NON-DEMOCRATIC TRANSITIONS: REACTIONS OF THE OAS AND CARICOM TO ARISTIDE'S DEPARTURE

Dr. David S. Berry*

INTRODUCTION

The states of the Americas have a long history of support for democracy and the human rights related to democracy. They have expressed this support through treaties, resolutions and declarations, and these democratic rights have been further interpreted and developed by the organs of the Organization of American States (OAS). From early, pre-OAS treaties such as the 1907 *Additional Convention to the General Treaty of Peace and Amity*,[1] to the more recent *Charter of the Organization of American States*, the *American Convention on Human Rights* and the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*, the States of the Americas have sought to promote and protect representative democracy.[2] These treaties protect important democratic rights and freedoms including those concerning thought, conscience, opinion, expression, peaceful assembly, association, and participation in government and public affairs. They also provide the more solid guarantees that are required to flesh out democracy, including the rights of citizens to hold, to vote in, and to otherwise take part in, periodic

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* 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. *See* Additional Convention to the General Treaty of Peace and Amity, art. 1, Dec. 20, 1907, 2 AM. J. INT'L. L. SUPP. 229, 229-30 (1908).

2. Charter of the Organization of American States, Apr. 30, 1948, O.A.S.T.S. No. 1, as amended by the Protocol of Buenos Aires, Feb. 27, 1967, O.A.S.T.S No. 1-A, OEA/Ser. A/2(SEPF)Add., by the Protocol of Cartagena de Indias, Dec. 5, 1985, O.A.S.T.S. No. 66, OEA/Ser.A/41 (SEPF), by the Protocol of Washington, Dec. 14, 1992, 1-E Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add. 3 (SEPF), and by the Protocol of Managua, June 10, 1993, 1-F Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add.4 (SEPF), the integrated text reflecting all four amendments *available at* http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/juridico/english/charter.html (last visited February 6, 2006) [hereinafter OAS Charter]; American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Nov. 17, 1988, O.A.S.T.S. No. 69, P.A.U.T.S. No. 69. The final three treaties are each *reprinted in* General Secretariat to the OAS, Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/I.4 rev. 10 (May 31, 2004).

elections. The rights and guarantees in these treaties are further elaborated in, and may be interpreted by, the American Declaration of the Rights and Duties of Man.[3]

In the last 25 years, however, the Member States of the Organization of American States have allowed democracy to play an even stronger role in the operation of the Organization. Several resolutions, declarations, and an amendment to the *OAS Charter* have made a non-democratic transition of government a ground for suspension of a Member State's right to participate in either the Organization of American States or Summit of the Americas. This process started with Resolution 1080 on "Representative Democracy" in 1991,[4] and was further grounded and developed in the *Protocol of Washington* of 1992,[5] the Declaration of Quebec City of 2001,[6] and the Inter-American Democratic Charter of 2001.[7] Through these acts the

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3. American Declaration of the Rights and Duties of Man, Res. XXX, Final Act, Ninth International Conference of American States, 1948, 43 AM. J. INT'L. L. SUPP. 133, 138 (1949). Although technically non-binding, the *Declaration* is now recognized as fulfilling the important role of being an authoritative guide to the interpretation of the phrase "fundamental rights of the individual" that is found in Articles 3(l) and 17 of the OAS Charter. Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89, Jul. 14, 1989, Inter-Am C.H.R. (ser. A) No. 10, paras. 41-47.

4. Representative Democracy, General Assembly of the OAS [hereinafter OAS G.A.] AG/RES. 1080 (XXI-O/91), June 5, 1991, http://www.oas.org (follow "Welcome" hyperlink; then follow "Documents & Reports" hyperlink to "Resolutions and Declarations – AG – General Assembly" and choose "Resolutions Before 1995"; then follow "AG/Res. 1080 (XXI-0/91" hyperlink) (last visited Dec. 30, 2005).

5. Protocol of Amendments to the Charter of the Organization of American States, Dec. 14, 1992, 33 I.L.M. 1005 [hereinafter Protocol of Washington]. Article 1 of the Protocol of Washington added a new Article 9 to the OAS Charter, which provides, in part:

> 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.

Id.

6. Third Summit of the Americas, Apr. 22, 2001, *Declaration of Quebec City*, http://www.summit-americas.org (follow "The Summit Process" hyperlink; then follow "Third Summit of the Americas, Quebec City" hyperlink) (last visited Dec. 30, 2005).

7. Organization of American States, Inter-American Democratic Charter, Sept. 11, 2001, OAS Doc. OEA/SerP/AG/Res.1 (2001), 28th Spec. Sess., OAS Doc. OEA/Ser.P/AG/Res.1 (XXVIII-E/01) (OAS General Assembly) (Sept. 11, 2001), 40 I.L.M. 1289 (2001) [hereinafter Democratic Charter], *available at* http://www.oas.org (follow "Welcome" hyperlink; then follow "Documents & Reports" hyperlink and choose "Democratic Charter") (last visited Dec. 30, 2005). Articles 20-21 of the Democratic Charter provide:

Article 20

> In the event of an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state, any member state or the

states of the Americas have accepted that unconstitutional alterations or disruptions of their democratic orders may provide the grounds for intense scrutiny, and perhaps intervention, by the OAS or the Summit of the Americas.[8] Further, this scrutiny may in turn result in suspension of their rights to participate in those bodies.

This paper briefly examines the practical implications of such democratic procedures in the Americas. It suggests that despite the availability of these potentially robust checks on non-democratic transitions, their meaningful implementation remains problematic. Focusing on the legal actions taken by the Organization of American States and the Caribbean Community (CARICOM) in response to the departure of Jean-Bertrand Aristide from Haiti in late February 2004,

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Secretary General may request the immediate convocation of the Permanent Council to undertake a collective assessment of the situation and to take such decisions as it deems appropriate.

The Permanent Council, depending on the situation, may undertake the necessary diplomatic initiatives, including good offices, to foster the restoration of democracy.

If such diplomatic initiatives prove unsuccessful, or if the urgency of the situation so warrants, the Permanent Council shall immediately convene a special session of the General Assembly. The General Assembly will adopt the decisions it deems appropriate, including the undertaking of diplomatic initiatives, in accordance with the Charter of the Organization, international law, and the provisions of this Democratic Charter.

The necessary diplomatic initiatives, including good offices, to foster the restoration of democracy, will continue during the process. *Id.*

Article 21

When the special session of the General Assembly determines that there has been an unconstitutional interruption of the democratic order of a member state, and that diplomatic initiatives have failed, the special session shall take the decision to suspend said member state from the exercise of its right to participate in the OAS by an affirmative vote of two thirds of the member states in accordance with the Charter of the OAS. The suspension shall take effect immediately.

The suspended member state shall continue to fulfill its obligations to the Organization, in particular its human rights obligations.

Notwithstanding the suspension of the member state, the Organization will maintain diplomatic initiatives to restore democracy in that state. *Id.*

8. For an analysis of the pro-democratic norms of the Inter-American system, *see, e.g.*, Stephen J. Schnably, *Constitutionalism and Democratic Government in the Inter-American System*, *in* DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW 155-98 (Gregory H. Fox & Brad R. Roth eds., 2000); Dinah Shelton, *Representative Democracy and Human Rights in the Western Hemisphere*, 12 HUM. RTS. L.J. 353 (1991). For analysis of the Inter-American Democratic Charter, *see, e.g.*, Timothy D. Rudy, *A Quick Look at the Inter-American Democratic Charter of the OAS: What is it and is it "Legal"?*, 33 SYRACUSE J. INT'L L. & COM. 237 (2005); *See also* Enrique Lagos & Timothy D. Rudy, *The Third Summit of the Americas and the Thirty-first Session of the OAS General Assembly*, 96 AM. J. INT'L L. 173 (2002). For an exploration of the difficulties associated with "democratic intervention" by regional organizations, *see e.g.*, Stephen J. Schnably, *The OAS and Constitutionalism: Lessons From Recent West African Experience*, 33 SYRACUSE J. INT'L L. & COM. 263 (2005).

this paper suggests that regional organizations in the Americas and Caribbean continue to face both substantive and procedural challenges in their implementation of the "right to democracy" of the peoples of the Americas.[9]

I. ARISTIDE'S DEPARTURE

On February 29, 2004, at 6:15 a.m., President Jean-Bertrand Aristide departed from Haiti on a Boeing 757, escorted by U.S. soldiers.[10] The events surrounding President Aristide's departure are fairly well established. However the *meaning* of that departure—whether it was a rescue or abduction—remains a subject of deep controversy.[11] Importantly, views also differ about the validity of Aristide's hasty and informal resignation immediately prior to his departure. If considered effective, it would serve as a foundation for future democratic transitions; if considered illegitimate, it would not support a democratic, constitutional transition.[12] This latter area of uncertainty clearly raises the question as to whether there was an unconstitutional alteration or disruption of the democratic order in Haiti, a question, which should have been subject to intense scrutiny by the Organization of American States under the *OAS Charter* or the Inter-American Democratic Charter.

II. THE OAS REACTION: SOFT USE OF THE DEMOCRATIC CHARTER

In this regard, it is useful to compare the reaction of the

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9. *See* Democratic Charter, *supra* note 7, art. 1. Due to space constraints, this article cannot examine the Haitian crisis in any significant depth. For a brief overview, *see, e.g.*, Garry Pierre, *Haiti Awaits Deliverance*, WALL ST. J., Mar. 1, 2004, at A16. For a thorough evaluation of the performance of the OAS in building democracy between 1990 and 2000 (with a brief note on the events of February 2004), *see* Yasmine Shamsie, *Building 'Low-Intensity' Democracy in Haiti: The OAS Contribution*, 25 THIRD WORLD Q. 1097 (2004).

10. Lisa Takeuchi Cullen, *A Disputed Departure*, TIME, Mar. 15, 2004, at 59.

11. *Id. See also*, Jose de Cordoba & Greg Jaffe, *Aristide Leaves Haiti Amid Chaos; Hundreds of U.S. Marines to Depart for the Country, Joining Peacekeeping Force*, WALL ST. J., Mar. 1, 2004, at A3; *see also* Jose de Cordoba, *Haitian Looters Find Cash Hoard, Fueling Charges of Corruption; Rotting Dollars Were Stashed Under Aristide's Mansion; Rebel Soldiers to Disarm*, WALL ST. J., Mar. 4, 2004, at A14.

12. For the official U.S. statement describing a "peaceful and constitutional succession," *see* Press Statement, Richard Boucher, U.S. DEP'T OF STATE, Resignation of President Jean-Bertrand Aristide of Haiti (Feb. 29, 2004), http://www.state.gov/r/pa/prs/ps/2004/29990.htm (last visited Dec. 30, 2005). For the view that Aristide's departure was the culmination of a "prolonged . . . chronic coup" at the hands of the Haitian opposition (the military and the elite), supported by the U.S., *see* Amy Wilentz, *Coup in Haiti*, THE NATION, Mar. 22, 2004, at 5-6. *Cf.*, Yves Engler, *A Denial of Beautiful Dreams*, THE ECOLOGIST (May 2004), at 16-21.

Organization of American States to the events in Haiti in 2004, with its more robust reaction to the Venezuelan crisis two years earlier.[13]

A. OAS Reaction to the Venezuelan Crisis in 2002

On April 11, 2002, President Hugo Chávez Frías was removed from office by *coup d'état.* Forty-eight hours later, following widespread dissatisfaction with the actions of his replacement, Chávez was returned to power.[14] The Organization of American States reacted swiftly to these events. The OAS Permanent Council met on April 13, and issued a Resolution on the "Situation in Venezuela" which condemned the "alteration of constitutional order in Venezuela," and the related acts of violence.[15] Further, under the Resolution a special diplomatic mission was sent to investigate and to help mediate the situation, and the Permanent Council convoked a special session of the General Assembly under Article 20 of the Inter-American Democratic Charter.[16] The General Assembly, in its twenty-ninth special session considered the report submitted by the Secretary General of the OAS and issued a resolution on "Support for Democracy in Venezuela."[17] By this resolution the General Assembly recognized the end of the constitutional crisis in Venezuela with the return of Chávez and expressed satisfaction at the return of the democratically elected President.[18] However the General Assembly also put the Chávez government on notice that Venezuela, like all OAS Member States, remained subject to the norms of the Inter-American Democratic

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13. For contemporary news reports of the coup and counter-coup, *see e.g.*, Marc Lifsher, *Venezuela's President Chavez Is Ousted in Military Uprising*, WALL ST. J., Apr. 12, 2002, at A1; Mary Anastasia O'Grady, *Americas: Venezuela Rejected a Coup, but Its Future Is No Brighter*, WALL ST. J., Apr. 19, 2002, at A19.

14. For a colorful account of the events, *see, e.g.*, Report presented by the Permanent Mission of the Bolivarian Republic of Venezuela for consideration by the Permanent Council of the OAS, *The Current Situation in Venezuela*, OAS Doc. OEA/Ser.P/CPdoc. 3616/02 (May 28, 2002) (original in Spanish), http://www.oas.org/xxxiiga/english/docs_en/docs_items/cpdoc3616_02.htm (last visited Dec. 30, 2005).

15. Situation in Venezuela, Perm. Council Res. of the Organization of American States [hereinafter OAS Perm. Council Res.] CP/RES. 811 (1315/02) (Apr. 13, 2002), http://www.oas.org/consejo/resolutions/res811.asp (last visited Dec. 30, 2005).

16. *Id.*

17. Support for Democracy in Venezuela, OAS G.A. AG/RES. 1 (XXIX-E/02) (Apr. 18, 2002), http://scm.oas.org/Reference/english/english.htm (Follow "Special Sessions" hyperlink; then follow "Twenty-ninth Special Session" hyperlink) (last visited Dec. 30, 2005).

18. *Id.* para. 1.

Charter, in particular, those set out in Articles 3 and 4.[19] Further, when the OAS General Assembly met in its fourth plenary session on June 4, 2002, it issued a declaration which reiterated both the "OAS's willingness to provide the support and assistance that the Government of Venezuela requires to consolidate its democratic process," and its "determination to continue applying, without distinction, and in strict accordance with the letter and spirit of the Inter-American Democratic Charter, the mechanisms provided for in the Inter-American Democratic Charter for the preservation and defense of representative democracy."[20] The General Assembly also welcomed the national dialogue taking place in Venezuela and the decision of the Government to establish a Truth Commission to look into the incident.[21] As can be seen in these declarations, resolutions, and the related actions of organs of the OAS, the Organization actively monitored and assisted in the resolution of the Venezuelan situation, constantly using the Inter-American Democratic Charter as a reference point.

B. OAS Reaction to the Haitian Crisis of 2004

In the case of Haiti in 2004, however, the OAS reaction was muted. The Permanent Council had been keeping the situation in Haiti on its agenda, as seen in resolutions preceding the incidents of February 29, 2004. In its resolution of February 26, 2004, for example, the Permanent Council recalled several earlier resolutions, emphasized the important role of the Caribbean Community (CARICOM) in helping to

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19. *Id.* paras. 2-4; see also Democratic Charter, *supra* note 7, arts. 3 and 4. Articles 3 and 4 provide:

Article 3

> Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government. *Id.*

Article 4

> Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy.
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> The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy. *Id.*

20. Declaration on Democracy in Venezuela, OAS G.A. AG/DEC. 28 (XXXII-O/02) (June 4, 2002), paras. 1 and 2, http://www.oas.org/juridico/english/ga02/agdec_28.htm (last visited Dec. 30, 2005).

21. *Id.* paras. 3-4.

resolve the crisis, including the CARICOM Plan, and called upon the U.N. Security Council "to take the necessary and appropriate urgent measures" to address the situation.[22] The Permanent Council also reaffirmed "its support for the OAS Special Mission in Haiti and its activities in accordance with all relevant OAS resolutions, and, in particular, its support for the CARICOM initiative, designed to promote a solution to the situation in Haiti."[23] No reference was made to the Inter-American Democratic Charter in this resolution. Following Aristide's departure on February 29, 2004, the Permanent Council did not issue any resolutions regarding the incident, and the OAS General Assembly only did so during its fourth plenary session several months later, on June 8, 2004.[24]

This latter resolution is fascinating in its treatment of the crisis. Paragraphs of the resolution's preamble describe Aristide's "abrupt departure," note the "subsequent questions" surrounding Aristide's resignation, and emphasize that there "was an alteration of the constitutional regime, which began prior to February 29, 2004, and which has damaged the democratic order in Haiti due to the nonexistence of a functioning parliament or democratically elected municipal authorities or an independent and free judiciary."[25] Cumulatively, these and other statements by the General Assembly in the resolution should have provided the platform for a robust invocation of the Democratic Charter, including use of Articles 19-22, as occurred in the Venezuelan context.

They almost did. In accordance with the Inter-American Democratic Charter the General Assembly called for new elections as soon as possible and requested the OAS Special Mission for Strengthening Democracy in Haiti to assist with those elections.[26] The General Assembly also mandated the Permanent Council, in accordance with Article 20 of the Democratic Charter, to undertake diplomatic initiatives to foster restoration of democracy in Haiti, and called for "the rapid normalization of democratic institutions in Haiti consistent with

22. Situation in Haiti, OAS Perm. Council Res. CP/RES. 862 (1401/04) (Feb. 26, 2004), para. 1, http://www.oas.org/consejo/resolutions/res862.asp (last visited Dec. 30, 2005).

23. *Id.* para. 2.

24. Situation in Haiti: Strengthening of Democracy, OAS G.A. AG/RES. 2058 (XXXIV-O/04) (Jun. 8, 2004), http://www.oas.org/juridico/english/ag02528e08.doc (last visited Dec. 30, 2005).

25. *Id.*

26. *Id.* paras. 1-2.

the Inter-American Democratic Charter."[27] However the 'teeth' of the Inter-American Democratic Charter, the portions of Articles 20-21, which allow special meetings of the Permanent Council and the General Assembly in order to *suspend* a Member State from the exercise of its right to participate in the OAS, were never utilized.[28]

C. Comparison and Assessment

These OAS reactions to the Haitian crisis were useful, but differed in two ways from their actions to the Venezuelan *coup* and counter-*coup*. Firstly, regarding timing, the OAS General Assembly and Permanent Council did not actively address the Haitian situation until months later. Secondly, regarding substance, there was no attempt to establish what actually happened on February 29, 2004. No new fact finding mission was sent to Haiti, nor is there a record of the OAS Special Mission in Haiti being asked to clarify the events. This is important because during and after the Venezuelan incident all parties emphasized the need to establish an accurate understanding of the sequence of the events and the actors involved. In addition, the OAS did not suspend Haiti's voting rights with the provisions of the Inter-American Democratic Charter.

These differences may be explained in part by the fact that the United Nations (U.N.) Security Council, acting under Chapter VII of the *U.N. Charter*, issued a resolution on the day of Aristide's departure, which appeared to legitimize President Boniface Alexandre as the acting President of Haiti.[29] Chapter VII decisions, of course, are binding on all U.N. Member States.[30] In light of this, perhaps the OAS merely recognized Aristide's departure as a *fait accompli*. Nevertheless, it is doubtful that this Security Council resolution could be viewed as prohibiting or otherwise restricting the OAS from initiating an investigation of the events surrounding Aristide's departure, as expressly called for by CARICOM and as envisaged in the Inter-American Democratic Charter.

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27. *Id.* paras. 4 and 6.

28. Democratic Charter, *supra* note 7, arts. 20-21.

29. S.C. Res. 1529, para. 1, U.N. Doc. S/RES/1529 (Feb. 29, 2004).

30. *See* U.N. Charter art. 25: "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." *Id.* *See also* Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. 16 (June 21).

III. THE CARICOM REACTION

A. Need for Investigation of Haitian Events

In contrast, CARICOM's efforts to establish the truth of what happened on February 28-29, 2004, is to be commended.[31] Haiti, a very recent member of the Caribbean Community (from July 2, 2002), is subject to the democracy-related rights and values of the Charter of Civil Society, a document adopted by a resolution of the Community's highest organ, the Conference of Heads of Government.[32] Invoking the

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31. CARICOM's Member States are: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago. For further information about CARICOM, *see generally* http://www.caricom.org. For an introduction to the new constituent treaty, the Revised Treaty of Chaguaramas, *see* David S. Berry, *The New Caribbean Community: An Introduction to the Institutional Changes in the Revised Treaty of Chaguaramas*, 7 CARIBBEAN L. BULL. 1, 1-58 (2002).

32. Although the provisions of the Charter are persuasive rather than binding, they do exert a normative force over Community affairs, *see* Charter of Civil Society for the Caribbean Community [hereinafter The Charter of Civil Society], http://www.caricom.org/jsp/secretariat/legal_instruments/chartercivilsocietyresolution.jsp?menu=secretariat (last visited Dec. 30, 2005). The Charter was adopted at the Eighth Inter-Sessional Meeting of the Conference of Heads of Government, on February 19, 1997, by a resolution of the Conference of Heads of Government of the Caribbean Community. *Id.* The Charter guarantees a variety of human rights, including civil and political rights and economic, social and cultural ones. The relevant portions of Articles 6 and 17 of the *Charter* provide:

ARTICLE VI

Political Rights

> 1. The States shall ensure the existence of a fair and open democratic system through the holding of free elections at reasonable intervals, by secret ballot, underpinned by an electoral system in which all can have confidence and which will ensure the free expression of the will of the people in the choice of their representatives.
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> 2. The States shall take all appropriate measures to promote and maintain an effectively functioning representational system, including the holding of regular public sessions of representatives of the people. . . . *Id.*

ARTICLE XVII

Good Governance

> 1. The States shall adopt and implement all appropriate measures to ensure good governance which is just, open and accountable.
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> 2. The States recognise and affirm that the rule of law, the effective administration of justice and the maintenance of the independence and impartiality of the judiciary are essential to good governance.
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> . . . .
>
> 7. The States in order to further the participation of the people in the democratic process shall establish effective systems of ongoing consultations between the Government and the people.
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> . . . .

Article 26, entitled "Implementation," provides: "The States declare their resolve to pay due

Charter of Civil Society, CARICOM's response to Aristide's departure was swift. The Community's Conference of Heads of Government met in an emergency session on March 2-3, 2004, and issued a statement refusing to recognize the legitimacy of Haitian rebel forces or to participate in the Multinational Interim Force.[33] The Conference also expressed clear concern about the non-democratic transition in Haiti as setting a dangerous precedent, one promoting "the unconstitutional removal of duly elected persons from office."[34] Referring to Inter-American and Caribbean democratic norms, the conference noted "the contradictory reports surrounding the demission from office of the constitutionally elected President . . . [and the] assertions made by President Aristide that he had not demitted office voluntarily," and called for a full investigation.[35] Shortly thereafter, Jamaican Prime Minister Patterson invited Aristide to visit Jamaica on compassionate grounds to be reunited with his family.[36] This visit was not welcomed by the interim head of the administration of Haiti, Mr. Gerard Latorture, who made public statements about the "freezing of relations with Jamaica" and the "putting to sleep of relations with CARICOM."[37] This reaction hardened the position of CARICOM, which did not invite the Haitian interim administration to attend the next Inter-Sessional Meeting of the Conference, held on March 29, 2004.[38] As noted in the Communiqué issued at the end of that meeting, although Haiti remained a CARICOM Member State, the Haitian interim administration was not invited to participate in the meetings of the main organs of the Community.[39] However, CARICOM maintained its active involvement with Haiti by reconstituting its Core Group of Prime Ministers on Haiti, designating a Special Envoy to help advance Community interests, and

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regard to the provisions of this Charter."
Id.

33. Press Release, CARICOM, Statement Issued by CARICOM Heads of Government at the Conclusion of an Emergency Session on the Situation in Haiti (Mar. 3, 2004), www.caricom.org/jsp/pressreleases/pres22_04.htm (last visited Dec. 30, 2005).

34. *Id.*

35. *Id.*

36. Press Release, CARICOM, Statement by the Most Honourable P.J. Patterson, Prime Minister of Jamaica, on the Hosting of Former President of Haiti, Jean-Bertrand Aristide (Mar. 11, 2004), www.caricom.org/jsp/pressreleases/pres34_04.htm (last visited Dec. 30, 2005).

37. Press Release, CARICOM, Statement on Haiti Issued by the Fifteenth Inter-Sessional Meeting of the Conference of the Heads of Gov't of the Caribbean Cmty. (Mar. 29, 2004), www.caricom.org/jsp/pressreleases/pres49_04.htm (last visited Dec. 30, 2005).

38. *Id.*

39. *Id.*

establishing a Task Force to coordinate assistance.[40] CARICOM also continued to press for an investigation of the circumstances surrounding Aristide's departure, first before the U.N., and later before the OAS—specifically seeking to invoke Article 20 of the Inter-American Democratic Charter before the OAS Permanent Council.[41] Despite the inability of Haiti to participate in CARICOM organs, relations between the Community and the Transitional Government in Haiti continued and were described by the CARICOM Secretary General as "close and productive."[42] In fact the return of Haiti to the Councils of CARICOM was stated to be "a most compelling issue" by the new Chairman of the Council for Foreign and Community Relations (COFCOR).[43] Yet as of June 2005 Haiti was still excluded from meetings of CARICOM organs. There was no evidence of any change in this position by January 2006.

Haiti's continued exclusion was explained by the Chairman of COFCOR, the Honorable Dame Billie Miller, at the open debate at the United Nations Security Council on Haiti, in January 2005.[44] In her statement Dame Miller noted that CARICOM had been actively involved in Haiti prior to Aristide's removal with three goals: stabilizing the political situation through power sharing, preventing the traditional Haitian practice of removing Presidents in order to resolve political conflicts, and helping the Haitians find a peaceful political solution which would preserve the rule of law and ensure constitutional continuity. Noting the departure of the elected President "in circumstances still to be elucidated," she explained:

> [I]n the view of CARICOM, the fundamental tenets of democratic practice and behaviour had been compromised. We cannot vacillate on principle since it is essential to our security as small states. Continuing violations of the principles laid down in the CARICOM Charter of

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40. *Id.*

41. Press Release, Conclusion of the Seventeenth Meeting of the Bureau of the Conference of the Heads Gov't of the Caribbean Cmty. (May 5, 2004), http://www.caricom.org/jsp/pressreleases/pres69_04.htm (last visited Dec. 30, 2005).

42. Press Release, CARICOM, Sec'y Gen. Denies Media Report on Haiti (June 24, 2004), http://www.caricom.org/jsp/pressreleases/pres100_04.htm (last visited Dec. 30, 2005).

43. Press Release, Communiqué issued at the Conclusion of the Eighth Meeting of the Council for Foreign and Cmty. Relations (COFCOR) (June 3, 2005), http://www.caricom.org/jsp/pressreleases/pres123_05.htm (last visited Dec. 30, 2005).

44. Press Release, Hon. Dame Billie Miller, Statement on Behalf of the Caribbean Cmty. at the Open Debate at the United Nations Sec. Council on the Situation in Haiti (Jan. 12, 2005), http://www.caricom.org/jsp/pressreleases/pres19_05.htm (last visited Dec. 30, 2005).

> Civil Society have made it impossible for the Community to receive representatives of Haiti in its Councils. The interim administration must be held to internationally recognized standards with regard to respect for fundamental civil and political rights, due process, and the rule of law.[45]

In sum, CARICOM has taken a principled position with respect to the non-democratic transition in Haiti. It has continued to provide assistance within Haiti and has constantly kept the Haitian situation on its agenda. However it has not allowed the Interim Administration to attend any of the meetings of principal CARICOM organs.

B. Failure of Procedural Democracy

Although CARICOM may have emphasized the substantive values of democracy to a greater extent than the OAS in calling for a full investigation of the transition, it has been less meritorious in following its own democratic, procedural requirements. In fact, all of the formal decisions regarding Haitian participation were taken at meetings of CARICOM organs without Haiti being present. This is contrary to the voting provisions in the *Revised Treaty of Chaguaramas*, which provide very limited grounds for exclusion of Member States.[46] Not one of these grounds concerns non-democratic transitions.[47] Under CARICOM voting procedures, Haiti could only be excluded from participation in the Conference if it was either a party to a dispute, or if

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45. *Id.*

46. Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy, Jul. 5, 2001 [hereinafter Revised Treaty of Chaguaramas], http://www.caricom.org/jsp/secretariat/legal_instruments/revisedtreaty.pdf (last visited Dec. 30, 2005). The Revised Treaty of Chaguaramas is not yet in force, but it has been ratified, and is being provisionally applied, by twelve CARICOM Member States. *See*, Protocol on the Provisional Application of the Revised Treaty of Chaguaramas, Feb. 5, 2002, http://www.caricom.org/jsp/secretariat/legal_instruments/revtreatyprovappl_protocol.jsp?menu=secretariat (last visited Jan. 23, 2006). Haiti has signed the Revised Treaty of Chaguaramas, but has not yet ratified it or signed the Protocol on Provisional Application; The Bahamas has not yet signed the Revised Treaty; Montserrat is awaiting a decision from the UK ("entrustment") as to its ability to participate in the Revised Treaty regime. *See*, CARICOM Secretariat, Establishment of the CARICOM Single Market and Economy (updated Aug. 10, 2005), http://www.caricom.org/jsp/single_market/csmekeyelements.pdf (last visited Jan. 23, 2006).

47. Revised Treaty of Chaguaramas, *supra* note 46, art. 27(2) (allowing suspension of voting rights of Member States "whose contributions to the regular budget of the Community are in arrears for more than two years").

sanctions were being considered against it.[48] It is doubtful whether Haiti could be excluded from a meeting of one of the other Ministerial Councils.[49] Since the Charter of Civil Society is not binding, it would be difficult to argue that a breach of its provisions on democracy or good governance would merit suspension. As a result, Haiti should have been invited to attend any CARICOM meeting which discussed the events of February 2004, and should have been able to present its case for continued participation. Of course at the end of such a meeting, the organs of CARICOM could have voted to exclude Haiti's continued participation, but at least Haiti, as a Member State, would have been entitled to take part in the deliberative processes.

As a result, even though CARICOM has gone much further than the OAS in attempting to uphold the full substance of the democratic rights and values protected by, *inter alia*, the Inter-American Democratic Charter, it failed to satisfy its own voting requirements. It also may have violated the good governance provisions of its Charter of Civil Society.[50] At the organizational level this produces an ironic democratic deficit.

CONCLUSION

Both the Organization of American States and the Caribbean Community have grappled with the difficulties of trying to apply democratic norms in the extreme situation of a non-democratic change in government. Both organizations have been partly successful. However, each organization has failed to uphold some of the democratic values and procedures established in its own constituent treaty and related documents. The OAS failed to uphold the substantive values or apply the full mechanisms of the Inter-American Democratic Charter; CARICOM failed to uphold the procedural voting rights of its membership.

Whether either of these failures has had a significant effect upon the efforts to restore democracy in Haiti is yet to be known. Both CARICOM and the OAS have continued their active involvement in Haiti, and each has joined the U.N. in assisting with the preparations for

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48. *Id.* art. 28(4).

49. By allowing issues of "critical importance" to be subject to unanimous voting, the Revised Treaty implicitly would prevent the exclusion of a Member State from a meeting where such an issue arises in relation to itself, as would have been the case for Haiti. *See id.* art. 29(3).

50. The Charter of Civil Society, *supra* note 32. Article XVII(1) may be read to extend to state behavior before the organs of CARICOM. *Id.*

elections.[51] But the challenges facing Haiti remain severe. U.N. Secretary General, Kofi Annan, has suggested that "[a] long term effort—10 years or more—is needed to help rebuild the police and judiciary, as well as basic social services such as health care and education."[52] Moreover, the challenge of entrenching fundamental democratic values within Haiti remains daunting. As this article suggests, this challenge is not confined to Haiti alone.

51. *See e.g.,* Press Release, CARICOM Task Force, An Indispensable Tool in Regional Response to Haiti (June 2, 2005), http://www.caricom.org/jsp/pressreleases/pres118_05.htm; *see also*, Press Release, OAS, OAS and U.N. Working Together to Ensure Elections in Haiti (Jan. 11, 2005), http://www.oas.org (follow "Press Releases" hyperlink; then follow "2005," "Jan.," and then "E-006 January 11, 2005" hyperlinks) (last visited Dec. 30, 2005).

52. Kofi A. Annan, *In Haiti for the Long Haul*, WALL ST. J., Mar. 16, 2004, at A20.