. In addition, while a vote by the Council results only in recommendations being sent to the government in question, the heads of state may impose penalties, such as the revocation of voting rights.

²⁵ The amendments to the Treaty of Nice entered into force as of February, 2003. See http://europa.eu.int/comm/nice_treaty/.

²⁶ The Council of Europe (CoE) is an intergovernmental organization, distinct from the EU, OSCE, or any other body. It aims to protect human rights, pluralist democracy, and the rule of law; to promote awareness and encourage the development of Europe's cultural identity and diversity; to seek solutions to problems facing European society; and to help consolidate democratic stability in Europe by backing political, legislative and constitutional reform. The Parliamentary Assembly of the CoE is responsible for monitoring member states' compliance with their commitments as members of the CoE and may, if warranted, suspend a member state's voting rights in the Assembly or suspend membership altogether. See, e.g., Council of Europe, "An Overview," August 1, 2002, available at: www.coe.int; L. McIntosh Sundstrom, "Carrots and Sticks for Democracy in the OAS: Comparison with the East European Experience," *Canadian Foreign Policy*, Vol. 10, No.3 (Spring 2003), pp. 49-52.

²⁷ For example, in response to the inclusion of the controversial Freedom Party led by Jorg Haider in Austria's ruling coalition, EU governments demanded the new government make certain commitments on political rights of minorities and other matters and sent a fact-finding team to monitor implementation.

The EU's Charter of Fundamental Rights, proclaimed in Nice in 2000, collects and reasserts the rights and freedoms guaranteed in other EU documents. The Charter would, if incorporated into EU treaty law, codify the relations between EU citizens/resident aliens and the union and also provides a framework for the Commission to evaluate potential violations by member states. The Charter's preamble recognizes democracy as a founding principle of the EU, and the chapters entitled "Freedoms," "Equality," and "Citizen's Rights" address several key components of democracy. The charter was not included in the Treaty of Nice, but discussion of its status is on the agenda for the Intergovernmental Conference in 2004. In the meantime, it is likely to affect European Court of Justice case law.

The EU further has made commitments to promote democracy outside of the union, notably through development of a standard democracy clause in development assistance agreements with non-EU members. Article 11 of the Treaty on European Union declares that an objective of the union's common foreign and security policy is "to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms." Since 1992, the EU has introduced a commitment to democracy into nearly every agreement or treaty with a third party.²⁸ Over the years, the EU has employed two different forms of a democracy clause with third parties: one compelling immediate suspension of the relevant agreement when certain principles or practices are breached, and another calling for consultation and "appropriate measures."²⁹ In practice, suspension has rarely been invoked.

More recently, the EU has modified its standard democracy clause, as seen in its latest agreement with the states belonging to the African, Caribbean and Pacific regions (ACP), known as the Cotonou Agreement of 2000. This multilateral accord between donor and recipient states makes respect for democracy and human rights an "essential element" of the union's relations with African, Caribbean, and Pacific states.³⁰ Article 8 of the Cotonou Agreement establishes a "political dialogue" mechanism that allows the parties to take up specific political issues of mutual concern. The political dialogue "shall also encompass a regular assessment of the developments concerning respect for human rights, democratic principles, the rule of law and good governance."³¹ According to Article 96, if, despite the political dialogue, the European Union considers that any ACP state has failed to fulfill an obligation stemming from respect for human rights, democratic principles, and the rule of law, the parties shall hold consultations aimed at remedying the situation. If an acceptable solution cannot be reached, unspecified "appropriate measures" may be taken, with suspension of the agreement "a measure of last resort."

The EU has integrated democracy promotion into its international development policies in other ways as well. It has identified promotion of human rights and democracy as essential components of its poverty-eradication agenda. Accordingly, democratic institutional capacity building is a high priority.³² In addition, other international democracy promotion efforts of the union are coordinated through the European Initiative for Democracy and Human Rights

²⁸ European Commission, "The European Union's Role in Promoting Human Rights and Democratisation in Third Countries," May 8, 2001, p. 4.

²⁹ European Commission, "On the Inclusion of Respect for Democratic Principles and Human Rights in Agreements between the Community and Third Countries," May 23, 1995, p. 3.

³⁰ Cotonou Agreement, Article 9.2.

³¹ *Ibid.*, Article 8.4.

³² European Commission, "The European Community's Development Policy—Statement by the Council and the Commission," November 10, 2001, pp. 2, 6.

(EIDHR), which in 2000 spent 97 million euros on 142 programs. It primarily focuses on eastern and southeastern Europe but funds projects worldwide.³³ Together, the EU has developed a carrots and sticks democracy policy that, if seriously implemented, could be used to defend and strengthen democracy both within and outside its membership.

³³ European Commission, "Report on the Implementation of the European Initiative for Democracy and Human Rights in 2000," May 22, 2001, p. 4.

Africa

African Union (formerly Organization of African Unity) (AU)

Over the last five years, African governments have made substantial progress toward developing norms and instruments in support of democracy. As further described below, however, the AU's democracy clause is, in essence, a regime protection mechanism designed to deter coups against any constitutional government, regardless of how democratic it is.

At the 1997 Organization of African Unity Summit in Harare, OAU members passed a resolution condemning coups d'état. Subsequently, the Heads of State Assembly at the 1999 OAU Summit in Algiers agreed on a resolution barring at its next summit in Lomé in 2000 those members whose governments had been deposed since the Harare Summit and who had not held credible elections. A separate foreign ministers' resolution in Algiers further called on the OAU Committee on Anti-Constitutional Changes to determine the appropriate OAU response to coups and report to the Council of Ministers at the Lomé Summit.

Around the same time, African governments reached agreement on a successor to the OAU that more clearly articulates promotion of democratic governance as an objective of the organization. The Constitutive Act of the new African Union, adopted in Lomé in July 2000, states that the AU shall "promote democratic principles and institutions, popular participation and good governance." The founding principles of the AU also include "condemnation and rejection of unconstitutional changes of government." Article 30 of the Constitutive Act goes on to state that "[g]overnments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union." In addition, African governments adopted in 2000 a framework for responding to unconstitutional changes of government, known as the Lomé Declaration. It sets forth a series of sanctions to be invoked in the event of an interruption of constitutional rule. These sanctions, in addition to suspension from the AU, include denial of visas to coup-plotters, commercial restrictions, and restrictions on government contacts. The AU agreements provide for six months of consultation after a coup to enable a national government to restore constitutional rule before any sanctions are applied.³⁴

Given that roughly half of the AU governments are not democratic, it was impossible for them to create a democracy clause that would make the existence of democratic governance a condition of membership. Therefore, the AU version, unlike most other democracy clauses, does not distinguish between democratically elected governments and regimes that came to power in other ways. A non-democratic regime in the region could invoke Article 30 to resist even legitimate efforts to unseat it, as was seen in the case of the disputed elections in Madagascar in December 2001. There, AU governments condemned President-elect Marc Ravalomanana for his efforts to claim electoral victory for the presidency even though incumbent President Didier Ratsiraka manipulated the electoral process to stay in power and was eventually forced to flee. Nonetheless, by requiring governments that come to power unconstitutionally to hold "credible elections" as a condition for lifting the suspension of membership or other sanctions, the African

³⁴ The text does not specify whether the toppled leader needs to be restored. In practice, national authorities would be expected to follow whatever constitutional provisions exist on the subject of transitional elections.

Union has begun to forge a path toward establishing popular sovereignty as the ultimate litmus test for legitimacy in the region.

The OAU's anti-coup clause was invoked in the case of Côte d'Ivoire, when Brigadier General Robert Guei overthrew President Henri Konan Bedie on December 24, 1999. Guei's action was in violation of the OAU's Harare Declaration (1997) and Algiers Resolution (1999) prohibiting the unconstitutional removal of member governments. In response, OAU governments condemned the coup and called on Guei to return the country to constitutional rule immediately. They also invoked the Algiers Resolution and barred Guei from the Lomé Summit in 2000.

Guei set about preparing the ground for new elections to legitimize his seizure of power. He organized a referendum to approve a personalized constitution barring the main opposition candidate, Alassane Ouattara, from contesting elections scheduled for October 2000. African governments requested a delay of elections for four months to resolve the underlying conflict surrounding Ouattara's citizenship and gave then OAU chairman, President Gnassingbe Eyadema of Togo, a mandate to pursue consultations with Ivorian political leaders. Eventually elections were held, but they were considered seriously flawed, prompting the OAU to call for new elections. Since then, Cote d'Ivoire has descended into further political turmoil and violence.

In the case of Comoros, Colonel Assoumani Azzali's April 30, 1999 coup against President Tadjidine Massound came at a time of secessionist upheaval. Violent protest in the capital, Moroni, and the separatists' refusal to sign the OAU-brokered Antananarivo Accord, provided Azzali with the excuse to seize power.³⁵ The OAU condemned the coup as a violation of the Harare Declaration (1997) and Algiers Resolution (1999) and gave Azzali one year to return the country to constitutional rule. Azzali was also denied entry at the Lomé Summit, although he had attended the Algiers summit some three months after seizing power.³⁶ Since then, under the auspices of the African Union, South African President Mbeki has facilitated negotiations among Comorean political parties leading to an agreement in December 2003 to hold parliamentary elections within four months.

³⁵ The OAU threatened sanctions if the secessionists did not sign the Antananarivo Accord by February 1, 2000. The movement's leadership responded with a referendum in January 2000 in which it claimed that 94.7 percent voted for full independence for the island. The OAU refused to recognize the ballot, citing reports of intimidation, and backed sanctions on the movement of goods and people imposed by Azzali. Under a deal brokered by the OAU and *La Francophonie*, the parties agreed that Colonel Azali Asoumani would head a transitional administration. Some critics charged that these measures had the effect of legitimizing the junta.

³⁶ Other noteworthy democracy-related mechanisms not covered in this paper include the Southern African Development Community Parliamentary Forum (SADCPF), a collaborative effort among 12 parliaments of southern Africa which conducts election observation and training. See <http://www.sadcpf.org/>. Also of note is the New Partnership for Africa's Development (NEPAD), which introduces a peer review mechanism (PRM) for the African Union on issues of political governance. The PRM has been criticized as being too beholden to governments. See, e.g., "Mbeki's volte-face has battered Nepad," Mail and Guardian Online, <http://archive.mg.co.za>, Nov. 8, 2002.

*Economic Community of West African States (ECOWAS)*³⁷

ECOWAS member states, many of which are undergoing dramatic transitions to democratic rule, have expressed a commitment to democracy but have not adopted a democracy clause per se.

In July of 1991, member states signed the Declaration of ECOWAS Political Principles, which pledges “unwavering commitment to the establishment and smooth functioning of democratic institutions in each member state.” The declaration bids leaders to promote “the liberty of the individual and his inalienable right to participate by means of free and democratic processes in the framing of society in which he lives” and commits them to promote “political pluralism and those representative institutions and guarantees for personal safety and freedom under the law.” The declaration also condemns unequivocally any seizure of power by force of arms. These principles have been incorporated into the revised ECOWAS Treaty of 1993 (Article 4), which cites as a fundamental principle of the organization the “promotion and consolidation of a democratic system of governance in each Member State as envisaged by the Declaration of Political Principles adopted in Abuja on 6 July, 1991.”³⁸

The Final Communiqué issued by ECOWAS foreign ministers meeting in Lomé on May 24–25, 1999, pledged member states to consolidate democracy and respect for human rights. The meeting reaffirmed the need for all member states to consolidate their democratic base and to observe the principles of good governance and good economic management to ensure the emergence and development of a democratic culture. It recalled the relevant provisions of the Declaration of the OAU Heads of State and Government condemning political assassinations. It expressed the view that no coup d’état, let alone a political assassination, could be justified by any situation, however unbearable it might be. A communiqué issued by the Extraordinary Summit of Heads of State and Government at Abuja on April 11, 2001, called on member states to consolidate peace and regional security in West Africa by taking measures that would help, among others, to strengthen democracy and stability.

³⁷ ECOWAS was founded in 1975 to promote economic integration of its 15 member states: Benin, Burkina Faso, Cape Verde, Côte d’Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

³⁸ See www.sec.ecowas.int.

Asia

Association of Southeast Asian Nations (ASEAN)

Founded in 1967 “to accelerate economic growth, social progress and cultural development in the region,” ASEAN member states have made no formal regional commitment to democracy as a system of government. This is hardly surprising given its membership – Brunei Darussalam (a sultanate), Cambodia, Indonesia, Laos, Malaysia, Burma/Myanmar, Philippines, Singapore, Thailand and Vietnam. Nonetheless, ASEAN states have taken some baby steps in the direction of a de facto regional concern for democracy. Notably, under the chairmanship of Thailand (during the Chuan administration), ASEAN adopted an “ASEAN Vision 2020” declaration in December 1997 calling for “vibrant and open ASEAN societies consistent with their respective national identities.” The phrase “open societies” was heavily contested among the delegates, who accepted the term only after Singapore proposed the watered-down qualifying phrase. The Vision 2020 document also “envisions our nations being governed with the consent and greater participation of the people.”

Earlier that same year, ASEAN decided to postpone consideration of Cambodia’s membership due to Hun Sen’s overthrow by force of his freely-elected coalition partner, Prince Norodom Ranariddh. Nonetheless, by proceeding with the admission process of Laos and Myanmar, despite their utter lack of democratic qualifications, ASEAN states made it clear that instability, rather than concern for free and fair elections, was the driving force behind the decision to delay Cambodia’s membership.

More recently, ASEAN states took the unusual step of publicly calling on the military junta in Burma to “resume its efforts of national reconciliation and dialogue among all parties concerned leading to a peaceful transition to democracy.” The June 17, 2003 statement also called for the early lifting of restrictions placed on Daw Aung San Suu Kyi and other members of her party, the National League for Democracy (NLD). Burma’s continued intransigence in proceeding with political reforms will be an important case to test the willingness of Indonesia, the chair of ASEAN, to make democratic reconciliation in Burma a meaningful element of ASEAN’s agenda for regional cooperation.

A MODEL DEMOCRACY CLAUSE

The preceding review of international rules and procedures to defend and restore democracy demonstrates both the advances and the gaps in the design of such mechanisms. Regional organizations with well-developed rules, like the Commonwealth, as well as associations with no defined democracy clause, like the South Asian Association for Regional Cooperation (SAARC) or ASEAN have much to learn from the experience in this field to date. The above comparison of democracy clauses allows one to identify key elements of a model democracy clause that would address both emerging threats to democratic norms and outright coups. While acknowledging that the willingness of states to develop an instrument for collective response in this area depends greatly on the particular history of democratic development in a given region, one nonetheless can construct a set of rules that would maximize the chance of an effective multilateral response to a crisis of democratic governance.

A model democracy clause should include these five most important elements:

1. *Respect for democratic norms, human rights, and the rule of law should be incorporated as an essential element of the particular organization's core mission.* This broader description of purpose provides the foundation for a strong democracy clause that could be used to respond to a variety of circumstances and increase the chance of preventing the worst case scenario of an overthrow of a democratically elected government.
2. *The democracy clause should authorize a standing committee of independent experts to monitor situations that give rise to concern, and to conduct on-site visits to investigate the problem and make recommendations to the government in question and to the other member states.* Likewise, the secretary-general of the organization in question should have the power to initiate his or her own action, at a minimum to call the particular situation to the attention of the member states, and to dispatch a specialized body of career professionals or eminent figures to help him or her carry out that function. In either case, *visits to the country in question must not depend on an invitation of its government.* Consultation with a broad spectrum of civil society should be required as well.
3. *The democracy clause should spell out in some detail the consequences of a breach of democratic norms and not simply suggest that "appropriate action" be taken.* A menu of specific measures that could be adopted depending on the severity of the crisis would put teeth into timely efforts to deter coups and lend predictability to the ensuing multilateral response in case deterrence fails.
4. *A breach of democratic norms should lead not just to "suspension" from the relevant organization but to economic, trade, and financial consequences as well.* These should include punishment of the abusers personally, such as visa restrictions and asset freezing. Since there is no one comprehensive international treaty that governs the entire range of interstate relations, democracy clauses should be integrated wherever possible into as many bilateral and multilateral treaties as possible, so that an interlocking web of agreements may be invoked when a democratic crisis erupts. This will have the effect of increasing pressure for a speedy return to democracy.

5. *If democracy is overturned, the democracy clause should prohibit participation of the offending government in the organization's decisions and include a time line for restoration of democracy.* If the deadline is not met, provision should be made for escalating engagement; for example, the situation should remain a priority on the organization's agenda until it is resolved. On the other hand, if a transition government is making genuine steps to return the country to democratic rule, it should be rewarded with technical assistance and diplomatic support.

CONCLUSION

In sum, as the so-called third wave of democratization took root in the 1990s, governments around the world have ceded some national sovereignty ground to create multilateral mechanisms designed to defend and restore democratic rule. The trend toward establishment of democracy clauses in Europe, Latin America, the Commonwealth and Africa is well-advanced, although implementation remains seriously compromised by other competing interests. Not surprisingly, most states of Asia, the former Soviet Union and the Middle East remain far behind in their recognition of democracy promotion as a guiding objective of multilateral cooperation, and even further away from establishment of democracy clauses.

Of greatest promise, perhaps, is the growing adoption of democracy clauses linked to specific trade and economic privileges, which further strengthen the web of interlocking agreements that effectively deter unconstitutional interruptions of democratic rule. For those states willing to participate in collective arrangements to protect democracy, the next frontier lies in developing preventive measures that deploy diplomatic resources to head off coups or other illegal attempts to overthrow the people's right to govern themselves. A model democracy clause, like the one offered here, would incorporate lessons learned from the diversity of democracy clauses already in existence to cover both abrupt overthrows of democracy and more gradual attrition of democratic practices by authoritarian forces.

About the Author and the Democracy Coalition Project

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About the Democracy Coalition Project

The Democracy Coalition Project is a nongovernmental organization that conducts research and advocacy relating to democracy promotion policies at the national, regional and global levels. Begun in June 2001 as an initiative of the Open Society Institute, the Democracy Coalition Project relies on an international network of civil society organizations, scholars, foreign policy experts and politicians committed to democracy promotion as an essential element of international peace and human development. DCP is a strategic partner of the Club of Madrid, an association of former heads of state and government working to strengthen and consolidate democracy around the world. More information is available at <http://www.demcoalition.org>.