
Lawmaking on the Road to International Summits

Eric Dannenmaier

Follow this and additional works at: <https://via.library.depaul.edu/law-review>

Recommended Citation

Eric Dannenmaier, *Lawmaking on the Road to International Summits*, 59 DePaul L. Rev. 1 (2009)
Available at: <https://via.library.depaul.edu/law-review/vol59/iss1/2>

This Article is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact digitalservices@depaul.edu.

LAWMAKING ON THE ROAD TO INTERNATIONAL SUMMITS

*Eric Dannenmaier**

INTRODUCTION

The rising dispute over greater public access to the machinery of international law features two rival camps, each raising a flag of democracy, and each claiming that the other threatens that flag. They represent competing models of global governance. One camp sees a vital constitutive role for non-state actors in lawmaking. The other views states as exclusive and autonomous international protagonists. Yet despite these polar positions, each claims the mantle of the “more democratic.” This Article joins the debate and examines international summits as an emerging phenomenon that offers a potential bridge between the two positions. Summit meetings of heads of state and government are public forums where transboundary constituencies engage state leaders even as those leaders engage one another. Lawmaking, though only a ceremonial fraction of summit meetings themselves, is advanced by planning and implementing summit commitments; in these interstices, non-state actors work to inform outcomes and shape institutional agendas. This Article examines the role of non-state actors in summits and asks whether they can be viewed as contributors to the lawmaking process. The Article studies inter-American summits as a case in point, focusing on efforts to advance a regional “democracy agenda” through the catalysis of the summit process. Case studies include a U.S. proposal for a regional public participation strategy, a Peruvian initiative to discourage and respond to coups, and a Canadian measure to increase citizen access to the region’s chief political body. The Article shows that summits facilitated these initiatives by providing a context for cooperative law-

* Associate Professor of Law, Indiana University School of Law, Indiana University—Indianapolis. M.St., Oxford University; LLM, Columbia University; J.D., Boston University. Charles B. Bretzfelder International Law Fellow, Columbia University, 2006–07. The author thanks Professors Lori F. Damrosch, Mark Barenberg, and Jose Alvarez, along with participants in Columbia Law School’s Doctoral Workshop, for insights on an early draft of this Article. The author is also grateful for insights offered on earlier drafts during faculty talks at the University of Illinois and the University of New Mexico, for the research assistance of Emily Slaten, and for the editorial support of the *DePaul Law Review*.

making in which non-state actors played a central role—a key concern for public access proponents. Yet states initiated and managed the process, and heads of state and government ultimately ratified the outcomes, so the public role in shaping outcomes did not threaten state authority—a key concern for access critics. In the debate over the appropriate place for non-state actors in international lawmaking, the author thus concludes that summits can advance the legitimacy and democracy concerns that, at their core, appear to motivate the competing positions. While summits are not a basis for lasting peace between the camps, they can be seen as an emerging mechanism that offers common ground.

A. *The Debate Over Non-State Access*

In the ongoing debate about mechanisms through which international law is made and administered, a number of scholars have argued that non-state actors,¹ often acting within networks that include subsidiary state agencies and inter-state institutions, have an important jurisgenerative role.² Peter Haas, for example, has described epistemic communities of scientific and policy experts that worked to address problems such as the transboundary pollution of the Mediterranean Sea³ and threats to the ozone layer.⁴ Haas argues that these communities act as “channels through which new ideas circulate from

1. The term “non-state actor” is used in this Article in its broadest sense to include organizations, communities, groups, associations, institutions, and even individual actors (activists, scholars, or private sector entrepreneurs). While there is a tendency to group such actors together under the heading “non-governmental organization,” “private voluntary organization,” or “civil society organization,” the term “non-state actor” is used here for several reasons. It emphasizes neutrality in terms of the . . . actors’ legal form, purpose, and/or objectives . . . [Moreover], it focuses on an essential question in international law—the participation of actors who are not state sovereigns in processes designed by and for states that have traditionally been the province of states.

Eric Dannenmaier, *A European Commitment to Environmental Citizenship: Article 3.7 of the Aarhus Convention and Public Participation in International Forums*, in 18 YEARBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 32, 33 n.4 (Ole Kristian Fauchald et al. eds., 2007).

2. The question of what is jurisgenerative in international law is bound up in a broader theoretical debate about the nature of international law; the importance of processes that give shape to positive legal commitments; and the significance of less formal instruments, institutions, and networks. See generally THE METHODS OF INTERNATIONAL LAW (Steven R. Ratner & Anne-Marie Slaughter eds., 2005) (presenting a collection of articles previously published in the *American Journal of International Law* that explore alternative theoretical frameworks for international law). These questions are explored in greater depth in Part V of this Article. See *infra* notes 135–202 and accompanying text.

3. See Peter M. Haas, *Do Regimes Matter? Epistemic Communities and Mediterranean Pollution Control*, 43 INT’L ORG. 377, 384–87 (1989). The term “epistemic communities” was earlier offered by John Ruggie to describe the communities that form around common policy ideas. See John Gerard Ruggie, *International Responses to Technology: Concepts and Trends*, 29 INT’L

societies to governments as well as from country to country,”⁵ and that they are an important means to solve multilateral problems and promote world order.⁶

Margaret Keck and Kathryn Sikkink have described how non-state actors work through transnational advocacy networks that “interact with each other, with states, and with international organizations” to “change the behavior of states and international organizations.”⁷ Keck and Sikkink point to the growing influence of these networks, which they portray as

[s]imultaneously principled and strategic actors, they “frame” issues to make them comprehensible to target audiences, to attract attention and encourage action, and to “fit” with favorable institutional venues. Network actors bring new ideas, norms, and discourses into policy debates, and serve as sources of information and testimony.⁸

While these networks engage government officials in an expansive policy community,⁹ participants are frequently non-governmental, and their agendas reflect the policy priorities of an even broader public.¹⁰

In a 2006 Centennial Anniversary article for the *American Journal of International Law*, Steve Charnovitz traced the history and discussed the relevance of non-state actor contributions to international

ORG. 557, 569–70 (1975) (analogizing to what Michele Foucault referred to as “‘epistemes,’ through which the political relationships” acted out on the international stage “are visualized”).

4. See Peter M. Haas, *Banning Chlorofluorocarbons: Epistemic Community Efforts to Protect Stratospheric Ozone*, 46 INT’L ORG. 187, 189–96 (1992).

5. Peter M. Haas, *Introduction: Epistemic Communities and International Policy Coordination*, 46 INT’L ORG. 1, 27 (1992).

6. See *id.* at 27–28; see also Emanuel Adler & Peter M. Haas, *Conclusion: Epistemic Communities, World Order, and the Creation of a Reflective Research Program*, 46 INT’L ORG. 367, 370–71 (1992) (describing the instrumental value of epistemic communities when promoting greater international coordination and greater affinity between the values and practices of states and the policies advanced through international regimes and institutions).

7. MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS* 1–2 (1998).

8. *Id.* at 2–3.

9. See *id.* at 31. The term “government officials” is used in this Article in a broad sense to encompass a range of senior, mid-level, and junior diplomats and bureaucrats (at each level including career employees as well as political appointees), not just senior officials who may be answering directly to a head of state.

10. *Id.* at 7–8. Networks comprised principally of governmental officials are also actively engaged in defining international priorities and shaping law outside of the traditional structure and formal hierarchies of foreign ministries. Robert Keohane and Joseph Nye have described “transgovernmental” activity “among sub-units of different governments that are not controlled or closely guided by the policies of the cabinets or chief executives of those governments.” Robert O. Keohane & Joseph S. Nye, *Transgovernmental Relations and International Organizations*, 27 WORLD POL. 39, 43 (1974). Anne-Marie Slaughter has detailed how these “[n]etworks of government officials—police investigators, financial regulators, even judges and legislators—increasingly exchange information and coordinate activity to . . . address common problems on a global scale.” ANNE-MARIE SLAUGHTER, *A NEW WORLD ORDER* 1 (2004).

lawmaking.¹¹ He concentrated on the participation of non-governmental organizations (NGOs)¹²—a dominant species of non-state actor—and argued that they “promote accountability by monitoring what government delegates say and do,” and that they “communicate that information to elected officials and the public.”¹³ NGOs, he noted, “help assure that decision makers are aware of the sympathies and interests of the people who will be affected by intergovernmental decisions.”¹⁴ These scholars and others make the case that non-state actors have an increasingly important affirmative role in international governance.¹⁵ They also highlight the normative value and instrumental advantage of an engaged public, and they are sympathetic to, and often proponents of, increasing access to the processes they describe.¹⁶

Others contest this scholarship and reject its normative implications. They hold to a more traditional Westphalian idea of international lawmaking that is reserved to autonomous and insular

11. See generally Steve Charnovitz, *Nongovernmental Organizations and International Law*, 100 AM. J. INT'L L. 348 (2006) [hereinafter Charnovitz, *Nongovernmental Organizations*]. Charnovitz has also authored an earlier, more extensive catalogue of non-state actor participation. See generally Steve Charnovitz, *Two Centuries of Participation: NGOs and International Governance*, 18 MICH. J. INT'L L. 183 (1997) [hereinafter Charnovitz, *Participation*].

12. Much of the literature on non-state actors deals with non-governmental organizations (NGOs), sometimes consciously distinguished from other actors—universities, think tanks, business groups, individuals, and for-profit organizations—and sometimes not. As discussed above, this Article is concerned with the broader universe of non-state actors. See *supra* note 1 and accompanying text. Yet NGOs are an important class of non-state actor, and they are frequent protagonists and thus frequently studied, so literature about NGOs is both abundant and relevant to the broader inquiry.

13. Charnovitz, *Nongovernmental Organizations*, *supra* note 11, at 367.

14. *Id.*

15. See generally, e.g., Menno T. Kamminga, *The Evolving Status of NGOs Under International Law: A Threat to the Inter-State System?*, in NON-STATE ACTORS AND HUMAN RIGHTS 93–111 (Philip Alston ed., 2005) (examining the legal capacity of NGOs to behave as states do in international law and concluding that there is “much more reason for concern about the negative impact of ‘irresponsible’ governments than about ‘irresponsible NGOs’”); Eric Dannenmaier, *Trade, Democracy, and the FTAA: Public Access to the Process of Constructing a Free Trade Area of the Americas*, 27 FORDHAM INT'L L.J. 1066, 1115 (2004) (describing a process through which non-state actors engaged negotiators of a regional trade accord in dialogue regarding societal priorities in areas such as the environment, labor, and combating corruption, and concluding that “the principles of participation far outweigh the principles of secrecy when multilateral [trade] policies are [ultimately] applied at the national level”); David Wirth, *Public Participation in International Processes: Environmental Case Studies at the National and International Levels*, 7 COLO. J. INT'L ENVTL. L. & POL'Y 1, 38 (1996) (analyzing competing policies of openness and secrecy in international environmental and public health matters, and concluding that rules of limited access at the international level can undermine the legitimacy of government at the national level in those cases in which “international institutions are vehicles for domestic policy making in the first instance”).

16. See Charnovitz, *Nongovernmental Organizations*, *supra* note 11, at 368–72; David B. Hunter, *Civil Society Networks and the Development of Environmental Standards at International Financial Institutions*, 8 CHI. J. INT'L L. 437, 456–57 (2008).

sovereign states. Former Interim Permanent Representative of the United States to the United Nations John Bolton¹⁷ is a prominent critic of an international governance role for civil society.¹⁸ Similarly, Kenneth Anderson has decried the threat that non-state actors, principally international NGOs, pose to “the sovereignty of democratic states.”¹⁹ Bolton, Anderson, and other critics reject transnational collaboration outside traditional diplomatic channels as an unaccountable, illegitimate, and even undemocratic threat to vital conceptions of sovereignty.²⁰ One key metaphor that Bolton uses when challenging non-state access to international process is a claim that this access pro-

17. Bolton was appointed by President George W. Bush in a recess appointment after Bolton failed to receive confirmation from the Senate, and he served from August 2005 until December 2006. He resigned when his recess appointment would have ended. See Helene Cooper, *Bush Drops Bid to Keep Bolton as UN Envoy*, INT'L HERALD TRIB., Dec. 5, 2006, at 1.

18. See generally John R. Bolton, *Should We Take Global Governance Seriously?*, 1 CHI. J. INT'L L. 205, 215–218 (2000) [hereinafter Bolton, *Global Governance*] (arguing that allowing civil society's “intrastate advocates to reargue their positions” in international forums “raises profoundly troubling questions of democratic theory that its advocates have almost entirely elided”); John R. Bolton, *Is There Really “Law” in International Affairs?*, 10 TRANSNAT'L L. & CONTEMP. PROBS. 1, 30–31 (2000) [hereinafter Bolton, *Is There Really Law*] (questioning the conceptual legitimacy of “international ‘civil society’” because it is a “collection of advocacy NGOs” that are “far different” from the “associations that make up domestic ‘civil society’” and challenging the tactics of international NGOs that operate outside of “democratic polities where they have been unsuccessful politically”).

19. Kenneth Anderson, *The Limits of Pragmatism in American Foreign Policy: Unsolicited Advice to the Bush Administration on Relations with International Nongovernmental Organizations*, 2 CHI. J. INT'L L. 371, 372 (2001); see also Kenneth Anderson & David Rieff, ‘Global Civil Society’: A Sceptical View, in GLOBAL CIVIL SOCIETY 26, 37 (Helmut Anheier et al. eds., 2005) (the authors “argue that the ‘democracy deficit’ of the international system is buttressed rather than challenged by the global civil society movement”).

20. See Bolton, *Is There Really Law*, *supra* note 18, at 30–31 (“What actually seems to be happening is that the international NGOs are becoming an alternative to national governments as vehicles for decision-making. In reality, however, it is precisely the detachment from governments that makes such a ‘civil society’ so troubling, at least for democracies.”); Anderson & Rieff, *supra* note 19, at 37; The Legality of the Threat or Use of Nuclear Weapons, I.C.J. Advisory Opinion, Separate Opinion of Judge Gilbert Guillaume, 1996 I.C.J. Rep. 216, 287–88 (July 8) (suggesting that the I.C.J. “could have considered declining to respond to the request for an advisory opinion” because the request from the U.N. General Assembly “originated in a campaign conducted by” NGOs, criticizing the “pressure brought to bear” by NGOs, and expressing concern over the continued “independence” of governments and intergovernmental institutions in the face of this pressure); Serge Surs, *Vers Une Cour. Pénale Internationale: La Convention de Rome entre les ONG et le Conseil de Sécurité*, 103 R.G.D.I.P. 29, 35–36 (expressing concern over the “excessive NGO role” at the 1998 Rome Conference that created the International Criminal Court). In the context of a broader claim about the “problem” that international law is undemocratic, Jed Rubenfeld echoes the concerns of many access critics when he argues that

[i]n the last ten years or so, it became common for internationalists to reply to this problem by pointing to the growing influence of non-governmental organizations (NGO) in international law circles, as if these equally unaccountable, self-appointed, unrepresentative NGOs somehow exemplified world public opinion, and as if the antidemocratic nature of international governance were a kind of small accountability hole that these NGOs could plug.

vides a “second bite at the apple.”²¹ Presumably, Bolton means that citizens are provided sufficient domestic access to the formulation of foreign policy, and they should thus leave the table sated, when he asserts that “[c]ivil society’s ‘second bite at the apple’ raises profoundly troubling questions of democratic theory that its advocates have almost entirely elided.”²² A metaphor that portrays democratic discourse as a perishable and finite comestible that is diminished (consumed) rather than strengthened by its participants seems even more profoundly troubling, but an explanation is entirely elided.

While it may seem ironic to charge that making international law more participatory will actually make it less democratic these are nevertheless the terms in which some see the issue. The debate has become more heated as non-state access and the role of NGOs have grown, and it touches on a central problem in international law: the advancement of means for cooperative—and, when needed, coercive—global governance in a system of autonomous sovereign states. State-centrism is, for now at least, the system we have. A pragmatist must admit wide latitude to the sovereign prerogative and anticipate its forceful defense. But this Article argues that such latitude should not be seen to irretrievably foreclose the potential of non-state actors to inform, shape, and police international law. Their access to decision-making process is not an assault on state autonomy. In many cases, non-state actors may play a role in lawmaking that access proponents find vital, without threatening the legitimacy and democracy values that they share in common with access critics.

B. *Summits as an Entry Point*

This Article examines one such case. It explores an emerging phenomenon in international relations—international summits²³—that may serve as a bridging mechanism between the two positions, at least when certain process features are present. Unlike traditional diplomatic discourse, which is often sequestered and problem-specific,

Jed Rubinfeld, *Unilateralism and Constitutionalism*, 79 N.Y.U. L. REV. 1971, 218 (2004) (footnote omitted); see also Jeremy Rabkin, *International Law vs. the American Constitution*, 55 NAT'L INT. 30, 37 (1999) (“NGOs never have to face voters or bear any sort of accountability.”).

21. Bolton, *Global Governance*, *supra* note 18, at 217.

22. *Id.*

23. Heads of state and government are called by diverse names—prime minister, emir, king, and president, for example—as are meetings among them. This Article will use the terms “international summit” and “summit” to refer to a forum of heads of state from more than two countries who are meeting to discuss common interests in regional, economic, or security matters. This definition excludes ad hoc meetings that may take place from time to time to address this same range of issues and focuses instead on planned or institutionalized meetings that are typically periodic.

summits convene national leaders on a highly public stage in a transparent and frequently expansive policy dialogue. Summit agendas cover a broad range of technical and policy issues that are cooperatively developed by specialized subsidiary state agencies that are capable of working across borders in collaboration with inter-state and non-state actors.

This Article argues that summits may be fertile ground for the sort of productive non-state input described by Charnovitz, Kamminga, Wirth, and others,²⁴ while operating within the context of transboundary networks such as those described by Haas, Keck, and Sikkink, among others.²⁵ Yet summits ultimately direct this cooperation and input through participating states' chief political authorities in a way that responds to the state-centered critique that is advanced by access critics such as Bolton and Anderson.²⁶ While non-state actors operate through transboundary networks to inform and shape outcomes, ministries and executive offices that are directly accountable to the state's principal political authority still review and approve final policy declarations and action plans. Heads of state and government must ultimately sign the commitments that must be ratified (in the case of formal obligations) or at least implemented (in the case of less formal promises) by domestic institutions of government.

Having helped to shape and advance specific outcomes, transboundary networks are positioned and motivated to support implementation, and this strengthens outcome legitimacy²⁷ and increases the likelihood of compliance,²⁸ both of which are important instru-

24. See Charnovitz, *Nongovernmental Organizations*, *supra* note 11; Kamminga, *supra* note 15; Wirth, *supra* note 15; Dannenmaier, *supra* note 15.

25. See Haas, *supra* notes 3, 5; KECK & SIKKINK, *supra* note 7.

26. See Bolton, *Global Governance*, *supra* note 18; Bolton, *Is There Really Law*, *supra* note 18; Anderson, *supra* note 19.

27. See generally THOMAS M. FRANCK, *THE POWER OF LEGITIMACY AMONG NATIONS* (1990) [hereinafter FRANCK, *LEGITIMACY AMONG NATIONS*] (arguing that nations are more likely to obey laws with a high degree of perceived legitimacy, and that legitimacy is reinforced by elements of "determinacy, symbolic validation, coherence, and adherence"); THOMAS M. FRANCK, *The Power of Legitimacy and the Legitimacy of Power: International Law in an Age of Power Disequilibrium*, 100 AM. J. INT'L L. 88, 94 (2006) [hereinafter Franck, *Legitimacy of Power*] (arguing that "determinacy," or "that which makes [the rule's] message clear or transparent" is perhaps the most important of these legitimacy-reinforcing elements). Engaging non-state actors in international processes not only increases process transparency and the clarity of outcomes but also better positions non-state actors to support adherence in a domestic context. See also *infra* Part VII (arguing that engaging non-state actors in the summit process has increased the jurisgenerative potential of summits).

28. See generally ABRAM CHAYES & ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS* (1995) (advancing a "managerial" model of treaty compliance that relies on a continuing dialogue between the parties, international officials, and NGOs); see also *infra* notes 309–310 and accompanying text (describing

mental contributions to the process of international lawmaking. Participation by non-state actors also offers the normative value associated with deliberative democracy, such as promoting practices of mutual respect and encouraging public spiritedness.²⁹ Yet state commitment and state resources remain essential to fulfilling promises that are made through the summit process.

In recent years, international summits have advanced substantially in profile as well as productivity, though they remain largely unstudied outside the circle of diplomats and specialists who manage their processes. Although ad hoc high level meetings abound, this Article is concerned with periodic and “institutionalized” summits where an iterative planning process drives outcomes, and where these outcomes rely on institutions or institutional features for implementation.³⁰ This Article studies the inter-American summit process as a case in point, focusing on efforts to strengthen democratic practices and institutions among Organization of American States (OAS) member states over the past decade. It finds that the inter-American process features a relatively flexible and inclusive mechanism through which epistemic communities—usually loose coalitions of state and non-state actors—have made modest but measurable progress in advancing this regional policy agenda.³¹ In each case, inter-American summits provided a platform for states and inter-state networks to negotiate interests and shape regional approaches. And in each case, the outcomes were overseen by officials reporting to heads of state, and the outcomes themselves were ultimately endorsed by heads of state.³² In fact, it is often difficult to separate the agendas of state officials from those of

the propensity of summits to “promote conforming behavior” among state institutions and to place societal actors in a position to monitor implementation).

29. See AMY GUTMANN & DENNIS THOMPSON, *WHY DELIBERATIVE DEMOCRACY?* 10–12 (2004) (arguing that mutual respect and public spiritedness are important in dealing with moral disagreement that can otherwise undermine legitimacy in governance); see also *infra* notes 306–308 and accompanying text (summarizing how summits engage interested parties, including vocal dissidents, in dialogue and consensus building); *infra* notes 325–329 and accompanying text (describing summits’ reliance on cooperative models and the potential of summits to change the context of interaction within regional policy institutions).

30. For examples of nineteen global and regional summits that were organized around social, economic, or security interests, see *infra* notes 67–85 and accompanying text.

31. See *infra* Part IV–V.

32. Formal summit outcomes, in the form of declarations and plans of action, are typically signed by the heads of state and government who participate in the summit meetings. The exception is the most recent summit in Trinidad in April 2009, where a consensus document was signed by the chair rather than participating state leaders. See *infra* note 131 and accompanying text.

non-state actors, at least as negotiated through and transformed by the deliberative process.³³

Although most inter-American summit “commitments” are not, in and of themselves, binding law in a positivist sense,³⁴ the process has a normative push that can drive more formal commitments.³⁵ Summit agreements frame the agenda for key institutional actors and stimulate negotiations over details—such as trade agreements³⁶—that encourage prescriptive adaptation. Moreover, summits can engage a broad spectrum of non-state actors and address wide-ranging social concerns—including the environment, human rights, gender discrimination, indigenous rights, and trade—in a dynamic and transparent way that may strengthen the legitimacy of summit outcomes and related regional projects.³⁷ As a consequence, inter-American summits

33. This outcome is seen as a positive feature of deliberative democracy, which seeks to combine preferences “in various ways that are efficient and fair” through a process that “tells citizens and their representatives to . . . reason together.” GUTMANN & THOMPSON, *supra* note 29, at 13, 20.

34. Even calling summit statements “commitments” might be contested, although that is the term commonly used among negotiators and bureaucrats when describing the imperative language of summit documents. Inter-American summit documents are variously called “declarations” or “plans of action,” and the text is usually couched in terms that state the signatories “will” accomplish a set of aims, which can vary from statements of principle to concrete programs. See, e.g., Third Summit of the Americas, Quebec City, Can., Apr. 22, 2001, *Plan of Action* [hereinafter Quebec Plan of Action], at 1, available at <http://www.state.gov/p/wha/rls/59664.htm> (“[Will] recogniz[e] the relationship among democracy, sustainable development [and] the separation of powers”); *id.* at 6 (“[Will] establish an inter-American program within the OAS for the promotion and protection of the human rights of migrants”). It could be argued that declarations by heads of state in a summit context create international legal obligations under some circumstances. See, e.g., Nuclear Tests Case (Austl. v. Fr.), 1974 I.C.J. 253, ¶ 43 (Dec. 20) (noting that even unilateral declarations of heads of state “concerning legal or factual situations may have the effect of creating legal obligations” where there is an “intent to be bound”); see also Case Concerning the Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nig.), 2002 I.C.J. 303 ¶¶ 262–63 (Oct. 10) (finding that a bilateral declaration of heads of state concerning a maritime boundary is “governed by international law and constitutes a treaty in the sense of the Vienna Convention on the Law of Treaties”). But it is beyond the scope of this Article to examine whether any of the International American summit declarations, which aspire more than they commit, are legally binding in this sense. Instead, the word “commitment” will be used in this Article not to imply a binding legal obligation, but for ease of reference to provisions of summit documents.

35. Summit commitments can be seen as advancing the lawmaking process and, by some theorists, as a type of soft law. There are some summit outcomes that can be seen as positive law. See discussion *infra* Part VII.

36. Negotiations for a Free Trade Area of the Americas, for example, were called for in the Miami Summit. See *infra* note 101 and accompanying text.

37. Legitimacy in outcome and process may be viewed in different ways, but here I use the term legitimacy in the sense that Thomas Franck has described as “the capacity of a rule to pull those to whom it is addressed toward consensual compliance.” Franck, *Legitimacy of Power*, *supra* note 27, at 93. The case studies presented in this Article suggest that inter-American summit commitments are reached through a process that values transparency and public access in a way that satisfies common normative concerns of national constituencies that are concerned

have strong jurisgenerative potential, and the public process through which summit agendas are developed serves to strengthen that potential.³⁸ Moreover, because summits feature transparency, openness, and inclusive agenda setting that emphasizes collaboration among states and their domestic constituencies, outcomes are more likely to be drawn into domestic legal agendas through transboundary legal process mechanisms such as those described by transboundary process theorists.³⁹ Evidence of this is found in domestic legislation that directly reflects summit commitments, in state behavioral adaptations, and in those instances when states commit funds and institutional resources to implement summit promises.⁴⁰ Even the tension and discord in evidence at the most recent summit in Trinidad and Tobago⁴¹ suggest that there is a very real connection between summit outcomes and domestic concerns. The unwillingness of some leaders to embrace summit promises that are inconsistent with domestic priorities, and the strong rhetorical connection between regional and domestic discourses, are as indicative of the potential power of the summit process as they are of the fractious state of regional politics.

This Article concludes that, by embracing transparent and participatory process features, inter-American summits have produced a mutually reinforcing phenomenon: the jurisgenerative potential of summits increases as public access to the insular world of international decision making expands.⁴² Where these features are present, summits can, in a sense, “democratize” without being antidemocratic. They might thus be seen as mechanisms that can bridge the distance between those who embrace transboundary networks and those who fear that they overreach, which is perhaps one step in the direction of reconciling an important theoretical divide.

Part II describes international summits as an emerging institutional phenomenon.⁴³ It offers a partial catalogue of summits that have become regularized opportunities for heads of state to meet and affirm

with the subject matter of summits. This does not suggest that the process is ideal or could not stand improvement, but it does help strengthen the legitimacy of summit outcomes as international legal norms. See also David Estlund, *Beyond Fairness and Deliberation: The Epistemic Dimension of Democratic Authority*, in *DELIBERATIVE DEMOCRACY: ESSAYS ON REASON AND POLITICS* 173, 173–74 (James Bohman & William Rehg eds., 1997) (outcome legitimacy derives in part “from the epistemic value . . . of the procedure that has produced it.”).

38. See *infra* notes 302–329 and accompanying text.

39. *Id.*

40. *Id.*

41. See *infra* notes 128–134 and accompanying text.

42. See *infra* Part VIII.

43. See *infra* notes 58–62, 67–85 and accompanying text.

commitments to broad policy goals that can then be carried forward by state-bound institutions.

Part III explores the history of inter-American summits in particular, offering a brief background on how these regional meetings have emerged since the first contemporary Summit of the Americas in Miami in 1994 to create cooperative networks, shape institutional agendas, promote normative solutions, and facilitate monitoring and compliance.⁴⁴

Part IV reviews non-state actor access to inter-American summit preparations, including the formulation of summit commitments and mandates.⁴⁵ It examines the unique process features that allow non-state actors to become engaged with foreign ministries and expert government agencies so that policy priorities are not discussed in a vacuum. Policy actors in the Inter-American System, both state and non-state, have taken advantage of these unique features to advance policy and normative goals through a process that is deliberative, and thus more democratic from an access proponent perspective, yet never outside the oversight or control of states, and thus no less democratic from an access critic perspective. The institutionalization of participatory norms within the inter-American summit has reinforced two types of summit outcomes. The first is a largely hortatory call for greater democracy within the region.⁴⁶ The second is a series of commitments to reform regional institutions in order to make them more democratic, as well as to support and defend elected governments through those regional institutions.⁴⁷

Part V addresses the first and more general of these two outcomes.⁴⁸ It examines inter-American summit commitments to promoting principles of democratic governance and public participation at a regional and national level. This Part traces the language of inter-American summit agreements from 1994 to present that promote regional efforts to advance a “democracy” agenda among OAS member states.⁴⁹ It also outlines commitments to greater participation in development decision making, both among and within OAS member states, along with prescriptive and institutional advances relating to these commitments.⁵⁰

44. See *infra* notes 86–102 and accompanying text.

45. See *infra* notes 103–134 and accompanying text.

46. See *infra* notes 135–202 and accompanying text.

47. See *infra* notes 203–301 and accompanying text.

48. See *infra* notes 135–202 and accompanying text.

49. *Id.*

50. *Id.*

Part VI addresses specific summit outcomes. It presents four case studies of democratic commitments that emerged from the inter-American summit process: (1) the formulation of the Inter-American Strategy for the Promotion of Public Participation in Sustainable Development Decision-Making (ISP), which addressed public participation at the regional and national level;⁵¹ (2) the development of an Inter-American Democratic Charter (IADC), which would in part discourage internal extra-constitutional challenges to elected governments;⁵² (3) the increase in openness and transparency of negotiations to create a Free Trade Area of the Americas (FTAA);⁵³ and (4) the engagement of non-state actors in the OAS through a program of accreditation.⁵⁴ Each example shows state leaders working alongside non-state actors to shape and advance a specific lawmaking goal.⁵⁵

Part VII discusses the jurisgenerative potential of inter-American summits in light of the outcomes discussed in the prior two Parts.⁵⁶ Inter-American summits have placed lawmaking and implementation in a more transparent institutional and procedural context, and they have opened the process in a way that introduces important deliberative features. While this Article shows some cases in which the summit process has had a discernable impact on positive law that emerged from the inter-American system, it does not claim a linear or direct causal connection between summit outcomes and prescriptive commitments. Instead, it argues that the process through which inter-American summits are managed and executed has a role in substantiating normative claims and shaping positive legal frameworks. This Article does not directly enter the debate over the nature of international law and the importance of soft law and legal process versus positive law, but the phenomenon it describes is certainly relevant to that debate. Even if summit outcomes are not understood as law, they should be understood as part of lawmaking, and the inclusionary or exclusionary manner in which these outcomes are formulated matters.

Part VIII concludes that a participatory and institutionalized inter-American summit process has served a mutually reinforcing function: increasing the legitimacy and prescriptive potential of summits even while providing a vehicle for bringing the concerns and agendas of non-state actors closer to the process and institutions of international

51. See *infra* notes 209–226 and accompanying text.

52. See *infra* notes 227–256 and accompanying text.

53. See *infra* notes 257–277 and accompanying text.

54. See *infra* notes 278–301 and accompanying text.

55. See *infra* notes 209–301 and accompanying text.

56. See *infra* notes 302–329 and accompanying text.

law.⁵⁷ The format and impact of summits vary widely, and no claim is made that the inter-American summit process represents a universal model. Summits do, however, possess the common dimension that they periodically convene heads of state on a public stage to address issues of public concern. The summits with which this Article is concerned also have an institutionalized multilateral framework within which those issues are discussed and outcomes are derived. To the extent that summits possess or may come to possess the key features explored in this Article, they offer a mechanism for engaging non-state actors that can satisfy divergent claims about how to advance democratic ideals through international process.

II. THE SUMMIT PHENOMENON

International summits are an important, although under studied, post-World War II institutional trend that has grown in scope and impact in the post-Soviet era. As more commonly studied international institutions such as the United Nations and the World Bank have matured, at least twenty-one global and regional head of state forums have also evolved;⁵⁸ a few have been singular events, but most are planned and held on an annual or biennial basis. Summits address issues ranging from global concerns (such as climate change, human rights, and terrorism) to parochial concerns (such as trade and economic integration) to local concerns (such as Indonesian forest fires and the need to promote women to positions of authority in African states). While summits fulfill the public diplomacy role of providing a world stage to national leaders, their substantive impact should not be discounted. Summits provided a context and platform for the formation of the Organization for African Unity,⁵⁹ helped to advance the formation of the Non-Aligned Movement (the 1955 Asian-African Conference),⁶⁰ provided a platform for concluding the Convention on

57. See *infra* Part VIII.

58. This count includes the following: seventeen continuing forums, each of which has included dozens of separate summit meetings; three stand-alone forums, namely the 2005 U.N. Summit, the 1992 and 2002 Sustainable Development Summits, and the 1955 and 2005 Asian-African Summits; and one new forum that was inaugurated in 2005, the East Asian States Summit. See *infra* notes 67–85 and accompanying text.

59. Charter of the Organisation of African Unity, 479 U.N.T.S. 39 (signed May 25, 1963; entered into force Sept. 13, 1963) (signed by “the Heads of African States and Governments assembled in the City of Addis Ababa, Ethiopia”).

60. See GEORGE McTURNAN KAHIN, *THE ASIAN-AFRICAN CONFERENCE: BANDUNG, INDONESIA, APRIL 1955* (1956) (describing from a journalistic perspective the meeting of leaders from twenty-nine Asian and African countries and reproducing key speeches and final agreements). The Final Communiqué from Bandung included provisions for economic and cultural cooperation, the promotion of human rights and self determination, and the promotion of peace and

Biological Diversity and Framework Convention on Climate Change in 1992 (concluded at The United Nations Conference on Environment and Development or “Earth Summit”),⁶¹ and almost offered an opportunity for exile to Saddam Hussein a few weeks before the U.S. invasion of Iraq in 2003 (occurring at the Arab League Summit).⁶²

As the power and legitimacy of international law are debated in a newly multi-polar international political context, the emergence of summits appears to have been underappreciated, or at least under studied. Efforts to construct a “new world order,”⁶³ to deconstruct global administrative law,⁶⁴ and to seek greater democratic access to international decision making⁶⁵ might each benefit from a close study of the phenomenon of summits. Summits might not currently be viewed as formal international institutions, but as they become institutionalized and begin to shape institutional agendas, they might offer an opportunity to meet the concerns of those who wish to see international law become more democratic.

The following table of recent regional and global summits provides an idea of the extent of the summit phenomenon. While these meetings do not all share the same process features as the inter-American summits, they fit the basic definition of periodic meetings of heads of state and government.⁶⁶ Although this Article focuses only on the in-

security cooperation. *Id.* at 76–85. Participants created a basis for continuing cooperation through a commitment to appoint “Liaison Officers . . . for the exchange of information on matters of mutual interest.” *Id.* at 78. Participants also signed a Declaration on the Promotion of World Peace and Cooperation that called for “respect for territorial integrity and sovereignty of all nations,” abstention from aggression, abstention from interference in domestic affairs, “equality of all races and nations,” peaceful dispute settlement, and “promotion of mutual interests and cooperation.” *Id.* at 83–85.

61. See SHANNA L. HALPERN, ACADEMIC COUNCIL FOR THE UN SYS., THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT: PROCESS AND DOCUMENTATION, at 12 (1992), available at <http://www.ciesin.org/docs/008-585/unced-home.html> (last visited July 30, 2009).

62. In the days before the U.S. invasion of Iraq in 2003, then-President George W. Bush announced, “Saddam Hussein and his sons must leave Iraq within 48 hours. Their refusal to do so will result in military conflict.” CNN reported that there were

some private maneuverings among some Arab leaders to try to forestall the U.S. invasion. . . . [R]oughly three weeks before the first U.S. strike, Saddam Hussein agreed in principle to accept an offer of exile. The offer came from the United Arab Emirates and was presented to other Arab leaders during a summit of the Arab League in Egypt.

The proposal . . . was never acted upon.

The Situation Room (CNN television broadcast Nov. 2, 2005), available at <http://transcripts.cnn.com/TRANSCRIPTS/0511/02/sitroom.03.html> (last visited July 30, 2009).

63. SLAUGHTER, *supra* note 10, at 15–17.

64. See Daniel C. Esty, *Good Governance at the Supranational Scale: Globalizing Administrative Law*, 115 YALE L.J. 1490, 1495, 1561–62 (2006).

65. See Charnovitz, *Nongovernmental Organizations*, *supra* note 11, at 368–72.

66. See *supra* note 23 and accompanying text.

ter-American process, these other meetings might also warrant study as they become increasingly institutionalized international forums.

TABLE 1: PARTIAL CATALOGUE OF RECENT SUMMITS

1. Andean Community (ANCOM) (17th) Tarija, Bolivia 2007⁶⁷
2. Asia-Pacific Economic Cooperation (APEC) (16th) Singapore 2009⁶⁸
3. Arab League (20th) Damascus, Syria 2008⁶⁹
4. Association of South East Asian Nations (ASEAN) (14th) Cha-am Hua Hin, Thailand 2009⁷⁰
5. Asia-Europe Meeting (ASEM) (7th) Beijing, China 2008⁷¹
6. Asian-African Summit (2nd) Jakarta, Indonesia 2005 (50th anniversary of first)⁷²
7. African Union (AU) (13th) Sirt, Libya 2009⁷³
8. European Union (EU) Brussels, Belgium 2009⁷⁴
9. Group of Eight (G-8) L'Aquila, Italy 2009⁷⁵
10. Group of Twenty (G-20) London, United Kingdom 2009⁷⁶

67. Declaration of Tarija: Seventeenth Regular Meeting of the Andean Council of Presidents, Tarija, Bol., June 14, 2007, <http://www.comunidadandina.org/ingles/documentos/documents/tarija.htm> (last visited Oct. 14, 2009).

68. Asia-Pacific Economic Cooperation, Peru and APEC, <http://www.apec2008.org.pe/apecperuandapec.aspx> (last visited Oct. 15, 2009).

69. The 2008 Arab League Summit, <http://www.middleeastprogress.org/2008/03/the-2008-arab-league-summit/> (last visited Oct. 15, 2009).

70. 14th ASEAN Summit, Cha-am Hua Hin, Thai., Feb. 28–Mar. 1, 2009, *Chairman's Statement of the 14th ASEAN Summit: "ASEAN Charter for ASEAN Peoples"*, <http://aseansec.org/22328.htm> (last visited Oct. 15, 2009).

71. Asia-Europe Meeting, ASEM Summits: Overview, <http://www.aseminfoboard.org/page.phtml?code=summits#> (last visited July 30, 2009).

72. This second Asian-African Summit was held fifty years after the inaugural edition. See Ministry of Foreign Affairs of Japan, Asian-African Summit 2005 and the Commemoration of the Golden Jubilee of the Asian-African Conference 1955, <http://www.mofa.go.jp/announce/announce/2005/4/0419.html> (last visited Oct. 15, 2009).

73. African Union, Summit 2009 Sirt—Libya, <http://foreign.gov.ly/online/ausummit2009/en/> (last visited June 27, 2009).

74. Brussels European Council, Brussels, Belg., June 18–19, 2009, *Presidency Conclusions* (June 19, 2009), http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/108622.pdf (last visited July 30, 2009).

75. G-8 Summit 2009, http://www.g8italia2009.it/G8/Home/G8-G8_Layout_locale-1199882116809_Home.htm (last visited July 30, 2009).

76. The London Summit, Apr. 2, 2009, *Global Plan for Recovery and Reform*, <http://www.londonsummit.gov.uk/resources/en/PDF/final-communiqué> (last visited July 30, 2009). Note that the G-20, formally known as the "Group of Twenty (G-20) Finance Ministers and Central Bank Governors," traces its history to 1999 and claims that its purpose is "to bring together systemically important industrialized and developing economies to discuss key issues in the global economy." g-20.org, What Is the G-20, http://www.g20.org/about_what_is_g20.aspx (last visited Sept. 12, 2009). The G-20 has only met twice at the head of state and government level.

11. Inter-American Summit (5th) Port of Spain, Trinidad and Tobago 2009⁷⁷
12. North Atlantic Treaty Organization (NATO) Strasbourg, France and Kehl, Germany 2009⁷⁸
13. Non-Aligned Movement (15th) Sharm El Sheikh, Egypt⁷⁹
14. Rio Group (20th) Santo Domingo, Dominican Republic 2008⁸⁰
15. South Asian Association for Regional Cooperation (SAARC) (15th) Colombo, Sri Lanka 2008⁸¹
16. Southern African Development Community (SADC) (28th) Johannesburg, South Africa 2008⁸²
17. Central American Integration System (SICA) (34th) Managua, Nicaragua 2009⁸³
18. United Nations (UN) New York, United States 2005⁸⁴
19. World Summit on Sustainable Development (WSSD) Johannesburg, South Africa 2002⁸⁵

III. A BRIEF HISTORY OF INTER-AMERICAN SUMMITS

In 1994, presidents and heads of state from thirty-four of the thirty-five Western Hemisphere states met in Miami for the First Summit of the Americas.⁸⁶ In fact, it was the third meeting of heads of state in

77. The Inter-American Summit is affiliated with the OAS. The Fifth Summit of the Americas was held in Port of Spain, Trinidad and Tobago, June 17–19, 2009. See <http://www.summit-americas.org/> (last visited Sept. 5, 2009).

78. North Atlantic Treaty Organization, Summit Meetings of Heads of State and Government, <http://www.nato.int/docu/comm/2009/0904-summit/index.html> (last visited July 30, 2009).

79. Ministry of Foreign Affairs, Egypt, XV Summit of the non-Aligned Movement, <http://www.namegypt.org/en/pages/default.aspx> (last visited Sept. 21, 2009).

80. Twentieth Summit of Heads of State and Government of the Rio Group, Santo Domingo, Dom. Rep., Mar. 7, 2008, *Santo Domingo Declaration*, http://www.minfor.gov.gy/itsite/images/minfor_docs/rio_group/2008/santo_domingo_declaration.pdf (last visited Jul 30, 2009).

81. Fifteenth South Asia Association for Regional Cooperation Summit, Colombo, Sri Lanka, Aug. 2–3, 2008, *Declaration: Partnership for Growth for Our People*, <http://www.saarc-sec.org/data/summit15/summit15declaration.htm> (last visited July 30, 2009). The Sixteenth Summit of the SAARC will be held in the Republic of Maldives. *Id.*

82. Dr. Tomaz Augusto Salomão, Southern African Development Community Executive Secretary, Address on the Occasion of the Pre-Summit Diplomats Briefing (Aug. 5, 2008), available at <http://www.sadc.int/index/browse/page/96> (last visited July 30, 2009).

83. Sistema de la Integración Centroamericana (SICA) (Central American Integration System), Regional Summits, <http://www.sica.int/busqueda/Reuniones%20Grupo%20de%20Autoridades.aspx?IDItem=37556&IDCat=9&IdEnt=401&Idm=1&IdmStyle=2> (last visited Nov. 5, 2009).

84. United Nations, The 2005 World Summit, <http://www.un.org/summit2005/> (last visited July 30, 2009).

85. The latest edition of this summit is a follow up to the 1992 UN Conference on Environment and Development, or “Earth Summit.” World Summit on Sustainable Development, Background and Resources, <http://www.bccaorg/ief/wssd.htm> (last visited July 30, 2009).

86. Cuba is the only state in the Western Hemisphere that does not participate in inter-American summits. Cuba remains a member of the Organization of American States (OAS), but was prevented from taking its seat in the OAS General Assembly pursuant to a 1962 resolution,

the Americas following the Second World War. Although prior meetings had convened in 1956 and 1967,⁸⁷ the third meeting was considered the first meeting of the modern era, and it has launched a series of meetings that has been perpetuated to this date. Depending on how one counts, there have been either five or seven inter-American summits since 1994. Five formal, or numbered, summits⁸⁸ have taken

which declared that “the present Government of Cuba has voluntarily placed itself outside the inter-American system.” Eighth Meeting of Consultation of Foreign Ministers, Punta Del Este, Uru., *Final Act*, at 14, OAS Doc. OEA/Ser.F/II.8, doc. 68, (Jan. 22–31, 1962), available at <http://www.oas.org/consejo/meetings%20OF%20consultation/actas/acta%208.pdf> (last visited Aug. 2, 2009) [hereinafter 1962 Cuba Exclusion Resolution]. The relevant part of that resolution reads,

1. That adherence by any member of the Organization of American States to Marxism-Leninism is incompatible with the inter-American system and the alignment of such a government with the communist block breaks the unity and solidarity of the hemisphere.

2. That the present Government of Cuba, which has officially identified itself as a Marxist-Leninist government, is incompatible with the principles and objectives of the inter-American system.

3. That this incompatibility excludes the present Government of Cuba from participation in the inter-American system.

Id. Until 2009, Cuba’s *non grata* status in the General Assembly and within OAS organs left it presumptively excluded from regional activities held under OAS auspices, and the OAS is a core institutional sponsor of inter-American summits. Cuba’s status changed in June 2009 when the OAS adopted a resolution at its 39th General Assembly in Honduras rescinding the 1962 Cuba Exclusion Resolution. See AG/RES. 2438 (XXXIX-O/09) OEA/Ser.P AG/doc.5006/09 rev. 1 (Sept. 29, 2009), ¶ 1, available at http://scm.oas.org/doc_public/ENGLISH/HIST_09/AG04689E10.DOC (last visited Nov. 6, 2009). The 2009 Resolution states that Cuba’s participation in the OAS going forward “will be the result of a process of dialogue initiated at the request of the Government of Cuba, and in accordance with the practices, purposes, and principles of the OAS.” *Id.* ¶ 2. This means that a key formal barrier to Cuba’s return to the regional political system, and thus the inter-American summit process, has been removed. But the actual return of Cuba would require a petition from its government along with commitments to reform political and economic policies to accord with the OAS charter and other basic documents. Cuba’s initial response to the resolution has been to reject the idea of rejoining what its official government newspaper, *Granma*, calls the “graveless cadaver” of the OAS. Frances Robles, *Cuba Says It Won’t Join OAS*, SUN-SENTINEL (Ft. Lauderdale), June 9, 2009, at 9A.

87. See Richard E. Feinberg, *The Summit of the Americas: An Architecture for Inter-American Relations*, Address Before the Inter-American Dialogue (Sept. 20, 1994), in *ADVANCING THE MIAMI PROCESS: CIVIL SOCIETY AND THE SUMMIT OF THE AMERICAS* 41, 42 (Robin Rosenberg & Steve Stein eds., 1995). At the time of his address Feinberg was Special Assistant to the President of the United States and Senior Director for Inter-American Affairs on the National Security Council. *Id.* at 41; see also Org. of Am. States, *Declaration of the Presidents of the American Republics in Panama* (July 22, 1956), available at <http://www.summit-americas.org/declarat%20presidents-panama%201956-eng.htm> (last visited July 30, 2009) (discussing the history of Western Hemisphere Summits); Org. of Am. States, *Declaration of the Presidents of the Americas, Meeting of American Chiefs of State* (April 14, 1967), available at <http://www.summit-americas.org/declaratpresidents-1967-eng.htm> (last visited July 30, 2009) (describing the outcome of the 1967 Summit); Summit of the Americas Information Network, the Summit Process, <http://www.summit-americas.org/eng/summitprocess.htm> (last visited Sept. 13, 2009) (providing history of Western Hemisphere summits provided by the OAS through its summit web site).

88. The titles of these summits are preceded by ordinal numbers—for example, first, second, and so on—in official documents.

place, the most recent in Port of Spain, Trinidad and Tobago, in April 2009,⁸⁹ along with two special, or thematic, summits: a Summit on Sustainable Development in Santa Cruz, Bolivia in 1996,⁹⁰ and a Special Summit in Monterrey, Mexico in 2004.⁹¹

The confusion over numbering the meetings speaks in part to the relatively *ad hoc*—one might say flexible—and evolving structure for summit planning in the Western Hemisphere. In 1996, the Santa Cruz Summit, second in time (1996), dealt specifically with issues of sustainable development. For a range of reasons—some perhaps owing to the desire of governments not to elevate the theme too highly—Santa Cruz was not granted an ordinal number and remains known as the “sustainable development summit” rather than the “second summit.”⁹² Similarly, although the 2004 Monterrey Summit had not been planned as part of the summit sequence, some governments in the region sought to expedite a meeting after the time and place for the officially numbered “fourth” summit had already been announced for 2005 in Brazil.⁹³ The government of Brazil reportedly did not wish to advance the date of its summit, or to relinquish the privilege of holding the next official summit, so a compromise was reached: Mexico

89. Records relating to the Port of Spain Summit can be found at <http://www.summit-america.org> (last visited July 30, 2009).

90. The summit web site maintained by the OAS provides a summary and history of each summit, including the “special” summits. See http://www.summit-americas.org/previous_summits.html (last visited Sept. 10, 2009).

91. *Id.*

92. *Id.*

93. The United States, for example, was a chief proponent for holding an earlier meeting. Many observers speculated that the White House was seeking an opportunity for then-President George W. Bush to join his Latin American counterparts on an international stage early in a campaign year and to show some initiative in the region while he remained in office, rather than potentially ceding the process to a successor. The author was one of several moderators for civil society preparatory meetings hosted by the Organization of American States and the Government of Mexico as part of the Monterrey Summit preparatory process. These meetings included the Regional Forum entitled *Civil Society in the Processes of Hemispheric Integration, in the Context of the Special Summit of the Americas* held in Monterrey, Mexico, in November 2003, and the *Dialogue Between Plenipotentiaries and Civil Society Representatives*, held in Monterrey on January 11, 2004, the day before the opening of the Summit. See *Civil Society in the Processes of Hemispheric Integration, in the Context of the Special Summit of the Americas*, Mexico City, Mex., Nov. 24–25, 2008, <http://www.summit-americas.org/Quebec-CivilSociety/RegionalForum/bulletin-eng.pdf>; Summit of the Americas Information Network, <http://www.summit-americas.org/SpecialSummit/CivilSociety/Mainpage-eng.htm> (last visited Sept. 13, 2009). The information provided in this note was gathered during these meetings and during many informal discussions among the author and the participants in the Monterrey Summit and in other aspects of the preparatory process.

would host a non-numbered Special Summit, or *Cumbre Extraordinaria*, in Monterrey in January of 1994.⁹⁴

The summits are institutionally tied to the OAS, and this connection has become stronger over time. The OAS serves as the summit secretariat and has seen its own agenda increasingly shaped by summit commitments. Yet summit agenda setting and implementation are still technically independent of the OAS. The process of negotiating and shaping summit agendas is managed by the Summit Implementation and Review Group (SIRG), which is chaired by the upcoming summit's designated host country and steered by past summit host countries.⁹⁵ An institutional tripartite committee, which includes the OAS, the Inter-American Development Bank (IDB) and the UN Economic Commission for Latin America and the Caribbean (ECLAC), helps to oversee summit implementation.⁹⁶

The inter-American summits have typically featured one to three days of presidential plenary sessions and side meetings among heads of state and their delegations. Official documents have traditionally been signed by participating heads of state.⁹⁷ These include "declarations," which are essentially a broad statement of principles, and "plans of action," which are more detailed lists of commitments that state leaders will pursue in order to advance the principles on which they have agreed.⁹⁸ The action plans are often general and vague, but

94. This information is based on conversations by the author with participants in summit planning, although it does not appear that the reasons for this arrangement have been acknowledged in print.

95. For those interested in more background on inter-American summits generally, the OAS maintains a web site at <http://www.summit-americas.org>. See also *ADVANCING THE MIAMI PROCESS: CIVIL SOCIETY AND THE SUMMIT OF THE AMERICAS* (Robin Rosenberg & Steve Stein eds., 1995) (highlighting the goals and outcomes of the early summit process and reprinting many of the original preparatory documents).

96. See, e.g., *Second Summit of the Americas, Santiago de Chile, Chile, Apr. 18–19, 1998, Santiago Declaration and Plan of Action* [hereinafter *Santiago Plan of Action*], reprinted at 37 I.L.M. 947, 958 (1998).

97. The 2009 Port of Spain Summit marked an exception to this tradition. See *infra* note 131 and accompanying text.

98. These two documents were issued for the summits in Miami, Santa Cruz, Santiago, Quebec City, and Mar del Plata. See discussion *infra* notes 136–169, 177–181 and accompanying text (detailing outcomes from each of these summits). At the 2004 Special Summit (*Cumbre Extraordinaria*) in Monterrey, no plan of action was issued; instead, heads of state signed the Declaration of Nuevo León, which was largely a statement of principles but which included some concrete commitments such as those typically found in a plan of action. See Special Summit of the Americas, Monterrey, Nuevo León, Mexico, Jan. 13, 2004, *Declaration of Nuevo León*, available at http://www.summit-americas.org/sp_summit/sp_summit_dec_en.pdf (last visited July 30, 2009). At the most recent summit in Port of Spain, heads of state signed no final document. Instead, Trinidad's Prime Minister, as summit host, signed a declaration of commitment on behalf of the heads of state. See *Declaration of Commitment of Port of Spain, OEA/Ser.E, CA-V/DEC.1/09* (April 19, 2009), available at *CA-V/DEC.1/09* (last visited Nov. 6, 2009) [hereinafter

in some cases they include more concrete commitments to work toward social goals.⁹⁹ The declarations and action plans are negotiated through the SIRG in a relatively transparent process that offers both formal and informal opportunities for non-state actors to offer advice, including advice about specific language, and to comment on elements of the documents. Non-state actors also work informally with the tripartite committee institutions, especially the technical units of the OAS, to conduct research and develop reports and recommendations that inform the preparation of summit documents.¹⁰⁰

The subject matter of inter-American summits has varied widely to cover a range of security, economic, and social interests in the region. A commitment to negotiate a Free Trade Area of the Americas (FTAA) emerged at the First Summit in Miami,¹⁰¹ and greater economic integration remained a subject of many subsequent summit commitments until an impasse over the creation of a new regional free trade zone emerged in Quebec, which has hardened in subsequent summits.¹⁰² In addition to serving as a platform for the discussion of

Port of Spain Declaration]. See *infra* notes 182–202 and accompanying text (discussing the context and outcomes of the Port of Spain summit).

99. These goals have included promoting universal primary education, establishing cooperative networks or institutions, and pursuing binding legal instruments. Frequently, plans of action also include instructions to regional institutions, often the OAS or one of its organs, directing them to pursue a project, prepare a report on an issue of concern, or both.

100. SECRETARY GENERAL'S REPORT ON THE SUMMIT OF THE AMERICAS PROCESS (2004), copy on file with author; see also ORG. OF AM. STATES, INTER-AM. COUNCIL FOR INTEGRAL DEV., INTER-AMERICAN STRATEGY FOR THE PROMOTION OF PUBLIC PARTICIPATION IN DECISION MAKING FOR SUSTAINABLE DEVELOPMENT (2001) [hereinafter ISP FINAL REPORT], available at http://www.oas.org/dsd/PDF_files/ispenglish.pdf (last visited Aug. 2, 2009) (official report of the formulation of the OAS participation strategy, which includes accounts of public meetings and joint research that informed the strategy).

101. See ORG. OF AM. STATES, 1 OFFICIAL DOCUMENTS OF THE SUMMIT PROCESS FROM MIAMI TO SANTIAGO 213–40 (1998); SUMMIT REPORT 2001–2003: ADVANCING IN THE AMERICAS, PROGRESS AND CHALLENGES, ORGANIZATION OF AMERICAN STATES SUMMITS OF THE AMERICA SECRETARIAT 62 (2004), available at http://www.summit-americas.org/pubs/summit_report_II_en.pdf (copy on file with author); First Summit of the Americas, Miami, Fl., Dec. 11, 1994, *First Summit of the Americas: Declaration of Principles and Plan of Action*, reprinted in 34 I.L.M. 808 (1995). The Miami Declaration and Plan of Action are available at <http://www.summit-americas.org/miamidec.htm> and <http://www.summit-americas.org/miamiplan.htm>, respectively.

102. Venezuela noted reservations regarding the proposed Free Trade Area of the Americas (FTAA) in the final Declaration of the Quebec Summit in 2001. See Third Summit of the Americas, Quebec City, Can., Apr. 20–22, 2001, *Declaration of Quebec City*, at 6, available at http://www.oas.org/dil/Declaration_of_Quebec_City.pdf [hereinafter Quebec Declaration]. Venezuela's opposition to the FTAA at the Monterrey Summit in 2004, along with objections by Brazil, scuttled hopes for a commitment to complete the trade accord on a specific timetable. See Robert Collier, *Modest Gains for Bush at Summit of Americas; Sweeping Promises, Sharp Divisions As 34-Nation Meeting Ends*, S.F. CHRONICLE, Jan. 14, 2004, at A1. At the Fourth Summit in Mar del Plata in 2005, the language in the Declaration regarding the proposed FTAA

competing trade agendas, summits have addressed concerns over education, labor rights, gender discrimination, human rights, the environment, democracy, transparency, health, and urban development, among others.

IV. NON-STATE ACCESS TO INTER-AMERICAN SUMMITS

To understand how non-state actors have engaged in and influenced summit planning and outcomes, it is useful to begin with an analysis of the summit process itself because it offers a view of how rhetoric about participation accompanied a normative shift toward a more open and participatory process. The precedent was set when the preparations for the Miami Summit—including the preparation of background papers and the negotiation of documents to be signed by heads of state, integrated NGOs, academics, and other interested non-state actors—exposed OAS member states and the OAS itself to a

was equivocal, noting that “some member states” remain optimistic about the FTAA and that these states instruct their trade officials through the Declaration to resume negotiations in 2006. See Fourth Summit of the Americas, Mar Del Plata, Arg., Nov. 5, 2005, *Declaration of Mar del Plata*, ¶ 19A [hereinafter Mar Del Plata Declaration], available at <http://www.state.gov/p/wha/rls/56901.htm> (last visited July 28, 2009). The Mar Del Plata Declaration also states that

other member states maintain that the necessary conditions are not yet in place for achieving a balanced and equitable free trade agreement with effective access to markets free from subsidies and trade-distorting practices, and that takes into account the needs and sensitivities of all partners, as well as the differences in the levels of development and size of the economies.

Id. ¶ 19B. While the Declaration does not identify the dissenting states, press accounts reported that Venezuela, which continued to object to the FTAA as a neo-imperial project, was joined by states of the Mercado Común del Sur (MERCOSUR), which consists of Argentina, Brazil, Paraguay, and Uruguay as full members, and Bolivia, Chile, Colombia, Ecuador, and Peru as associate members. See American Society of International Law, Reports on International Organizations, http://www.asil.org/rio/mercosur_sum09.html (last visited Nov. 2, 2009). These states objected to a trade agreement unless it addressed U.S. agricultural subsidies. See Patrick J. McDonnell & Edwin Chen, *Bush Exits Summit As Trade Talks End in Disagreement*, L.A. TIMES, Nov. 6, 2005, at A1; Julie Mason & John Otis, *Summit of the Americas; Clash of Ideology in Street, at Forum*, HOUSTON CHRONICLE, Nov. 5, 2005, at A1. The unusual bifurcated text offered some measure of compromise that would allow trade ministers to return to the negotiating table. During the Hong Kong WTO meeting in December 2005, an agreement was finally reached on agricultural subsidies, calling for their elimination by 2013. See World Trade Organization, Ministerial Declaration of 18 December 2005, WT/MIN(05)/DEC (Dec. 22, 2005), available at http://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.pdf (last visited Aug. 2, 2009). While this might have offered an opportunity for the MERCOSUR countries to join continued FTAA negotiations, trade discussions have instead proceeded on a bilateral and sub-regional basis. See J.F. HORNBECK, A FREE TRADE AREA OF THE AMERICAS: MAJOR POLICY ISSUES AND STATUS OF NEGOTIATIONS, CONGRESSIONAL RESEARCH SERVICE (2008), available at <http://wikileaks.org/wiki/CRS-RS20864> (last visited Sept. 14, 2009). The idea of the FTAA was not even mentioned in the final document to emerge from the Port of Spain summit. See Port of Spain Declaration, *supra* note 98; see also *infra* notes 182–202 and accompanying text (discussing the context and outcomes of the Port of Spain summit).

level of participation that had not been seen in prior regional policy making processes.¹⁰³ In the time leading up to the Miami Summit, the U.S. administration had made a decision to involve non-state actors in the summit process, and as the “host government,” it sponsored a series of roundtables and workshops among NGOs from throughout the region to discuss the summit agenda.¹⁰⁴ These workshops were attended by OAS officials and summit negotiators from a number of OAS member states, mostly foreign ministry representatives, but in some cases representatives from ministries with responsibilities for the subject areas of the summit, such as education, environment, and health. The United States also tapped a congressionally funded think tank at the University of Miami, the North-South Center, to serve as an unofficial non-governmental host of the summit. The North-South Center held a number of meetings on summit issues that were attended by government delegates and non-state actors both prior to and during the summit.¹⁰⁵

This participatory approach continued over the next two years in the process leading up to the Santa Cruz Summit. The Bolivian Government welcomed the participation of non-state actors in the formulation of the Santa Cruz Summit agenda;¹⁰⁶ for example, as host of the upcoming summit, it participated in a regional dialogue hosted by the Government of Uruguay on “enabling responsible participation,” “strengthening representative organizations,” and “expanding avenues for participation” (collectively the Montevideo Dialogue) the outcomes of which were offered to Bolivia and other OAS members states as input for the Santa Cruz summit agenda.¹⁰⁷ This dialogue

103. For a description of the level of participation, including copies of a number of NGO submissions and the results of NGO consultations, see generally *ADVANCING THE MIAMI PROCESS*, *supra* note 95.

104. *Id.*

105. *Id.*

106. At the time, the government of Bolivia was experimenting with democratic reform at a national level, having just passed a new national law on democratic participation—the *Ley de Participación Popular* (Popular Participation Law). See Ley No. 1551, 20 Apr. 1994 (Bol.), available at <http://www2.ids.ac.uk/logolink/resources/downloads/regionalreports/RegionalReportLatinAmericaAnnex%20final%20.pdf> (last visited Oct. 16, 2009). It was essentially a decentralization law, recognizing hundreds of new municipalities and local and indigenous communities as *Organizaciones Territoriales de Base* (Base Territorial Organizations), and giving them some input on national budget expenditures at a local level. For a description of how the Popular Participation Law operated, see MERILEE S. GRINDLE, *AUDACIOUS REFORMS: INSTITUTIONAL INVENTION AND DEMOCRACY IN LATIN AMERICA* 94–96 (2000).

107. See *INTER-AMERICAN SEMINAR ON PUBLIC PARTICIPATION IN SUSTAINABLE DEVELOPMENT: REPORT ON PROCEEDINGS* (1996) [hereinafter *MONTEVIDEO REPORT*] (on file with author). Uruguay was at the time serving as the “responsible government” for follow-up on summit agenda items relating to democracy and participation, and the seminar was co-sponsored by the OAS and USAID, among others. *Id.* at 1; see also *ADVANCING SUSTAINABLE DEVELOP-*

attracted over 150 participants including government representatives from twenty-three of the thirty-four OAS member states, along with non-state actors from throughout the region,¹⁰⁸ and it produced a recommendation to pursue a regional strategy for participation in development decision making that was adopted as part of the Santa Cruz Summit Plan of Action.¹⁰⁹

The Bolivian Government contracted with the World Resources Institute (WRI), a U.S.-based NGO, to provide advice on creating a plan of action for sustainable development,¹¹⁰ and the U.S. Government again financed a series of NGO consultations leading up to the Santa Cruz Summit, including the Montevideo Dialogue.¹¹¹ The Declaration and Plan of Action adopted in Santa Cruz incorporated the principal recommendation from the Montevideo Dialogue: to formu-

MENT IN THE AMERICAS: U.S. CIVIL SOCIETY RECOMMENDATIONS FOR THE 1996 SUMMIT CONFERENCE ON SUSTAINABLE DEVELOPMENT, SANTA CRUZ, BOLIVIA 3, available at www.brazilink.org/tiki-download_file.php?fileId=7 (last visited Nov. 6, 2009) (discussing the Bolivian government's "full support and participation" in the Montevideo conference); Eric Dannenmaier, *Democracy in Development: Toward a Legal Framework for the Americas*, 11 TUL. ENVTL. L.J. 1, 11-14 (1997) (describing the Montevideo meeting in detail); CORPORACIÓN PARTICIPA, CITIZEN PARTICIPATION IN THE SUMMIT OF THE AMERICAS: NINE YEARS OF EXPERIENCE OF THE NETWORK OF CIVIL SOCIETY ORGANIZATION OF THE AMERICAS, available at <http://www.civil-society.oas.org/Publicación%20Cumbre%209%20años%20ing.pdf> (last visited Nov. 5, 2009) (describing the decision to adopt Montevideo recommendations regarding the formulation of a regional strategy for public participation).

108. MONTEVIDEO REPORT, *supra* note 107, at 1.

109. The Montevideo meeting recommendation was reflected in the final Plan of Action from Santa Cruz, which called for the design of an "inter-American strategy for public participation in sustainable development decision-making" (ISP). See Summit of the Americas on Sustainable Development, Santa Cruz de la Sierra, Bol., Dec. 7-8, 1996, *Plan of Action for the Sustainable Development of the Americas*, at 14-15 [hereinafter Santa Cruz Plan of Action], available at <http://www.summit-americas.org/boliviaplan.htm>; see also *infra* notes 209-226 (describing the development of the ISP).

110. See Aaron Zazueta, Draft Plan of Action for Santa Cruz Summit (1995) (on file with author). While Zazueta's role as an outside NGO advisor to the Bolivian government was not well publicized at the time, it is documented in contemporaneous intergovernmental communications and in his professional biography. As of September 2009, Zazueta serves with the Monitoring and Evaluation Office of the Global Environment Facility (GEF). His biography sheet published by GEF includes the following entry:

[Zazueta] was appointed by Vice President Al Gore on to a Special Commission to assist the Bolivian President to incorporate sustainable development into the policies and programs carried out during his administration. He co-chaired the technical commission that drafted the Hemispheric Agenda for Sustainable Development, ultimately adopted by thirty two heads of state of the Americas in December 1996.

GEF, Evaluation Office Staff Directory, <http://www.gefweb.org/gefevaluation.aspx?id=23144> (last visited Sept. 14, 2009). The "Hemispheric Agenda" referred to in Zazueta's GEF biography is the 1996 Santa Cruz Summit Plan of Action. *Id.*

111. See MONTEVIDEO REPORT, *supra* note 107, at 1.

late an “inter-American strategy for the promotion of public participation in sustainable development decision-making.”¹¹²

The practice of public consultation continued with the Santiago Summit in 1998 as the Government of Chile, with financial support from Canada and the United States, contracted a Santiago-based NGO, Corporación Participa, to host a series of NGO consultations for input into the Santiago Declaration and Plan of Action.¹¹³ Corporación Participa facilitated civil society consultations on three of the four principal topics of the summit—education, democratic governance, and poverty, but not hemispheric trade—with government officials who were negotiating the text sitting alongside civil society participants on panels and roundtables.¹¹⁴ As with Santa Cruz, there is evidence that some of the NGO priorities were reflected in the final Santiago Summit Declaration and Plan of Action.¹¹⁵

NGO participation continued in the subsequent summits in Quebec City, Canada (2001), Monterrey, Mexico (2004), Mar del Plata, Argentina (2005), and Port of Spain, Trinidad and Tobago (2009),¹¹⁶ and

112. Santa Cruz Plan of Action, *supra* note 109, at 14. The actions taken following the Santa Cruz Summit to implement this part of the Plan of Action are more fully described *infra* Part VI. A.

113. See PROJECT RESULTS: CITIZEN PARTICIPATION IN THE CONTEXT OF THE SUMMIT OF THE AMERICAS (1999), available at http://pdf.usaid.gov/pdf_docs/PDABR033.pdf (last visited Nov. 2, 2009); see also Yasmine Shamsi, MUTUAL MISGIVINGS: CIVIL SOCIETY INCLUSION IN THE AMERICAS 26–31 (2003), available at http://www.un-ngls.org/orf/cso/mutual_misgivings.pdf (last visited Nov. 2, 2009); Ambassador Ellen Bogle of Jamaica, Statement to Workshop on the Role of Public Participation in Santiago, Chile (Nov. 5–7, 1997) (on file with author). After describing consultations with civil society throughout the region during the three years following the Miami Summit and highlighting the role of civil society organizations in preparations for the Santiago Summit, the Ambassador concluded, “Indeed, it may well be that, following this meeting, Jamaica and Uruguay [coordinators for civil society in the summit process] can present to the Coordinator of the Santiago Summit, Chile’s Ambassador Juan Martabit, a new and more meaningful text which will reflect the efforts of the stakeholders.” Bogle, *supra*, at 2.

114. Agenda of Workshop on the Role of Public Participation, Santiago, Chile (Nov. 5–7, 1997) (copy on file with author).

115. The Santiago Plan of Action stated that “governments will [p]romote, with the participation of civil society, the development of principles and recommendations for institutional frameworks to stimulate the formation of responsible and transparent, non-profit and other civil society organizations” *Santiago Plan of Action*, *supra* note 96, ¶ III.A.III. The Santiago Plan of Action then refers to the Inter-American Strategy for the Promotion of Public Participation in Sustainable Development Decision-Making (ISP)—which had been pursued by the OAS with substantial civil society participation following the Santa Cruz Summit—and states, “[A]s soon as possible, Governments will adopt work plans to implement legal and institutional frameworks based on the principles and recommendations in their respective countries.” *Id.* This language was proposed by the OAS Unit for Sustainable Development and Environment and the NGOs working with the Unit to develop the ISP. See *infra* notes 224–226 and accompanying text.

116. A brief description of activities undertaken to engage civil society in connection with each of the summits is provided at the Summits of the Americas web site maintained jointly with

has been supported by an OAS Civil Society Office, established following the 1996 Santiago Summit.¹¹⁷ A coalition of NGOs, led by Corporación Participa from Chile, the Canadian Foundation for the Americas (FOCAL), and the U.S.-based Partners of the Americas and the Inter-American Democracy Network (IADN), has worked with the OAS Civil Society Office and summit host governments to facilitate workshops, seminars, and other forms of outreach as a means of incorporating input from non-state actors into the summit process.¹¹⁸ Funding from the U.S. government has continued—although it was reduced and refocused under the Bush administration¹¹⁹—principally through the U.S. Agency for International Development (USAID). Funding from the Canadian Government has also continued, principally through Canada-based FOCAL and Chile-based Corporación Participa.¹²⁰

Non-state participation has thus become *de rigueur*, even routine, in inter-American summitry. Governments have largely welcomed an increasing dialogue with non-state actors both in formal and informal settings. For their part, non-state actors have embraced the process even where they do not embrace the motivations or goals of the state leaders who gather for the summits, and this counter-current is tolerated—sometimes even sponsored by—governments against which it runs. For example, in addition to funding dialogue with civil society

the OAS at <http://www.summit-americas.org/cs.html#Hemisphere> (last visited Nov. 7, 2009). This site offers hyperlinks to official web pages maintained by host countries for each of the summits. In each case the country web site offers a summary of civil society activities sponsored or hosted by governments in connection with the summit.

117. This office was created as part of a broader institutional reform aimed at engaging non-state actors more fully in the work of the OAS. See *infra* Part VI.D (describing efforts to create NGO accreditation rules for the OAS). Following its creation, the office was moved into the OAS Department of International Affairs. See <http://www.civil-society.oas.org/> (last visited Nov. 7, 2009) (as of the time this Article went to press this web site serves as the principal formal point of entry for non-state actors to the OAS).

118. See, e.g., the discussion of summits and civil society input into the summit process on the websites of Corporación Participa, www.participa.cl (last visited July 28, 2009); Canadian Foundation for the Americas, www.focal.ca (last visited July 28, 2009); Partners of the Americas, www.partners.net (last visited July 28, 2009); Interamerican Democracy Network, <http://www.redinter.org> (last visited July 28, 2009); Civil Society Participation in OAS Activities, www.civil-society.oas.org (last visited July 28, 2009); Summits of the Americas, www.summit-americas.org (last visited July 28, 2009).

119. When George W. Bush took office in January 2001, his administration shifted emphasis from participatory democracy and the integration of NGOs into the summit process to the promotion of electoral democracy and an effort to ensure the continued exclusion of non-democracies—notably Cuba—from the summit process and inter-American institutions generally. See *infra* note 250 and accompanying text (discussing U.S. regional priorities and policy toward Cuba in the context of developing the Inter-American Democratic Charter).

120. This information is based on interviews with staff of the Canadian Foundation for the Americas (FOCAL) and Corporación Participa. Notes on file with author.

organizations about the formulation of the summit agenda at Quebec in 2001, the Canadian government also funded a parallel event, the self-titled People's Summit, which was largely a protest meeting held outside the security zone of the official summit.¹²¹

At Mar del Plata in 2005, a parallel protest event at a soccer stadium featured President Hugo Chavez of Venezuela, who left the official proceedings to deliver an anti-trade, anti-neoliberal, anti-U.S. rant that lasted more than two hours before an estimated crowd of 20,000.¹²² While Chavez has become notorious for his unorthodox and contrarian approach to diplomacy,¹²³ the willingness of host government Argentina to permit such a public forum is noteworthy. In addition, one should not discount the importance of giving voice to a message of protest in the company of a large, seemingly receptive, audience¹²⁴ in close proximity to a head of state meeting devoted to pursuing some of the very goals which were the subject of protest. Professor Richard Feinberg has criticized the Mar del Plata summit as a "shambles" in part because of "a duplicitous host government [and] an out-of-control Hugo Chávez."¹²⁵ Feinberg's credentials and experience in Western Hemisphere affairs give his insights regarding Mar del Plata special weight,¹²⁶ yet his critique speaks more to substantive challenges of inter-American relations than to any procedural debility of summits as a public forum. The counterproductive use of a public

121. The website for the People's Summit in Quebec (a similar event had taken place in Santiago) describes its purpose as creating "a space and an opportunity for progressive civil society from north and south, to come together as equals. During the Summit we will debate, define new strategies for the Americas and create new alliances. The Summit will be another crucial step in the process of developing Alternatives." Quebec City—Protest the Summit of the Americas, <http://www.web.net/comfront/quebec.htm> (last visited Oct. 16, 2009).

122. Larry Rohter & Elisabeth Bumiller, *Protesters Riot As Bush Attends 34-Nation Talks*, N.Y. TIMES, Nov. 5, 2005, at 1; Colin McMahon *Protesters Scorn Bush at Summit*, CHICAGO TRIBUNE, Nov. 5, 2005, at 1.

123. See, e.g., Warren Hoge, *Venezuelan's Diatribe Seen As Fatal to U.N. Council Bid*, N.Y. TIMES, Oct. 25, 2006, at A6 (recounting Chavez's statement during a speech to the U.N. General Assembly in September 2006 that "he could still smell the telltale scent of sulfur on the General Assembly rostrum where Mr. Bush had spoken the day before").

124. One opinion writer described television coverage of "applauding" crowds attending the Chavez speech. John Hughes, *Chavez's Socialism Won't Help Latin America; Free Trade Will*, CHRISTIAN SCIENCE MONITOR, Nov. 9, 2005, at 9.

125. Richard Feinberg, *Making the Fifth Summit the Finest So Far*. FOCAL POINT, July-August 2008, at 1, available at <http://www.focal.ca/publications/focalpoint/fp0808/?article=article2&lang=e> (last visited Nov. 7, 2009).

126. In addition to broad practical and academic experience in inter-American relations, Professor Feinberg was Senior Director of the National Security Council's Office of Inter-American Affairs under President Clinton, and in that post served as a principal architect of the 1994 Miami summit. His biography and CV are reproduced at the University of California San Diego School of International Relations and International Studies web site, available at <http://irps.ucsd.edu/faculty/faculty-directory/richard-feinberg.htm> (last visited Nov. 7, 2009).

forum by a self-styled populist like Chavez (who would find a platform in any event) does not discount the need for, or importance of, public non-state forums held in connection with the summit. Chavez may have stolen headlines—a feat of which he has proven capable even in the more traditional diplomatic cloisters of the United Nations in New York¹²⁷—but engaging the public more quietly in debating summit priorities and outcomes through public forums that were institutionalized through the summit process deprived Chavez of any claim to monopoly on public discourse. Put another way, Chavez cannot maintain that he is the only regional leader speaking to the people about their interests in regional political and institutional priorities.

By the time the 2009 Port of Spain Summit convened, inter-American politics had shifted in ways that would create even greater challenges to substantive outcomes for a common regional agenda. Voters in Bolivia, Ecuador, Honduras, and Nicaragua elected populist leaders with socialist leanings¹²⁸—which was anathema to some of the core regional integration goals that had defined the summit agenda since Miami¹²⁹—and Chavez was thus joined at Port of Spain by heads of state who could match his substantive concerns if not his rhetoric. While Chavez had been reduced to noting exceptions to earlier summit agreements¹³⁰ these new ideological partners added enough weight to undermine support for outcomes which depend upon consensus. A single state dissent in a summit of thirty-four states will produce exceptions, but not necessarily scuttle a consensus document. But five dissenting states can change the dynamics of consensus.

127. See *supra* note 123 (describing Chavez's 2006 U.N. performance).

128. Evo Morales became President of Bolivia in January 2006, Manuel Zelaya took office as President of Honduras in January 2006, and Rafael Correa became President of Ecuador in January 2007, and Daniel Ortega returned to the presidency of Nicaragua in January 2007, having previously served in that office from 1985 to 1990. Each has joined an economic alliance with Venezuela called the "Bolivarian Alliance for the People of Our Americas," which promotes an agenda that Venezuela's President Chavez has branded as "21st Century Socialism." Tyler Bridges, *Tough Times for Leftist Leaders; Six Aligned Latin American Countries Find Populism Is Slowing*, SUN-SENTINEL (Fort Lauderdale, Florida) July 5, 2009, at 13A.

129. See *supra* notes 101–102 and accompanying text.

130. The 2001 Quebec Declaration includes a reservation that states in part, "The Venezuelan delegation wishes to reserve its position on paragraphs 1 [which relates to strengthening representative democracy] and 6 [which instructs foreign ministers to prepare an Inter-American Democratic Charter], because, according to our government, democracy should be understood in its broadest sense and not only in its representative quality." Quebec Declaration, *supra* note 102, at 6. The Quebec Declaration also includes a reservation by Venezuela regarding the proposed FTAA. The 2005 Mar del Plata Declaration includes a reservation by Venezuela to a paragraph under the "Strengthening Democratic Governance" heading that states, "We are convinced that representative democracy is an indispensable condition for the stability, peace, and development of the region." Mar del Plata Declaration, *supra* note 102, ¶ 58,

The Port of Spain summit thus produced a Declaration signed by the chair rather than participating heads of state,¹³¹ and the substance of the Declaration's text relating to democracy appears to reflect the parties' lack of substantive agreement on what exactly is meant by democracy.¹³² But non-state actors remained a part of the Port of Spain summit, both in the preparatory meetings where the summit agenda was debated and at the summit itself.¹³³ Non-state participants were afforded an opportunity to engage diplomats formally and informally in shaping a regional agenda even if the agenda had become captive to new regional politics.¹³⁴ Whether these new politics represent an anomaly or a trend that will overshadow the broader cooperative agenda of the summit process is uncertain. But even a rising disagreement about the nature of democracy at Port of Spain did not lead states to retreat from the tradition of non-state access that has become part of the summit process.

V. COMMITMENTS TO DEMOCRATIC GOVERNANCE AND PUBLIC PARTICIPATION

Democratic governance and public participation have been consistent inter-American summit themes, and the rising dispute over how best to address these themes at a regional level¹³⁵ only serves to high-

131. At the conclusion of the Trinidad Summit, a dispute over some final aspects of the agreement and the continuing exclusion of Cuba from the inter-American political process led Venezuelan President Hugo Chavez, Bolivian President Evo Morales, Honduran President Jose Manuel Zelaya, and Nicaraguan President Daniel Ortega to withhold their signatures. See Shaliza Hassanali, *Morales to Colleagues: Don't Sign Declaration*, TRIN. & TOBAGO GUARDIAN, Apr. 18, 2009, available at <http://guardian.co.tt/news/general/2009/04/19/morales-colleagues-don-t-sign-declaration>; *Americas Rivals See Signs of Hope*, BBC NEWS, Apr. 19 2009, available at <http://news.bbc.co.uk/2/hi/americas/8007305.stm>; Tamara Pearson, *Venezuela and ALBA Promote "New Climate" in Summit of the Americas*, TRIN. & TOBAGO NEWS.COM, Apr. 21, 2009, available at <http://www.trinidadandtobagonews.com/5summit/210409.html> (last visited Sept. 5, 2009). The Trinidad summit chair, Trinidad and Tobago Prime Minister Patrick Manning, signed a statement indicating that the parties had agreed that he "would sign the declaration as having been adopted by all Heads of State and Government attending the Summit." Fifth Summit of the Americas, Apr. 17–19, 2009, Port of Spain, Trin. & Tobago, *Statement by the Chairman of the Fifth Summit of the Americas, the Honourable Patrick Manning, Prime Minister of the Republic of Trinidad and Tobago*, at 4, OAS Doc. OEA/Ser.E CA-V/DP-1/09 (Apr. 19, 2009), available at http://www.summit-americas.org/V_Summit/statement_chair_en.pdf (last visited Sept. 24, 2009).

132. See *infra* notes 188–200 and accompanying text.

133. The summit web site maintained by the OAS includes a compilation of documents describing consultations with various non-state actors, including indigenous peoples, youth, academia, labor, and private sector representatives. See http://www.summit-americas.org/GA09_CD/psa_en.htm (last visited Nov. 12, 2009). Dialogue between ministers of foreign affairs and non-state actors was also held. *Id.*

134. *Id.*

135. See *supra* notes 128–132 and accompanying text (describing the emergence of Venezuela's objection to summit language regarding democracy in the context of the 2001 Quebec

light their importance as summit objectives. The following outlines commitments made to advance both electoral and participatory democratic models in summits held to date.

A. *Miami (1994)*

The Miami Declaration affirmed that “[d]emocracy is based, among other fundamentals, on free and transparent elections and includes the right of all citizens to participate in government.”¹³⁶ The Declaration called for making “democratic institutions more transparent and accountable,” and it expressed an interest in ensuring “public engagement and commitment.”¹³⁷ The Miami Plan of Action asserted that “[t]he strengthening, effective exercise and consolidation of democracy constitute the central political priority of the Americas,”¹³⁸ and it called on the OAS “to promote and consolidate representative democracy.”¹³⁹ Governments committed to “give expeditious consideration to ratifying the Cartagena de Indias,¹⁴⁰ Washington,¹⁴¹ and Managua¹⁴² Protocols to the OAS Charter,” each of which added commitments to representative democracy to the OAS Charter.¹⁴³ The Miami Plan of Action also called for regional institutional reform, including strengthening the ability of a technical office of the OAS, the Unit for Promotion of Democracy, so that it could provide assistance to “interested state[s]” in legislative and judicial processes and the administration of justice.¹⁴⁴

The Miami Plan of Action also highlighted the importance of public participation, including civil society’s access to information and the decision-making process. The plan states that “a vigorous democracy requires broad participation in public issues. Such activities should be carried out with complete transparency and accountability, and to this

summit, and increasing support for that objection among more recently elected leaders in the region).

136. Miami Declaration, *supra* note 101, at 810.

137. *Id.* at 810, 813.

138. Miami Plan of Action, *supra* note 101, at 815.

139. *Id.*

140. Protocol of Amendment to the Charter of the Organization of American States, Dec. 5, 1985, 25 I.L.M. 527, 527–530 (1986) [hereinafter Protocol of Cartagena de Indias].

141. Protocol of Amendments to the Charter of the Organization of American States, Dec. 14, 1992, 33 I.L.M. 981, 1005 (1994) [hereinafter Protocol of Washington].

142. Protocol of Amendments to the Charter of the Organization of American States, June 10, 1993, 33 I.L.M. 981, 1009–10 (1994).

143. The Protocol of Washington amended Article 33 of the OAS Charter to affirm that “[t]he Member States agree that . . . the full participation of their peoples in decisions relating to their own development are . . . basic objectives of integral development.” Protocol of Washington, *supra* note 141, at 1007.

144. Miami Plan of Action, *supra* note 101, at 815.

end a proper legal and regulatory framework should be established to include the possibility of obtaining technical and financial support, including from private sources.”¹⁴⁵ This language points, albeit obliquely, to the need to develop frameworks for the operation and financing of NGOs, which was a relatively new phenomenon in the Americas in the early 1990s. The Plan of Action also calls for increased access to information as a means to combat official corruption, which was a perennial inter-American summit theme. Heads of state pledged to “[e]nsure proper oversight of government functions by strengthening internal mechanisms, including investigative and enforcement capacity with respect to acts of corruption, and facilitating public access to information necessary for meaningful outside review.”¹⁴⁶

In a later part of the Miami Plan of Action dealing with environmental issues and sustainable development, heads of state again expressed support for participatory models. They pledged to “[s]upport democratic governmental mechanisms to engage public participation, particularly including members of indigenous communities and other affected groups, in the development of policy involving conservation and sustainable use of natural environments.”¹⁴⁷

B. *Santa Cruz (1996)*

Held two years after the Miami Summit, the Santa Cruz Summit on Sustainable Development echoed the themes of democratic governance and public participation. The Santa Cruz Declaration pledges that states “will support and encourage, as a basic requisite for sustainable development, broad participation by civil society in the decision-making process, including policies and programs and their design, implementation, and evaluation. To this end, we will promote the enhancement of institutional mechanisms for public participation.”¹⁴⁸ The Santa Cruz Declaration and Plan of Action called for public participation in a range of development areas, from watershed management to the use of forests and the conservation of biological diversity.¹⁴⁹ The Plan of Action also called for the OAS to “assign[] priority to the formulation of an inter-American strategy for the pro-

145. *Id.* at 817.

146. *Id.* at 818.

147. *Id.* at 833. The Plan of Action notes, however, that “[t]he forms of this participation should be defined by each individual country.” *Id.*

148. Summit of the Americas on Sustainable Development, Santa Cruz de la Sierra, Bol., Dec. 7-8, 1996, *Declaration of Santa Cruz de la Sierra*, ¶ 8, available at <http://www.summit-americas.org/boliviadec.htm>.

149. See Santa Cruz Plan of Action, *supra* note 109, at 5, 7, 8-10.

motion of public participation in decision-making for sustainable development.”¹⁵⁰

C. Santiago (1998)

In 1998, at the inter-American summit in Santiago, Chile, heads of state again highlighted the importance of participatory democracy, both in principle and through commitments to institutional reform. The Santiago Declaration states that

the strength and meaning of representative democracy lie in the active participation of individuals at all levels of civic life. The democratic culture must encompass our entire population. We will strengthen education for democracy and promote the necessary actions for government institutions to become more participatory structures. We undertake to strengthen the capabilities of regional and local governments, when appropriate, and to foster more active participation in civil society.¹⁵¹

Heads of state also pledged that “[t]he FTAA negotiating process will be transparent,” and they “encourage[d] all segments of civil society to participate in and contribute to the process in a constructive manner, through our respective mechanisms of dialogue and consultation and by presenting their views through the mechanism created in the FTAA negotiating process.”¹⁵²

The Santiago Plan of Action included a pledge by states to “intensify our efforts to promote democratic reforms at the regional and local level.”¹⁵³ The OAS had been working to develop the *Inter-American Strategy for the Promotion of Public Participation in Sustainable Development Decision-Making* (ISP) since the Santa Cruz Summit two years earlier,¹⁵⁴ and the Santiago Plan of Action reads like an endorsement of the ISP’s terms of reference. Heads of state agreed to

[p]romote, with the participation of civil society, the development of principles and recommendations for institutional frameworks to stimulate the formation of responsible and transparent, non-profit and other civil society organizations, including, where appropriate, programs for volunteers, and encourage, in accordance with national priorities, public sector-civil society dialogue and partnerships in the areas that are considered pertinent in this Plan of Action. In

150. *Id.* at 14–15.

151. Second Summit of the Americas, Santiago de Chile, Apr. 18–19, 1998, *Declaration of Santiago*, available at <http://www.summit-americas.org/chiledec.htm>.

152. *Id.* at 3.

153. Santiago Plan of Action, *supra* note 96, at 8.

154. *See infra* Part VI.A.

this context the Organization of American States (OAS) may serve as a forum for the exchange of experiences and information.¹⁵⁵

The Santiago Plan of Action goes on to state that the process of strengthening participatory mechanisms should “draw upon existing initiatives that promote increased participation of civil society in public issues, such as . . . the Inter-American Strategy for Public Participation, among others.”¹⁵⁶ The Plan of Action also pledges that, “[a]s soon as possible, Governments will adopt work plans to implement legal and institutional frameworks based on the principles and recommendations in their respective countries.”¹⁵⁷

D. Quebec City (2001)

In 2001, the Quebec City Summit Declaration acknowledged “the contributions of civil society”¹⁵⁸ to the summit process and “affirm[ed] that openness and transparency are vital to building public awareness and legitimacy.”¹⁵⁹ The Quebec Plan of Action noted that “good governance requires . . . transparent and accountable government institutions at all levels,” as well as “public participation.”¹⁶⁰ Heads of state agreed to

[w]ork jointly to facilitate cooperation among national institutions with the responsibility to guarantee the protection, promotion and respect of human rights, and access to and freedom of information, with the aim of developing best practices to improve the administration of information held by governments on individuals and facilitating citizen access to that information.¹⁶¹

The Plan of Action also committed to “[c]reate and implement programs with the technical and financial support, where appropriate, of multilateral organizations and [multilateral development banks], to facilitate public participation and transparency . . . in decision-making processes.”¹⁶² The Quebec Plan of Action also noted that “men and women have the right to participate, with equality and equity, in the

155. Santiago Plan of Action, *supra* note 96, at 7–8.

156. *Id.*

157. *Id.* at 12.

158. Quebec Declaration, *supra* note 102, at 6.

159. *Id.* at 2.

160. Quebec Plan of Action, *supra* note 34, at 1.

161. *Id.* at 2. This provision is aimed at ensuring greater transparency and information access rather than direct participation in decision-making processes. But information access is central to effective participation, and it is recognized, along with access to justice, as a critical component of public participation frameworks. See United Nations Conference on Environment and Development, Rio de Janeiro, Bra., June 3–14, 1992, *Rio Declaration on Environment and Development*, Principle 10, U.N. Doc. A/CONF. 151/26/Rev.1 (1992).

162. Quebec Plan of Action, *supra* note 34, at 2.

decision-making processes affecting their lives and well-being,¹⁶³ and heads of state pledged to “[p]romote participation of all minority groups in forging a stronger civil society.”¹⁶⁴

Additionally, the Plan of Action addressed participation at a local level, pledging to “[p]romote mechanisms to facilitate citizen participation in politics, especially in local or municipal government.”¹⁶⁵ It also addressed regional institutions, agreeing, for example, to “[e]nsure the transparency of the negotiating process, including through publication of the preliminary draft FTAA Agreement in the four official languages as soon as possible and the dissemination of additional information on the progress of negotiations.”¹⁶⁶ The Quebec Plan of Action called for greater openness of the FTAA process. Specifically, states agreed to

[f]oster through their respective national dialogue mechanisms and through appropriate FTAA mechanisms, a process of increasing and sustained communication with civil society to ensure that it has a clear perception of the development of the FTAA negotiating process [and] invite civil society to continue to contribute to the FTAA process.¹⁶⁷

While this language hints at the marketing of the FTAA,¹⁶⁸ it suggests a degree of transparency and openness to public dialogue about the content of the proposed Agreement.

Finally, and significantly, the Quebec Declaration took note of “threats to democracy,” an indirect reference to the then-evolving constitutional challenges in Peru,¹⁶⁹ and called for the preparation of an Inter-American Democratic Charter (IADC). Although more concrete commitments are usually reserved for action plans, the Quebec Declaration, in language that is unusually specific and action-oriented, reads:

163. *Id.* at 13.

164. *Id.* at 14.

165. *Id.* at 3.

166. *Id.* at 14.

167. *Id.* at 14.

168. By stressing the need to “ensure that” civil society has a “clear perception of the development of the FTAA negotiating process,” the text appears aimed at promotion rather than engagement. While this brings a degree of transparency to the process, the transparency is tied to a description of the venture rather than the right to influence the venture. A promise to “ensure that” civil society has an “opportunity to influence” or an “opportunity for input into” FTAA negotiations would advance participation interests far more directly. That said, transparency is an aid to informed input and thus advances the goal of participation even if it does not seem to make that goal a priority.

169. Quebec Declaration, *supra* note 102, at 2. See *infra* notes 243–252 and accompanying text (describing the political situation in Peru preceding the Quebec summit).

Threats to democracy today take many forms. To enhance our ability to respond to these threats, we instruct our Foreign Ministers to prepare, in the framework of the next General Assembly of the OAS, an Inter-American Democratic Charter to reinforce OAS instruments for the active defense of representative democracy.¹⁷⁰

E. Monterrey (2004)

At Monterrey, Mexico, heads of state did not produce a Plan of Action, but only a statement of principles entitled the Declaration of Nuevo León.¹⁷¹ One of the summit's three central themes was democratic governance, and a number of provisions in the Declaration supported participatory processes. The Declaration of Nuevo León calls for the "full application of the Inter-American Democratic Charter, which constitutes an element of regional identity, and, projected internationally, is a hemispheric contribution to the community of nations."¹⁷² Heads of state also pledged to "foster a culture of democracy and development based on pluralism and the acceptance of social and cultural diversity."¹⁷³ In addition, the Declaration of Nuevo León committed to increased transparency in international organizations,¹⁷⁴ and heads of state undertook to "institutionalize meetings with civil society and with the academic and private sectors."¹⁷⁵ The Declaration also asserted that

[a]ccess to information held by the State, subject to constitutional and legal norms, including those on privacy and confidentiality, is an indispensable condition for citizen participation and promotes effective respect for human rights. We are committed to providing the legal and regulatory framework and the structures and conditions required to guarantee the right of access to information to our citizens.¹⁷⁶

170. Quebec Declaration, *supra* note 102, at 2. An exception to this provision was noted by Venezuela, the first such exception ever noted to an inter-American summit declaration or plan of action. *Id.* at 4 n.1.

171. Special Summit of the Americas, Monterrey, Nuevo León, Mex., Jan. 13, 2004, *Declaration of Nuevo León*, available at <http://www.summit-americas.org/SpecialSummit/Declarations/Declaration%20of%20Nuevo%20Leon%20-%20final.pdf>.

172. *Id.* at 9. The Inter-American Democratic Charter was negotiated following the Quebec Summit and was signed in Lima, Peru on September 11, 2001. John W. Graham, A Magna Carta for the Americas, The Inter-American Democratic Charter: Genesis, Challenges and Canadian Connections, FOCAL Policy Paper (Sep. 2002) at 4–5 available at http://www.focal.ca/pdf/iad_charter.pdf (last visited Nov. 2, 2009). See also Strengthening the Democratic Commitment, OAS informal briefing paper for General Assembly (2001), available at http://www.oas.org/charter/docs/why_charter.htm (last visited Nov. 2, 2009).

173. *Id.*

174. *Id.* at 10.

175. *Id.* at 11.

176. *Id.*

F. Mar del Plata (2005)

The Declaration from the most recent inter-American summit, held in Mar del Plata, Argentina, claims that heads of state “are convinced that representative democracy is an indispensable condition for the stability, peace, and development of the region.”¹⁷⁷ It also acknowledges that “[i]ncreased participation by citizens, communities, and civil society will contribute to ensuring that the benefits of democracy are shared by society as a whole.”¹⁷⁸ The Declaration goes further to link democratic governance to a range of benefits, including economic prosperity, “decent jobs and good employment,” and the security of the state.¹⁷⁹ The Mar del Plata Plan of Action offers only limited new initiatives for democratic governance, instead calling for greater commitment to regional security, increased effort to combat corruption, and development of a regional extradition network, ironically all under the general heading of “Strengthening Democratic Governance.”¹⁸⁰ The Plan of Action instructs the OAS Summit Implementation Review Group (SIRG) to continue to “coordinate the participation of civil society” in summit planning and implementation.¹⁸¹

G. Port of Spain

The 2009 summit in Port of Spain, Trinidad and Tobago occurred against the backdrop of a global economic downturn that had a severe impact on the Americas.¹⁸² The summit also followed the ascendance of new left-leaning presidents in Bolivia, Ecuador, Honduras, and Nicaragua.¹⁸³ These new heads of state joined Venezuela’s President Hugo Chavez in rejecting some of the fundamental ideas that had driven regional political relations and the summit agenda since Miami in 1994.¹⁸⁴ Port of Spain also marked the first inter-American summit

177. Declaration of Mar de Plata, *supra* note 102, ¶ 58. Venezuela noted a reservation to this provision.

178. *Id.* ¶ 62.

179. *Id.* ¶¶ 64, 67, 72.

180. *Id.* ¶¶ 57–76.

181. *Id.* ¶ 74.

182. See Eduardo Fernández-Arias & Peter J. Montiel, *Crisis Response in Latin America: Is the “Rainy Day” at Hand?* 5–11 (Inter-American Development Bank Working Paper No. 686, June 2009), available at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docum=2024179> (last visited Dec. 15, 2009) (describing the impact of the 2008 global economic crisis in Latin America).

183. See *supra* note 128 (discussing the election of new leaders in each country).

184. Presidents Morales, Correa, Zelaya, and Ortega have each embraced socialist rhetoric and policy objectives. *Id.* At the summits preceding Port of Spain, Chavez insisted on exceptions to the consensus documents reflecting his distrust of a trade-driven (what he terms a neo-

of the administration of U.S. President Barack Obama, but much of the early preparatory work had been done under the guidance of political appointees of his predecessor, George W. Bush. While this context may have had a profound impact on summit negotiations and outcomes, analyzing this impact is beyond the scope of this Article. What can be reported that is relevant to this Article is that summit commitments to fundamental democratic concerns of electoral process and public participation—commitments to expand participatory rights at a regional and domestic level, including calls for the ISP¹⁸⁵ and the IADC¹⁸⁶—stalled in Port of Spain.¹⁸⁷

A “Declaration of Commitment” signed “on behalf of heads of state and government” by summit host, Trinidad and Tobago Prime Minister Patrick Manning.¹⁸⁸ The Port of Spain Declaration included a section on “Strengthening Democratic Governance,”¹⁸⁹ which addresses poverty,¹⁹⁰ decentralization,¹⁹¹ corruption,¹⁹² access to government budgets,¹⁹³ human rights,¹⁹⁴ social inclusion,¹⁹⁵ “all forms of discrimination,”¹⁹⁶ indigenous rights,¹⁹⁷ the protection of children,¹⁹⁸ and the role of the OAS in promoting peace¹⁹⁹—ostensibly as these concerns relate to strengthening democracy. These are important social concerns that should not be discounted, but they notably do not address core issues of electoral or participatory democracy at the domestic or regional level.

liberal) agenda. *See supra* note 102 (discussing Venezuela’s reservations to the summit agreement in Quebec regarding the proposed FTAA); *supra* note 122 and accompanying text (describing Chavez’s speech at the Mar de Plata summit denouncing a “neo liberal” regional trade agenda). As the agenda for Port of Spain was negotiated, Chavez was no longer the lone voice in this regard.

185. *See infra* notes 214 and accompanying text.

186. *See infra* notes 251–252 and accompanying text.

187. Statement by the Chairman of the Fifth Summit of the Americas, the Honourable Patrick Manning, Prime Minister of the Republic of Trinidad and Tobago, OEA/Ser.E, CA-V/DP-1/09 (Apr. 19, 2009), available at, http://www.summit-americas.org/V_Summit/statement_chair_en.pdf (last visited Nov. 6, 2009) [hereinafter Port of Spain Chairman’s Statement].

188. Port of Spain Declaration, *supra* note 98.

189. *Id.* ¶¶ 78–88.

190. *Id.* ¶ 78.

191. *Id.* ¶ 79.

192. *Id.* ¶ 80.

193. *Id.* ¶ 81.

194. *Id.* ¶¶ 82–83.

195. *Id.* ¶ 84.

196. *Id.* ¶ 85.

197. *Id.* ¶ 86.

198. *Id.* ¶ 87.

199. *Id.* ¶ 88.

It is difficult to say whether the abandonment of these core issues at Port of Spain reflects a new regional emphasis or simply a passing artifact of regional political interests or tensions.²⁰⁰ But participatory democracy issues are not dead to inter-American summits. Although Port of Spain did not produce new initiatives specifically dealing with these issues, broader commitments made under the heading of “democratic governance”—especially language concerning corruption and access to information concerning government finances²⁰¹—respond to core democratic concerns, and commitments to access mechanisms made at prior summits continued to be pursued in the broader regional institutional context.²⁰²

VI. COMMITMENTS TO DEMOCRACY: FOUR CASE STUDIES

The preceding Part catalogues the extent to which inter-American summits have embraced the rhetoric of democracy, including ideas of participatory democracy and governance through open, transparent, and inclusive processes. Yet much of the language is merely precautionary, expressing statements of principle or wishes and desires that do not call for specific action. A cynical view would hold that summit declarations and plans of action are not even aspirational: they are just smokescreens for inaction. Political leaders, from this perspective, are simply making statements that allow them to claim some moral high ground, even as they ignore deeper challenges and avoid taking the difficult policy steps that might advance the causes that they purport to champion.

To be sure, summit documents include a good deal of language about promoting democracy that is beyond the capacity or will of signatories to act. Yet the summit commitments also call for the development of specific programs and institutional responses that can begin to support the higher democratic ideals of summit rhetoric. The call for an Inter-American Democratic Charter in Quebec City, which would have binding elements,²⁰³ was quite concrete, as was the agree-

200. This neglect of earlier summit priorities is difficult to explain in terms of the public summit record. Venezuela had pushed for some integration of participatory democracy principles into the IADC, *see supra* note 130, and while the distinct diplomatic goals of individual states engaged in the summit process cannot be definitively discerned, it is possible that disagreement over how to frame direct democracy (participatory and electoral) concerns in the context of the Port of Spain Summit could not be overcome in framing a final text, even where the text was only framed as a Chair’s statement.

201. *See supra* notes 192–193 and accompanying text.

202. *See infra* Part VI (discussing commitments to regional democratic mechanisms made at prior summits and ongoing efforts to implement these commitments).

203. *See infra* notes 251–252 and accompanying text.

ment reached in Santa Cruz to create a program to design the ISP.²⁰⁴ Statements in Miami, Santa Cruz, and Santiago summit agreements about the importance of civil society and the role of the OAS as a public forum served as tangible reference points for a later OAS General Assembly resolution that advanced a program of NGO accreditation in the OAS.²⁰⁵ Even the call in Miami for securing participatory rights through “proper legal and regulatory framework[s],”²⁰⁶ while more rhetorical than programmatic, may have significance beyond its symbolic value. Even rhetoric, when stated publicly and plainly, has an enduring value with the potential to transform attitudes and alter institutional behavior, at least in a context where interested parties can refer to and build upon that rhetoric in pursuit of more concrete programs. As James Madison once noted about the Bill of Rights, which he privately claimed did not need to be set forth affirmatively,²⁰⁷ “political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the national sentiment, counteract the impulses of interest and passion.”²⁰⁸

What, then, has been the utility of the inter-American summit claims and commitments about democratic governance and public participation? By placing the language in context, an answer begins to emerge. In a number of cases, summit commitments have grown out of regional or domestic initiatives that were championed by specific governments or by non-state actors working with governments, and the summit has helped to advance those initiatives through official acknowledgement and institutional action. The following four cases are illustrative.

A. Inter-American Strategy for the Promotion of Public Participation in Sustainable Development Decision-Making (ISP)

In the months prior to the 1996 Santa Cruz Summit in Bolivia, an informal working group of governmental officials and non-state actors met to discuss how public participation issues should be addressed in

204. See *infra* notes 214–217 and accompanying text.

205. See *infra* notes 285–289 and accompanying text.

206. Miami Plan of Action, *supra* note 101, at 5.

207. Letter from James Madison to Thomas Jefferson (Oct. 17, 1788), in 11 THE PAPERS OF JAMES MADISON 298–99 (Robert A. Rutland et al. eds., 1977). Madison confided to Jefferson, “I have never thought the omission [of a Bill of Rights] a material defect.” *Id.* at 297. Among other reasons for this position, Madison explained, “I have not viewed it in an important light . . . because I conceive that in a certain degree . . . the rights in question are reserved by the manner in which the federal powers are granted.” *Id.*

208. *Id.* at 298–99.

the context of the upcoming summit. Participants included representatives of the government of Uruguay,²⁰⁹ the OAS, and the U.S. Agency for International Development (USAID), as well as a representative of World Resources Institute (WRI) who had been tapped by the Bolivian government to offer advice on the formulation of a summit agenda.²¹⁰ This informal working group facilitated the design of a regional consultation held in Montevideo, Uruguay and co-hosted by the governments of Bolivia and Uruguay in August 1996. The consultation resulted in a series of recommendations for consideration in planning the 1996 Santa Cruz Summit.²¹¹

The Montevideo meeting convened over 150 participants, including representatives of more than twenty governments from the region and a range of NGOs and academics.²¹² Participants used an informal workshop approach to develop recommendations for the heads of state who would meet in Santa Cruz later in the year. The principal recommendation was that heads of state should commit to the formulation of an inter-American strategy for public participation.²¹³ This recommendation was adopted verbatim at the subsequent summit, and the outcomes of the Montevideo meeting were cited in the Santa Cruz Plan of Action as a point of guidance in the development of the strategy. In a section entitled “Public Participation,” the Santa Cruz Plan of Action stated,

15. In order to support the specific initiatives on public participation contained in the Plan of Action, entrust the OAS with assigning priority to the formulation of an inter-American strategy for the promotion of public participation in decision-making for sustainable

209. Uruguay had been designated as the “responsible coordinator” for follow-up on summit commitments regarding democratic governance. The system of “responsible coordinators” was developed following the 1992 Miami Summit as a means of identifying “countries or international organizations [to] volunteer to coordinate implementation of individual action items, taking the lead in developing an implementation strategy, convening meetings, and communicating relevant information about the implementation process.” Summit Implementation: An Evolving Process (unpublished paper presented to the IV SIRG by the United States), <http://www.summit-americas.org/SIRG/1995/IV/Summit-paper-USA-IVSIRG.htm> (last visited Sept. 27, 2006).

210. See *supra* note 110 and accompanying text. The author served as part of this informal working group in his capacity as an advisor to U.S. Agency for International Development (USAID) and participated in much of the subsequent planning and development of the ISP. Information regarding participation in the meetings is based on the author’s recollection and on documents—including agendas, correspondence, and working papers—that are on file with the author. The work of the informal group, like the later work of the ISP, was always meant to be open and transparent, and not classified or privileged in any way.

211. See *supra* notes 107–109 and accompanying text. For a more complete description of the Montevideo meeting, see Dannenmaier, *Democracy in Development*, *supra* note 107, at 12–13.

212. See MONTEVIDEO REPORT, *supra* note 107, at 1.

213. *Id.* at 1–2, 5–7.

development, taking into account the recommendations of the Inter-American Seminar on Public Participation held in Montevideo in 1996.

16. The strategy should promote the exchange of experiences and information among government representatives and civil society groups with regard to the formulation, implementation, and improvement of sustainable development policies and programs, legal and institutional mechanisms, including access to and flow of information among the relevant actors, training programs, and consultation processes used at the national level to ensure civil society involvement. Establish consultation processes at the regional level, such as regular fora for government-civil society dialogue at relevant high-level meetings convened by the OAS, and when necessary support the integration and strengthening of national sustainable development councils, drawing on the experience of Central America and other existing councils in the Hemisphere.²¹⁴

Because the OAS had been involved in the formulation of this proposal from the beginning through an arm of its Permanent Secretariat, the Unit for Sustainable Development and Environment (USDE),²¹⁵ it was positioned to respond to this summit commitment quickly. Within a year of the Santa Cruz Summit, the USDE had formed a technical advisory group to begin developing a regional participation strategy.²¹⁶ With the support of the ISP Technical Advisory Group, the OAS USDE also formed a separate Project Advisory Committee that included seven representatives from OAS member states—two each from North, South, and Central America, and one from the Caribbean—and seven non-governmental representatives who were nominated and selected by NGOs of the region from seven areas of work.²¹⁷

During 1997 and 1998, the Technical Advisory Group, with guidance from the Public Advisory Committee, hosted a series of public workshops, funded pilot studies, and sponsored research regarding frameworks and mechanisms, including legal and regulatory frameworks, in order to help frame the ISP and promote public participation in the region more generally.²¹⁸ More than \$1 million in fund-

214. Santa Cruz Plan of Action, *supra* note 109, at 14–15.

215. The OAS Unit for Sustainable Development and Environment (USDE) is now known as the OAS Department of Sustainable Development. See <http://www.oas.org/dsd/> (last visited Sept. 12, 2009).

216. The author was a member of the ISP Technical Advisory Group and participated in its deliberations throughout the time that the OAS worked to develop the ISP.

217. The seven NGO areas of work were Business, Trade, and Economic Growth; Environmentally Sustainable Development; Socially Sustainable Development; Women's Issues; Minority or Marginalized Peoples (non-Indigenous); Indigenous Peoples; and Labor Interests. A contact list for the OAS/ISP is maintained on file with the author.

218. Workshop agendas, participant lists, and reports of outcome are on file with the author.

ing support was provided collectively by USAID, the Global Environment Facility (GEF), and the United Nations Economic and Social Council (UNESCO).²¹⁹ The work resulted in a fifty-one page strategy document that was given the same name as the project: the *Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development*.²²⁰ This strategy document was adopted by the OAS Inter-American Council on Integral Development (CIDI) on April 20, 2000.²²¹ While the document does not purport to bind OAS member states to specific actions, it does include a series of recommendations for implementation by member states at a national level. In a section entitled “Legal Frameworks,” the ISP recommends that OAS member states “[c]reate, expand, and implement legal and regulatory frameworks that ensure the participation of civil society in sustainable development decisions.”²²² It also includes a section entitled “Institutional Procedures and Structures,” recommending that OAS member states “[d]evelop and support institutional structures, policies, and procedures that promote and facilitate, within all levels of government and civil society, interaction in sustainable development decisions, and encourage change within existing institutions to pursue a basis for long-term direct dialogue and innovative solutions.”²²³

These recommendations were developed over a two-year period through a process that included the participation of government officials—usually a combination of foreign ministry officials and those from technical ministries, such as ministries of the environment, at whom the recommendations were aimed—alongside NGO participants, scholars, and OAS staff.²²⁴ They were adopted in draft form at

219. Copies of the ISP budget and grant instruments, along with reports by OAS USDE personnel on funding sources and budgeting, are on file with the author.

220. See Org. of Am. States, *Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development*, OEA/Ser.D/XXIII.1 (2001) [hereinafter ISP Strategy Document], available at http://www.oas.org/dsd/PDF_files/ispenglish.pdf (last visited Aug. 1, 2009).

221. CIDI Res. 98 (V/O/00), 5th Reg. Meeting, OEA/Ser.W/II.5. CIDI/Doc. 25/00 (Apr. 20, 2000).

222. ISP Strategy Document, *supra* note 220, at 7 (Policy Recommendation No. 2).

223. *Id.* at 9 (Policy Recommendation No. 3).

224. Non-state actor input was facilitated by the Technical Advisory Group, which oversaw the two-year process and helped draft much of the final language of the ISP, as well as the Project Advisory Committee, which participated in public meetings and periodically met to advise the OAS USDE on project design. The author served as a member of this group. Notes from the Technical Advisory Group and the Project Advisory Committee meetings are on file with the author. See also ISP Strategy Document, *supra* note 220, at 13–15 (describing the process through which the ISP was developed and emphasizing the role of public consultations and advisors drawn from civil society).

a regional meeting that included representatives from most OAS member states, and they were vetted at a national level by technical ministries following the regional meeting and prior to CIDI approval of the ISP.²²⁵ Thus, the recommendations were vetted at a national level by relevant officials through a process that offered ample opportunity for non-state actors to influence the thinking of these officials and give shape to the final ISP. Moreover, throughout the process, draft language of the ISP was presented at public meetings and the details were discussed and debated among participants from civil society and government agencies. The suggestions of participants in these meetings, both state officials and non-state actors, regularly found their way into the ISP draft.²²⁶

B. *Inter-American Democratic Charter (IADC)*

Although the twentieth century history of Latin America and the Caribbean has been characterized by authoritarian regimes and violent transfers of power, the region saw a pronounced shift toward electoral democracy in the 1980s, and this move became consolidated, or at least stable, after the collapse of the Soviet Union.²²⁷ Despite a number of “irregular disruptions”²²⁸ and moves by some leaders to

225. As a member of the Technical Advisory Group, the author made a presentation on the process of regional consultations to an inter-governmental meeting on the ISP held in Mexico City in September 1999. This presentation described outreach efforts undertaken by the Technical Advisory Group, including a mailing of hundreds of surveys regarding the proposed ISP to NGOs identified by Project Advisory Committee members and other OAS contacts, thirteen national consultations hosted in and by OAS member states, and a two-week virtual discussion hosted over the internet by the OAS, among other efforts. A copy of this presentation is on file with the author. See also Richard A. Meganck, Head, OAS USDE, Speech at Mexico City Meeting, 1–2 (Sept. 8, 1999) (copy on file with author) (describing the importance of input from civil society actors in formulating the ISP).

226. Agendas, participant lists, and reports of outcome from these meetings, along with personal notes about the process, including Technical Advisory Group and Project Advisory Committee meetings, are on file with the author. The ISP Strategy Document also describes this iterative and open process. See ISP Strategy Document, *supra* note 220, at iii (foreword by Richard A. Meganck); *id.* at 13–14 (describing the “unique advisory structure [which] ensured that the ISP itself was open to continual input and that it supported the ongoing work of the regular OAS staff, consultants, and dedicated volunteers”).

227. See Scott Mainwaring, *The Surprising Resilience of Elected Governments*, 10 J. DEMOCRACY 101–114, 101 (1999) (despite shortcomings, “[b]y 1990, virtually every government in the region was either democratic or semidemocratic”); Larry Diamond, *Is the Third Wave Over?*, 7 J. DEMOCRACY 20–37, 29–30 (1996) (describes the “growing gap between electoral and liberal democracy” in the region, but notes that the “persistence of constitutional procedures gives grounds for hope about the future of democracy in Latin America”);

228. The term “irregular disruptions” was used by Arturo Valenzuela, who is now a professor of government at Georgetown University, but who was formerly Special Assistant to the President and Senior Director for Inter-American Affairs at the U.S. National Security Council from 1999 to 2000. In a recent article, Valenzuela reports that “[f]rom 1930 until 1980, 40 percent of

amend constitutional term limits in order to extend their opportunities for re-election,²²⁹ all but one state in the region is now a nominal democracy.²³⁰ While the recent history of electoral democracy in the region is difficult to describe as stable, a tradition of political change by military coup has largely given way to change through the electoral process. Honduran President Ernesto Zelaya was ousted by elements of the Honduran army in late June 2009,²³¹ ending almost two decades of respite since the last successful military coup in the region, which occurred in Haiti in 1991.²³² But the Honduran coup had the explicit support of the country's Supreme Court and legislature,²³³ and occurred after the President had taken what many in the country claimed were extra-constitutional steps when no constitutional process for impeachment existed.²³⁴ Despite universal regional condemnation of Mr. Zelaya's ouster,²³⁵ the move by his country's military was itself alleged, perhaps ironically, to have been taken in defense of Honduras's constitutional order.²³⁶ During the eighteen years between the 1991 coup in Haiti and the 2009 coup in Honduras, and perhaps even despite recent events in Honduras, it can be argued that civilian-led constitutional systems have taken root in most countries despite instances of unrest.²³⁷

all governmental changes in Latin America were by military coups," and that this "number dropped by half in the 1980s." Arturo Valenzuela, *Putting Latin America Back on the Map*, 42 FIN. & DEV., Dec. 2005, at 16, 16 (2005).

229. In 1995, President Carlos Menem of Argentina succeeded in an effort to change the constitution so that he could run for a second consecutive term. However, in 1999 he failed to gather sufficient support to reinterpret the constitution so that he could serve a third term. *Profile: Carlos Menem*, BBC NEWS, Apr. 28, 2003, available at <http://news.bbc.co.uk/2/hi/americas/202482.stm> (last visited Sept. 25, 2009). In 2009, Hugo Chavez succeeded in having constitutional term limits lifted so that he could run for an additional term. See Tyler Bridges, *Term Limit Win for Chavez*, CHI. TRIB., Feb. 16, 2009, at 10. Bolivia's Evo Morales and Ecuador's Rafael Correa have won similar challenges to constitutional term limits. *Id.*

230. Cuba is the lone exception, although some have questioned the democratic quality of several other governments in the region. See generally Mainwaring, *supra* note 227 (discussing the shortcomings of Latin American democracies).

231. See Elisabeth Malkin, *Honduran Army Ousts President Allied to Chavez*, N.Y. TIMES, June 29, 2009, at A1.

232. See *Haitian Army Seizes Power in Bloody Coup*, CHI. TRIB., Oct. 1, 1991, at 3C.

233. See Malkin, *supra* note 231.

234. See *Ghost of Coups Past*, CAN. GLOBE & MAIL, June 30, 2009, at A16.

235. See Mary Beth Sheridan, *U.S. Condemns Honduran Coup*, WASH. POST, June 30, 2009, at A5; Press Release, Org. of Am. States, OAS Permanent Council Condemns Coup D'etat in Honduras, Calls Meeting of Ministers and Entrusts Secretary General with Carrying Out Consultations, June 28, 2009, available at http://www.oas.org/OASpage/press_releases/press_release.asp?sCodigo=E-214/09 (last visited July 10, 2009).

236. See Ramon Antonio Vargas, *Local Hondurans Back Zelaya's Ouster; But Don't Call It a Coup, They Say*, NEW ORLEANS TIMES-PICAYUNE, June 30, 2009, at 8.

237. For a discussion of the relative stability in the years preceding the Honduras coup, see Valenzuela, *supra* note 228, at 16. See also Mainwaring and Diamond, *supra* note 227. The term

In an effort to secure democratic practices and electoral transitions in the region, the OAS General Assembly approved the Santiago Commitment to Democracy and the Strengthening of the Inter-American System at its 1991 meeting in Santiago, Chile, and it embraced the idea of collective response to any illegal or sudden interruption of democratic rule.²³⁸ The Santiago Commitment was supplemented at the same General Assembly by a Resolution on Representative Democracy, known as Resolution 1080, the purpose of which was to “promote and consolidate representative democracy” in the region by creating a response mechanism “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

“relative” stability is used because constitutional challenges did occur between 1991 and 2009. These include Alberto Fujimori’s “*auto-golpe*,” or “self-coup,” in Peru in 1992, which saw an elected president suspend the constitution, dissolve congress, and retain plenary power until November 2000; in Venezuela in 2002, when opposition parties supported by the military temporarily ousted an elected president, Hugo Chavez, for roughly two weeks in May; and in Haiti in February 2004, when elected president Jean Bertrand Aristide left the country in the face of mounting opposition—beginning with his contested 2001 election and escalating to a full-scale national rebellion—but was replaced by his constitutional successor, Boniface Alexandre, the President of the Haitian Supreme Court. In addition, democratically elected presidents were forced to resign early in the face of popular pressure in Ecuador (Abdallah Bucaram in February 1997, followed by Jamil Mahuad in January 2001), Argentina (Fernando de la Rúa in December 2001, followed by four others within a matter of weeks, with Nestor Kirchner later elected in May 2003), and Bolivia (Gonzalo Sanchez de Losada in October 2003, followed by his vice president, Carlos Mesa, who resigned in June 2005 and was succeeded by the President of the Bolivian Supreme Court until elections were held in December 2005). An April 2005 article about the resignation of Ecuador’s president after a “constitutional coup” provides a further “brief catalogue of irregular changes of government” in the region that includes the examples above as well as the 1999 presidential resignation in Paraguay and the 2001–2002 presidential successions brought on by economic woes in Argentina. See “*Constitutional Coup*” by Congress Ousts Gutierrez on Wave of Popular Protests, *LATIN AM. WKLY. REP.*, Apr. 26, 2005, at 1–3. In each of these cases, succession occurred under established constitutional procedures, and the military was a minor player or notably absent, usually remaining quartered while civilian authorities worked through succession procedures and later held elections. Some have argued that even the recent Honduras coup is hard to categorize as an overthrow of civilian power, despite its obvious constitutional challenge, because the military acted after key national civilian institutions, the country’s supreme court and congress, raised serious concerns about a third branch’s extra-constitutional behavior. See Vargas, *supra* note 236; see also *infra* note 315 (discussing more recent developments in Honduras).

238. See Santiago Commitment to Democracy and the Renewal of the Inter-American System, Santiago, Chile, OAS GA, 3d plenary sess., June 4, 1991, OEA/Ser.P/XXI.O.2 (Aug. 20, 1991), at 1–3, available at <http://scm.oas.org/pdfs/agres/ag03805E01.pdf> (last visited Nov. 6, 2009); see also Stephen J. Schnably, *The Santiago Commitment as a Call to Democracy in the United States: Evaluating the OAS Role in Haiti, Peru, and Guatemala*, 25 U. MIAMI INTER-AM. L. REV. 393, 399 (1994) (arguing that the Santiago Commitment moved Latin American nations “closer to a more activist position posture toward military coups”).

democratically elected government in any OAS Member State.”²³⁹ A year later, a special session of the OAS General Assembly approved an amendment to the OAS Charter, known as the Washington Protocol, which calls for the suspension of any OAS member state whose government is overthrown by force.²⁴⁰

While these instruments supported the ideal of elected government, they failed to provide a concrete mechanism that responded to internal assaults on elected governments. The Santiago Commitment offers only precatory language, and although Resolution 1080 provides a basis for consultation, at least where a threat is external or clearly extra-constitutional, it offers no real basis for response. Instead, it merely calls for the “immediate convocation” of the OAS Permanent Council to “examine the situation” and to convene foreign ministers for further discussion.²⁴¹ While it provides for a meeting of the General Assembly to “look into the events collectively and adopt any decisions deemed appropriate, in accordance with the OAS Charter and international law,”²⁴² there is no real guidance on what course of action the General Assembly might appropriately take. Thus, Resolution 1080 allows for the kind of joint deliberation that would likely occur in any event, but does not create a meaningful procedural response. Even the Washington Protocol, which would punish a successful coup with membership suspension, does little more than state the obvious course of action because a suspension would likely be sought even absent the Charter amendment, and it gives no hope of immediate relief to a legitimate government under pressure or to a state whose government has stepped outside of constitutional bounds. Resolution 1080 only addresses external challenges to power, but it does not deal with cases in which an elected government seeks to remain beyond its constitutional tenure or in which an election is stolen.

These debilities became apparent during Peru’s 2000 election cycle when its President, Alberto Fujimori, decided to run for a constitutionally questionable third term and then won in what was widely re-

239. OAS G.A. Res. 1080, ¶ 1, 5th Plen. Sess., OAS Doc. AG/RES.1080 (XXI-O/91) (June 5, 1991), available at <http://www.oas.org/juridico/english/agres1080.htm> (last visited Sept. 18, 2009) [hereinafter Resolution 1080].

240. Protocol of Amendments to the Charter of the Organization of American States, art. 1, Dec. 14, 1992, 33 I.L.M. 981, 1005. The amendment was approved in 1992 and entered into force in 1997. OAS Department of International Law Treaties and Agreements Database, available at http://www.oas.org/dil/treaties_A-56_Protocol_of_Washington_sign.htm (last visited Nov. 6, 2009).

241. Resolution 1080, *supra* note 239, ¶ 1.

242. *Id.* ¶¶ 2–3.

garded as a corrupt electoral process.²⁴³ Although the country and the region had tolerated Fujimori's 1992 "self-coup," in which he suspended Peru's Constitution and dissolved the country's Congress and the Supreme Court in order to give himself latitude to fight the Shining Path guerilla insurgency, local and international constituencies loudly protested his 2000 election. In 2000, a series of scandals involving his intelligence chief, Vladimir Montesinos, eroded Fujimori's remaining support at home and abroad, and, in the face of unrelenting pressure, Fujimori left office later in November of the same year.²⁴⁴ He fled Peru, sought asylum in Japan, and submitted his resignation. The resignation was rejected by Peru's Congress, which instead approved a resolution finding Fujimori "permanently morally unfit" to continue his term and appointed its speaker, Valentin Paniagua, as interim President.²⁴⁵

Paniagua learned a great deal about the inter-American framework's inability to protect democratic governments from this experience. The terms of Resolution 1080 had not fit the circumstances of the stolen election in Peru, and the OAS had been unable to agree to invoke the resolution during a meeting of the General Assembly in June 2000 in Windsor, Canada. Instead, the OAS sent a high level mission comprised of "the Chair of the General Assembly and the Secretary General of the OAS" to Peru in order to explore "options" to strengthen democracy and to make recommendations for democratic reform.²⁴⁶ Some credit this high level mission with smoothing the transition as Fujimori fled the country the following November.²⁴⁷

243. See Peter Hakim, *Follow Up After Peru's Election*, CHRISTIAN SCIENCE MONITOR, May 31, 2000, at 20. Hakim is the President of the Inter-American Dialogue; see also Andres Tapia, *En Elecciones Peruanas*, MENSAJERO, Apr. 19, 2000, at 8 (describing election irregularities); *A Second Chance for Toledo, and Peru*, ECONOMIST, Apr. 15, 2000, at 31-32 (describing the context of the election).

244. See Rick Vecchio, *Fujimori Renuncia*, MENSAJERO, Nov. 22, 2000, at 1.

245. *Id.*; see also Clifford Krauss, *Peru Congress Says Fujimori Is "Unfit" and Picks Successor*, N.Y. TIMES, Nov. 22, 2000, at A12 (describing the steps taken by Peru's congress to transfer power to Mr. Paniagua following Fujimori's resignation and departure from the country). The appointment of Paniagua was an appropriate constitutional step because both of the country's vice presidents had also resigned. See *The Future Without Fujimori*, ECONOMIST, Nov. 25, 2000, at 38-39. For additional background, see Samantha Newbold, *The Fujishock: How and Why Did It Occur? An Analysis of Alberto Fujimori's Policy Reversal of 1990*, in ENTRECAMINOS 2003 (2003).

246. OAS G.A. Res. 1753, ¶ 1, OAS Doc. OEA/Ser.P AG/RES. 1753 (XXX-O/00) (June 5, 2000).

247. See MAXWELL A. CAMERON, LIU INST. FOR GLOBAL ISSUES, *THE INTER-AMERICAN DEMOCRATIC CHARTER: TOWARD A PLAN OF ACTION* (2003), available at http://www.ligi.ubc.ca/sites/liu/files/Publications/19May2004_InteramericanCharter.pdf (last visited Aug. 2, 2009).

Informed by its experience, Paniagua's transitional government called for the creation of an Inter-American Democratic Charter in part to ensure that the Inter-American System would respond when a democratic state is "perverted from within" and in part to strengthen the mechanisms for response.²⁴⁸ For Paniagua and Peru, the timing of the upcoming Quebec City Summit was auspicious. The agenda for the April summit was taking shape as Paniagua took office in November 2000, and it was finalized during the early months of 2001. Peru found support from its neighbors in South and Central America; from Canada, which had been directly involved diplomatically in the crisis engendered by Fujimori's election and the Montesinos scandal;²⁴⁹ and from the incoming Bush administration, which may have seen a democratic charter as a means to further secure the lock-out of Cuba from the inter-American system as a means of pressing for political change in Cuba.²⁵⁰ There was something of a groundswell of support for Peru's initiative, and the final Declaration from the 2001 Quebec Summit agreement included a "democracy clause" that stated,

We acknowledge that the values and practices of democracy are fundamental to the advancement of all our objectives. The maintenance and strengthening of the rule of law and strict respect for the democratic system are, at the same time, a goal and a shared commitment and are an essential condition of our presence at this and future Summits. Consequently, any unconstitutional alteration or interruption of the democratic order in a state of the Hemisphere

248. *Members of Organization of American States Sign Declaration Supporting Democracy*, NOTISUR—S. AM. POL. & ECON. AFF., Sept. 14, 2001 (quoting Peruvian Foreign Minister Diego García Sayan on the need for a democratic charter: "Although Peru is not the only example, it most clearly demonstrates that democracies can be perverted from within"); see also Nfer Muoz, *Politics-Americas: OAS Applauds Peru's Smooth Elections*, INTER PRESS SERVICE, June 4, 2001 (reporting on diplomatic discussions at the OAS General Assembly then taking place in San Jose, Costa Rica regarding Peru's political transition and the proposed Inter-American Democratic Charter).

249. As host of the June 2000 OAS General Assembly, Canada was Chair of the General Assembly and its representative joined the Secretary General in the mission to Peru called for in the June 5, 2000 resolution. Stephanie Boyd, *Canadians Lauded For Work on Peru*, TORONTO STAR, Oct. 28, 2000, at 1 (describing work by Canadian diplomats in convincing the OAS to send a mission to Peru and in brokering an agreement with Fujimori to hold elections).

250. President George W. Bush took office in January 2001, two months before the Quebec Summit, and his new administration's Western Hemisphere policy—led by Under Secretary of State for Western Hemisphere Affairs Robert Noriega—was characterized in part by a policy of increasing the isolation of Cuba as a means to compel internal political change. See Michele Zebich-Knos, *US Policy Toward Cuba: Trends and Transformation During the George W. Bush Administration*, in MICHELE ZEBICH-KNOS & HEATHER NORA NICOL, FOREIGN POLICY TOWARD CUBA: ISOLATION OR ENGAGEMENT?, at 31, 32–36 (discussing the Bush administration's turn away from engagement and toward further isolation of Cuba). More recently there has been a move led by Cuba's allies within the inter-American system to re-integrate Cuba into regional political institutions. See discussion *supra* at note 86 (describing 2009 OAS vote to readmit Cuba upon its meeting certain commitments).

constitutes an insurmountable obstacle to the participation of that state's government in the Summit of the Americas process. Having due regard for existing hemispheric, regional and sub-regional mechanisms, we agree to conduct consultations in the event of a disruption of the democratic system of a country that participates in the Summit process.²⁵¹

The Quebec Declaration went further, calling for the development of a binding regional Inter-American Democratic Charter to restate regional democratic values, to help OAS member states "respond to" democratic challenges, and "to reinforce OAS instruments for the active defense of representative democracy."²⁵²

The Inter-American Democratic Charter (IADC) was negotiated in the months following the Quebec Summit, and a draft was presented by Peru to the OAS General Assembly in June 2001, although a final agreement could not be reached.²⁵³ Negotiations continued through the summer of 2001, and a final text was accepted by all OAS member states except Venezuela.²⁵⁴ Venezuela ultimately reserved its objections, and the IADC was signed in Lima, Peru on September 11, 2001.²⁵⁵

While it cannot be claimed that the IADC owes its existence to the summit process alone, the timing and the process of the Quebec Sum-

251. Quebec Declaration, *supra* note 102, at 1.

252. *Id.* at 1–2. Venezuela noted an exception to this language. *Id.* at 4.

253. See Jim Lobe, *New Chief Takes Over at OAS—and Gives Mixed Signals*, INTER-PRESS SERVICE, May 26, 2005.

254. Venezuela's stated reasons for objecting were that the Charter should refer to "participatory" rather than "representative" democracy and, echoing the Cold War socialist bloc theme in the human rights field, that a charter on "social rights" should be made an integral part of any effort to define regional political rights. See HENRY J. STEINER & PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT, 237–38 (2d ed. 2000) (describing how the debate over two sets of human rights—civil and political versus economic, social, and cultural—had become a "casualty of the Cold War"). At a subsequent OAS General Assembly meeting in 2004 in Quito, Ecuador, Venezuela's Foreign Minister Jesus Arnaldo Pérez again pushed for the adoption of an inter-American social charter. According to Radio Nacional de Venezuela, he "stressed the need to give democracy a 'social content,' because the continent has had 'enough of elitist democracies.'" *Venezuela: Highlights of Radio Nacional de Venezuela* (BBC Monitoring International Reports June 7, 2004) (Global News Wire June 8, 2004). Venezuela's persistence paid off: the OAS called for the formulation of a social charter at its 2004 General Assembly. See OAS G.A. Res. 2056, 4th Plen. Sess., OAS Doc. AG/RES. 2056 (XXXIV-O/04) (June 8, 2004). The new Secretary General of the OAS—Jose Miguel Insulza, a former Interior Minister from Chile—took up the call for a social charter shortly after his election in May 2005. See Lobe, *supra* note 253. The 2005 General Assembly renewed the call to draft a social charter. See OAS G.A. Res. 2139, OAS Doc. AG/RES. 2139 (XXXV-O/05) (June 7, 2005). The OAS began the process of developing the Inter-American Social Charter with a ministerial meeting in Caracas in August 2005. *Venezuelan Foreign Minister Calls for "Understanding" with USA* (BBC Monitoring International Reports, Aug. 29, 2005) (Global News Wire Aug. 31, 2005).

255. Inter-American Democratic Charter, OAS G.A. Res. 1, 28th Spec. Sess., OAS Doc. OEA/Ser.P, AG/RES. 1 (XXVIII-E/01) (Sept. 10, 2001).

mit helped advance the agreement. The fact that earlier summits had dealt with the theme of democracy and that a constituency of state and non-state actors looked to the summit process to advance democratic themes cannot have hurt.

Some observers have made the connection more directly. A policy brief written by the Liu Institute for Global Studies at the University of British Columbia, an Institute headed by former Canadian Foreign Minister Lloyd Axworthy, asserted that

[t]he idea of a Charter might have been ignored and forgotten had it not been taken up by the organizers of the Summit of the Americas in Quebec City, which instigated the negotiations leading to the signing of the Charter in September 11, 2001. The negotiation process that culminated in the Charter was led by a coalition of countries including Peru, Canada, Costa Rica, Argentina, and Mexico.²⁵⁶

C. FTAA Negotiations

As international trade agreements have been constructed in recent years, calls for greater transparency and public access to the trade process have increased, including access to negotiations on the texts of agreements and to dispute resolution processes. This has been exemplified at the global level by a growing discourse on NGO participation in the processes of the World Trade Organization (WTO) and growing claims for access.²⁵⁷ These claims have, in some respects, begun to yield results in opening the WTO to non-state actors, although

256. THE INTER-AMERICAN DEMOCRATIC CHARTER: TOWARD A PLAN OF ACTION, *supra* note 247, at 4 (emphasis omitted).

257. See, e.g., Chi Carmody, *Beyond the Proposals: Public Participation in International Economic Law*, 15 AM. U. INT'L L. REV. 1321, 1338–41 (2000) (describing efforts by NGOs to gain access to the WTO); Steve Charnovitz, *Participation of Nongovernmental Organizations in the World Trade Organization*, 17 U. PA. J. INT'L ECON. L. 331, 331, 357 (1996) (tracing efforts by NGOs to gain access to the WTO and arguing for the creation of formal opportunities for participation); Daniel C. Esty, *Linkages and Governance: NGOs at the World Trade Organization*, 19 U. PA. J. INT'L ECON. L. 709, 719 (1998) (arguing that an “expanded role for NGOs, particularly environmental groups, in the workings of the international trading system, would not only address public choice problems that might otherwise diminish the legitimacy of WTO decision-making, but would offer the prospect of broader political support for trade and investment liberalization”); John H. Jackson, *The Linkage Problem—Comments on Five Texts*, 96 AM. J. INT'L L. 118, 120 (2002) (noting the apparent agreement among five scholars contributing to a symposium edition on the WTO “that the WTO as an institution is seriously flawed, in some cases because of important institutional defects such as lack of democratic input, transparency, public participation, and relationship with nongovernmental organizations (NGOs).”); Gabrielle Marceau & Peter Pedersen, *Is the WTO Open and Transparent? A Discussion of the Relationship of the WTO with Non-Governmental Organizations and Civil Society's Claims for More Transparency and Public Participation*, 33 J. WORLD TRADE 5, 37 (1999) (discussing the “state of affairs” of claims for greater access to WTO work and noting some limited opportunities for access to trade dispute settlement processes); Eric Stein, *International Integration and Democracy: No Love at First Sight*, 95 AM. J. INT'L L. 489, 504–06 (2001) (discussing criticism of “the

the results have been quite modest and generally limited to the right to “attend” Ministerial Conferences,²⁵⁸ to participate in certain technical or informational forums, and to submit amicus briefs to dispute resolution panels.²⁵⁹ No real institutional effort has been made to open the WTO negotiating process to actors, although some delegations have occasionally posted negotiating positions or specific proposals on their web sites.²⁶⁰ This measure of transparency at least informs public positions and allows non-state actors to think strategically about where allies and obstacles may lie.

Similar claims for access greeted negotiations for the proposed Free Trade Area of the Americas (FTAA). Unlike the WTO, which has grown as an autonomous economic integration body, the FTAA proposal had its origins in the inter-American summit process, having been conceived at the Miami Summit,²⁶¹ and advanced and promoted in subsequent summits. FTAA negotiations stalled following the Eighth Annual Ministerial Conference in Miami in 2003, and for a number of reasons, the FTAA proposal has not been revived.²⁶²

way the GATT/WTO had used its power and the democratic deficit and lack of transparency and legitimacy”).

258. Marceau & Pedersen, *supra* note 257, at 5, 12.

259. See James Cameron & Stephen Orava, *WTO Opens Disputes to Private Voices*, NAT'L L.J., Dec. 7, 1998, at B5–B6; Steve Charnovitz, *Opening the WTO to Nongovernmental Interests*, 24 FORDHAM INT'L L.J. 173, 183–197 (2000).

260. See Robert Howse, *From Politics to Technocracy—and Back Again: The Fate of the Multilateral Trading Regime*, 96 AM. J. INT'L L. 94, 115 (2002). This reflects the general attitude that access to the process of making trade policy should be at the national level. See General Counsel Decisions, *Guidelines for Arrangements on Relations with Non-Governmental Organizations*, ¶ 6, WT/L/162 (July 23, 1996), available at http://www.wto.org/english/forums_e/ngo_e/guide_e.htm (last visited Sept. 27, 2009).

261. See Miami Plan of Action, *supra* note 101, at 11.

262. Negotiations were suspended after the Miami Ministerial Meeting for a number of reasons. A principal impasse involved agricultural subsidies, and negotiations were halted in part so that this difficult issue could be worked out first in the WTO. The issue was addressed at the 2005 WTO meeting in Hong Kong, thus clearing an obstacle to continuing the FTAA discussions. A second obstacle was the policy position taken by Venezuela. President Hugo Chavez has stridently opposed the FTAA on more or less philosophical grounds as a neocolonial or neoliberal project. Perla Noguera, *Chavez, en vez del ALCA el ALBA*, Feb. 21 2003, available at <http://ecuador.indymedia.org/es/2003/02/1772.shtml> (last visited Nov. 8, 2009) (quoting Chavez as saying “el camino del neoliberalismo no es el correcto, ese modelo neoliberal fracasó porque moralmente no tiene sustentación y nuestra Constitución es antineoliberal,” author’s translation: “The path of neoliberalism is not correct, this neoliberal model failed because, morally, it has no substance and our Constitution is antineoliberal.”); Perla Noguera, *El ALCA es un mecanismo para la desintegración de nuestros pueblos*, Nov. 26, 2003, available at <http://www.nuestraamerica.info/leer.hlvs/2634> (last visited Nov. 8, 2009) (quoting Chavez as stating: “el ALCA constituye un mecanismo para la desintegración de nuestros pueblos y Repúblicas,” author’s translation: “The FTAA constitutes a mechanism for the disintegration of our people and republics”). The Venezuelan delegation was apparently isolated in this position at the Miami Ministerial Meeting, but subsequent events demonstrate that some other Latin American leaders are rethinking the ad-

While regional trade negotiations may or may not be revived, the degree of transparency and public access to the negotiation process was clearly on the rise prior to suspension. As described below, this access was informed by summit commitments and efforts to implement those commitments.

At the Santiago Summit in 1998, heads of state explicitly called for greater transparency and participation in FTAA negotiations:

The FTAA negotiating process will be transparent . . . in order to create the opportunities for the full participation by all countries. We encourage all segments of civil society to participate in and contribute to the process in a constructive manner, through our respective mechanisms of dialogue and consultation and by presenting their views through the mechanism created in the FTAA negotiating process.²⁶³

While this commitment is aimed in part at the participation of smaller states whose capacity to engage in complex and protracted trade negotiations is limited, it also contemplates a degree of openness to non-state actors. The mechanism referred to is the Committee of Government Representatives on the Participation of Civil Society (SOC), which was created as part of a broader scheme to receive input from civil society on a range of issues, and which convened for the first time several months after the Santiago Summit.²⁶⁴

Heads of state renewed their commitment to a transparent process at the Quebec Summit in 2001 by pledging to

[e]nsure the transparency of the negotiating process, including through publication of the preliminary draft FTAA Agreement in the four official languages as soon as possible and the dissemination of additional information on the progress of negotiations.²⁶⁵

The negotiating text of the FTAA was released three months later, and two subsequent revisions were released in the days preceding the annual meetings of trade ministers that punctuate the negotiating pro-

visability of any potential free trade agreement. At the Mar del Plata Summit in 2005, the four full member states of MERCOSUR—Argentina, Brazil, Paraguay, and Uruguay—joined Venezuela in opposing continued negotiations for an FTAA. The other participating states agreed to a U.S. proposal to resume negotiations, and this resulted in a statement that “some member states” remain optimistic about the FTAA. See Declaration of Mar del Plata, *supra* note 102, ¶ 9A. At the 2009 summit in Port of Spain, the question of an FTAA was not even mentioned in the final document. Port of Spain Declaration, *supra* note 98.

263. Second Summit of the Americas, *Santiago Summit Declaration and Plan of Action*, 37 I.L.M. 947, 951 (1998).

264. Information about the Committee of Government Representatives on the Participation of Civil Society (SOC) and its proceedings can be found on the official FTAA web site at http://www.ftaa-alca.org/SPCOMM/COMMCS_E.ASP (last visited Oct. 16, 2009).

265. Quebec Plan of Action, *supra* note 34, at 14.

cess.²⁶⁶ The Quebec Summit Plan of Action also includes a pledge by states to

[f]oster through their respective national dialogue mechanisms and through appropriate FTAA mechanisms, a process of increasing and sustained communication with civil society to ensure that it has a clear perception of the development of the FTAA negotiating process [and to] invite civil society to continue to contribute to the FTAA process.²⁶⁷

While this language appears partly aimed at marketing the FTAA to civil society—communications are intended to “ensure” clear perceptions rather than to invite meaningful input—it also includes a call for non-state actors to contribute to the process. These contributions have largely been managed by the SOC, although the negotiating process at trade ministerial meetings has also been opened to some extent.

The SOC created a public input mechanism that invited NGOs to make “submissions” on any area of concern that was raised by the proposed FTAA.²⁶⁸ This mechanism has been criticized for being a somewhat one-way “post office box” approach to public input that creates no real basis for dialogue.²⁶⁹ Nevertheless, since its inception, it has evolved to some extent, and the SOC now collates and summarizes submissions for trade delegations, so that at least this one-way flow of information is a bit more accessible. Between 2003 and 2004, the SOC also hosted a series of three “issue meetings” on agriculture, services, and intellectual property rights.²⁷⁰ While these themes reflected the concerns of governments more than those of the NGO community—NGO concerns relate more to environmental, labor, and other social issues—the meetings at least provided an opportunity for direct interaction between non-state actors and responsible government officials, including negotiators and representatives of technical ministries. The SOC was also charged with designing a proposal for a

266. The current draft text can be found on the official FTAA website at http://www.ftaa-alca.org/FTAADraft03/Index_e.asp (last visited June 27, 2009).

267. Quebec Plan of Action, *supra* note 34, at 14.

268. For the most recent iteration of this invitation, see Free Trade Area of the Ams., Comm. of Gov't Representatives on the Participation of Civil Soc'y, *Open and Ongoing Invitation to Civil Society in FTAA Participating Countries*, FTAA.soc/15/Rev.5 (Mar. 31, 2004), available at http://www.ftaa-alca.org/spcomm/SOC/INVITATION/SOC15r5_e.asp. (last visited June 27, 2009).

269. See CENTRO ECUADORIANO DE DERECHO AMBIENTAL 2003, TOWARDS CIVIL SOCIETY PARTICIPATION IN THE AMERICAS: MEMOIRS OF THE TRADE AND ENVIRONMENT WORKSHOPS IN THE QUITO MINISTERIAL 75–76 [hereinafter CEDA/FFLA PROCEEDINGS] (copy on file with author).

270. Summaries of the meeting agendas and results can be found at http://www.ftaa-alca.org/SpComm/SOC/Thema_e.asp (last visited June 27, 2009).

“civil society consultative committee within the institutional framework of the FTAA,” as called for in the Eighth Ministerial Meeting in Miami in 2003,²⁷¹ but efforts to develop the proposal have not proceeded since the FTAA negotiation process was suspended.

The last two FTAA Ministerial Meetings, in Quito in 2002 and in Miami in 2003, also provided opportunities for direct interaction between trade negotiators and interested civil society participants. In both cases, the issues that NGOs brought to the table were related to the broader social concerns raised by the FTAA proposal. In Quito, trade ministers held a brief direct meeting with non-state actors who had participated in three separate non-governmental forums. The first, on indigenous and labor concerns, was hosted by a loose coalition called the Hemispheric Social Alliance.²⁷² The second, on environmental sustainability, was hosted by two Ecuadorian NGOs and their counterparts from the region.²⁷³ The third, on trade policy more generally, was hosted by a Latin American coalition of parliamentarians.²⁷⁴ In Miami, a coalition of NGOs from the region organized a forum called the Americas Trade and Sustainable Development Forum (ATSDF) and, at the invitation of the Office of the United States Trade Representative, hosted a three-day workshop inside the “security perimeter” that was established to contain street protests.²⁷⁵ The ATSDF included parallel workshops on nine areas: trade and agriculture; trade, democracy, and human rights; trade and environment; trade and smaller economies; trade, participation, and access; trade and sustainable livelihoods; trade, corruption, and transparency; trade, knowledge, and intellectual property rights; and trade and investment.²⁷⁶ More than three hundred NGO participants from over twenty countries attended, and representatives from trade ministries of at least eight countries were present for at least part of the proceedings.²⁷⁷

271. Free Trade Area of the Americas: Eighth Trade Ministerial Meeting, Miami, Fla., Nov. 20, 2003, *Ministerial Declaration*, ¶ 28, available at http://www.ftaa-alca.org/Ministerials/Miami/Miami_e.asp (last visited June 27, 2009).

272. Dannenmaier, *supra* note 15, at 1101–03. For a more complete description of NGO participation in both the Quito and Miami ministerial meetings, see *id.* at 1089–13.

273. *Id.* at 1089–90.

274. *Id.* at 1101–02.

275. *Id.* at 1105; see also John Audley & Scott Vaughan, Civil Society and the November 2003 Miami Free Trade Area of the Americas (FTAA) Ministerial, (Carnegie Endowment for International Peace Briefing Paper) (May 21, 2003), available at <http://www.carnegieendowment.org/events/index.cfm?fa=eventDetail&id=619> (last visited Sept. 27, 2009)

276. Dannenmaier, *supra* note 15, at 1108.

277. *Id.*

While each of these mechanisms is imperfect, and although considerable obstacles still prevent the opening of any future regional trade negotiations to meaningful participation by non-state actors, a framework is evolving that offers a greater degree of access than can be found in comparable negotiations related to other trade accords.

D. NGO Accreditation Rules for the OAS

Non-state actors have for many years worked in an informal manner with the OAS and its technical units, but until the 1990s, no formal status was afforded to NGOs before the political bodies of the organization.²⁷⁸ The Canadian government became interested in creating an NGO accreditation mechanism, and in 1994 made a formal request to the OAS Permanent Council that the question of NGO status be studied.²⁷⁹ The request was approved, and in the ensuing years, Canada worked through the summit process and through the organs of the OAS to create an accreditation mechanism.²⁸⁰

In 1994, the OAS began slowly creating a Working Group to Study the Possibility of Granting Status to Non-governmental Organizations (NGO's) in the OAS through the Committee on Juridical and Political Affairs of the Permanent Council.²⁸¹ The Working Group catalogued NGOs with which the OAS had cooperative agreements, interviewed OAS Secretariat staff about their work with NGOs, and looked to comparative examples of NGO participation in some UN conferences.²⁸² Yet the Working Group took over two years to conclude its efforts, offering a final report to the Committee on Juridical and Polit-

278. In 1971, the OAS issued a set of standards that approved relations with NGOs willing to provide advisory services or carry out programs for the OAS. But the standards included no reference to the status of NGOs as interest groups that might seek to influence the programs or policies of the OAS or its member states. OAS G.A. Res. 57, 10th Plen. Sess., ¶¶ 13-22, OAS Doc. OEA/Ser.P AG/doc.109 rev. 1 (Apr. 22, 1971), available at <http://www.oas.org/legal/english/CoopRelations/CoopRelations1.htm> (last visited Sept. 27, 2009).

279. Org. of Am. States, Permanent Council, *Note from the Permanent Mission of Canada on the "Study of the Possible Granting of Status to Non-Governmental Organization (NGOs) at the OAS,"* OAS Doc. OEA/Ser. G CP/doc.2486/94 (May 2, 1994), available at <http://www.civil-society.oas.org/Permanent%20Council/CP-DOC-2486-94-eng.htm> (last visited Sept. 27, 2009).

280. The author discussed these efforts with Canadian representatives to the OAS, and with other OAS officials in the course of discussions regarding Canada's accreditation proposal in 1999. Some of the efforts are described *infra* notes 290-294 and accompanying text.

281. See Org. of Am. States, Comm. on Juridical and Political Affairs, *Working Group to Study the Possibility of Granting Status to Non-governmental Organizations (NGO's) in the OAS*, OAS Doc. OEA/Ser.G CP/CAJP-1005/95 (Mar. 23, 1995), available at <http://www.civil-society.oas.org/Permanent%20Council/CP-CAJP-1005.htm> (last visited Aug. 2, 2009).

282. *Id.*

ical Affairs in July 1997.²⁸³ Rather than offering a plan for NGO accreditation, the report recommended new measures that could have limited the potential for NGO consultations on substantive issues, at least where those consultations were sought with technical bodies of the OAS.²⁸⁴

With progress on NGO accreditation stalled in the OAS technical and political organs, Canada was able to turn to the summit process. Summits had produced written commitments to increase civil society participation at the regional level,²⁸⁵ as well as a growing epistemic community of NGOs that were engaged in OAS processes and interested in greater participation. In June 1998, at the OAS General Assembly meeting following the Working Group report, a Canadian proposal was approved that went well beyond the modest and potentially limiting proposals of the Committee on Juridical and Political Affairs.²⁸⁶ The proposal, Resolution 1539, made specific reference to the Miami, Santa Cruz, and Santiago Summit language about the “im-

283. See Org. of Am. States, Comm. on Juridical and Political Affairs, *Report by the Committee on Juridical and Political Affairs on the Status of Non-Governmental Organizations (NGOs) in the OAS*, OEA/Ser.G CP/doc.2946/97 (July 11, 1997) [hereinafter *Report on Juridical and Political Affairs*], available at <http://www.civil-society.oas.org/Permanent%20Council/CP-doc-2946-97-Dixon.htm> (last visited Sept. 27, 2009).

284. *Id.* It is not clear that the Committee intended to propose limitations on NGO access, and in fact its report lauded the relations that NGOs generally had with the OAS. But the Committee's draft resolution failed to create any accreditation program and did not speak to how NGOs might become more actively engaged with the political bodies of the OAS. It focused instead on the OAS Technical Secretariat. In addition, the draft resolution proposed that the General Secretariat “draft practical guidelines to ensure consistency and enhancement of relations between the OAS General Secretariat and NGOs, which include: (i) the definition of selection criteria with regard to NGO participation in programs, projects and activities; (ii) financing; and (iii) document dissemination.” *Id.* app. 2 ¶ 2. Defining “selection criteria” to “ensure consistency and enhancement of relations” reads more like an effort to turn NGOs into an efficient contractor force for the technical branches of the OAS than an effort to assure robust participation by non-state actors in the workings of the OAS. See OAS Permanent Council CP Res. 704, OEA/Ser.G CP/RES. 704 (1129/97) (July 24, 1997), available at <http://www.civil-society.oas.org/Permanent%20Council/CP-RES-704.htm> (last visited Aug. 2, 2009). This language was endorsed verbatim by the Committee on Juridical and Political Affairs. See Org. of Am. States, Comm. on Juridical & Political Affairs, *Report by the Comm. on Juridical & Political Affairs on the Status of Non-Governmental Organizations in the OAS*, OAS Doc. OEA/Ser.G, CP/doc.2946/97 (July 11, 1997).

285. See discussion *supra* Part IV.

286. OAS G.A. Res. 1539, OAS Doc. AG/RES. 1539 (XXVIII-O/98) (June 2, 1998) [hereinafter Resolution 1539]; see also Santiago Plan of Action, *supra* note 115. The language cited in Resolution 1539 was drawn from a section of the Santiago Plan of Action that dealt with civil society. The same section called upon states to “draw upon existing initiatives that promote increased participation of civil society in public issues, such as relevant successful experiences from the National Councils for Sustainable Development and the Inter-American Strategy for Public Participation,” which called for greater openness to civil society participation at the national level. *Id.* at 8. See ISP Strategy Document, *supra* note 220, at 10 ¶ b–c, 17.

portance of civil society,” and to Santiago Summit language about the role of the OAS as a “forum for the exchange of experiences and information.”²⁸⁷ In essence, Resolution 1539 re-tasked the Permanent Council to address the issue of civil society access to the OAS. The General Assembly resolved

[t]o instruct the Permanent Council to examine ways to increase the degree to which appropriate nongovernmental organizations and civil society organizations may become more closely involved in, and contribute to, the activities of the Organization, and ways to implement the tasks entrusted to the OAS in the Santiago Plan of Action with respect to civil society. In this process, representatives of civil society organizations may be asked for their views on the matter.²⁸⁸

The Permanent Council was also instructed to report on progress at the following General Assembly meeting in June 1999.²⁸⁹

Acting pursuant to Resolution 1539, Canada convened an informal working group of NGOs and government representatives in Washington to make recommendations for an NGO accreditation framework.²⁹⁰ The group examined accreditation practices at the UN and discussed how to design an accreditation program for the OAS that would provide maximum openness for NGOs while creating some limits that would allow governments to constrain participation by groups operating contrary to the principles of the OAS Charter, such as the Shining Path rebels in Peru.²⁹¹ The group also discussed how to ensure access to working documents for accredited organizations, how to finance costs associated with the program, and how to ensure that an accreditation system did not discourage or limit existing avenues of access by NGOs, particularly to the technical units of the OAS.²⁹²

The results of this work, including draft guidelines for accreditation, were presented to a Special Joint Working Group of the Permanent Council and CIDI on the Strengthening and Modernization of the OAS, chaired by Canada.²⁹³ This Special Joint Working Group, which was formed to address a broader range of institutional reform issues within the OAS, reported favorably on the accreditation of NGOs to

287. Resolution 1539, *supra* note 286.

288. *Id.* ¶ 1.

289. *Id.* ¶ 2.

290. The author participated in this informal working group and has his notes of the meetings, along with copies of draft accreditation proposals, on file.

291. *Id.*

292. *Id.*

293. The author discussed these results with representatives of the Permanent Mission of Canada to the OAS.

the OAS in a presentation to the General Assembly through the Permanent Council.²⁹⁴

In response to the report, the General Assembly approved a resolution in 1999 (Resolution 1661) that created a Committee on Civil Society Participation in OAS Activities within the Permanent Council and that instructed the Permanent Council “to prepare, by way of that committee, and bearing in mind the attachment to the report presented by the Permanent Council, guidelines for civil society participation in OAS activities, for adoption before December 31, 1999.”²⁹⁵ In support of Resolution 1661, the General Assembly quoted at length from language of the Miami and Santiago Summits.²⁹⁶

The Permanent Council created a Civil Society Committee in the following weeks and issued accreditation guidelines on December 15, 1999.²⁹⁷ The Civil Society Committee’s functions were later merged with the OAS Office of Summit Follow-up and are now managed by the OAS Department of International Affairs within the Secretariat of External Relations.²⁹⁸ The OAS accreditation program and summit-related issues are now managed by the Permanent Council Committee on Inter-American Summits Management and Civil Society Participation in OAS Activities (CISC).²⁹⁹ The CISC’s functions are defined as follows:

- a. With respect to the Summit process:
 - i. To coordinate OAS activities in support of the Summits of the Americas process;
 - ii. To coordinate follow-up and implementation activities relating to mandates assigned to the Organization by the Summits;

294. See Org. of Am. States, Special Joint Working Group of the Permanent Council and the Inter-American Council for Integral Development on the Strengthening and Modernization of the OAS, *Discussion Paper: The OAS and Civil Society*, OAS Doc. OEA/Ser.T/VII, GETC/FORMOEA-101/99 rev. 4 (May 21, 1999), available at <http://www.summit-americas.org/Reform%20Group/getc101-99.htm> (last visited Aug. 2, 2009); OAS G.A. Res. 1661, OAS Doc. AG/RES. 1661 (XXIX-O/99) (June 7, 1999), available at <http://www.oas.org/juridico/English/ga-res99/eres1661.htm> (last visited Aug. 2, 2009).

295. OAS G.A. Res. 1661, OAS Doc. AG/RES. 1661 (XXIX-O/99) (June 7, 1999).

296. *Id.*

297. OAS G.A. Res. 759, OAS Doc. OEA/SER.G, CP/RES.759 (1217/99) (Dec. 15, 1999), available at <http://www.civil-society.oas.org/Permanent%20Council/CP-RES-759.htm> (last visited Aug. 2, 2009).

298. The work of the Civil Society Committee and its relationship to the summit process is described on its web page at <http://www.civil-society.oas.org/>.

299. The Permanent Council Committee on Inter-American Summits Management and Civil Society Participation in OAS Activities (CISC) maintains a web site at <http://www.oas.org/consejo/CUMBRES/> (last visited July 30, 2009).

- iii. To request and receive contributions from civil society, relating to its participation in the Summit process, for consideration by the Summit Implementation Review Group (SIRG);
 - iv. To study topics relating to the Summit process that are assigned to it by the Council or the General Assembly and to make recommendations thereon to the Permanent Council;
 - v. To consider the reports prepared by the Executive Secretariat for the Summit Process and the technical dependency responsible for ministerial meetings and other sectoral meetings linked to the Summits process.
- b. With respect to civil society participation in OAS activities:
- i. To implement the Guidelines for the Participation of Civil Society Organizations in OAS Activities and to present to the Permanent Council such amendments as the Committee deems pertinent;
 - ii. To design, implement, and evaluate the necessary strategies to increase and facilitate civil society participation in OAS activities;
 - iii. To promote the strengthening of relations established between civil society organizations and the bodies and dependencies of the OAS within the scope of the functions conferred upon the Permanent Council by the OAS Charter;
 - iv. To study matters relating to civil society participation in OAS activities that are presented to it by civil society organizations or entrusted to it by the Permanent Council or the General Assembly and to make recommendations thereon to the Permanent Council;
 - v. To analyze and transmit to the Permanent Council applications presented by civil society organizations to the Secretary General to participate in OAS activities.³⁰⁰

The merging of summit and civil society liaison functions reflects the fact that the OAS agenda, at the broadest political level, is increasingly driven by the summit process, and that the facilitation and management of input from non-state actors at the OAS and in the summit process are administratively and institutionally parallel.³⁰¹

300. Org. of Am. States, Permanent Council, *Rules of Procedure of the Permanent Council of the OAS*, at 6, OAS Doc. OEA/Ser.G, CP/doc.1112/80 rev. 4 corr. 1 (Aug. 27, 2003), available at http://scm.oas.org/doc_public/ENGLISH/HIST_03/CP11732E07.DOC (last visited Aug. 2, 2009); see also Org. of Am. States, Permanent Council, *Work Plan of the Committee on Inter-American Summits Management and Civil Society Participation in OAS Activities (2005–2006)*, OAS Doc. OEA/Ser. G, CP/CISC-183/05 rev. 1 (Sept. 26, 2005) (outlining the commitment to engage civil society actors as part of summit follow up and implementation activities in furtherance of OAS support role in summit process).

301. An examination of the OAS Civil Society web site demonstrates how these functions overlap. It also shows how important partnerships with NGOs and NGO networks have become to the Summit process and to the OAS. See <http://www.civil-society.oas.org/> (last visited Sept. 21, 2009).

VII. JURISGENERATIVE POTENTIAL OF SUMMITS

These four case studies show that summits advanced the international lawmaking process in the Inter-American System, and in some cases they produced international legal commitments that even a strict formalist could recognize as positive law. Inter-American summits nurtured institutional reforms both in the process for negotiating a regional trade accord and the process for engaging non-state actors in the OAS. Summits also gave rise to the IADC, which has positive legal features. While these instruments and institutional reforms have yet to be fully deployed, they owe their genesis to summits and the unique framework for access and interaction that summits offer.

Evidence of a shift in state practice tied to a summit commitment can be seen in the fact that both Argentina and Mexico enacted laws on access to information in the years that followed the formulation of the Inter-American Strategy for Public Participation which was approved in 2000.³⁰² The call for a domestic commitment to greater access to information was one of the principal recommendations of the ISP that emerged from the summit process.³⁰³ It cannot be claimed that the ISP alone motivated these changes, but some influence can certainly be posited.³⁰⁴

From a legal process perspective, summits play a role in determining “international society’s values” and thus legitimize and substanti-

302. See Decreto No. 1172/03, Dec. 3, 2003, B.O. (Arg.); Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, [Federal Law of Transparency and Access to Public Governmental Information], Diario Oficial de la Federación [D.O], 11 de Junio de 2002 (Mex.).

303. See ISP Strategy Document, *supra* note 220, at 5–6.

304. As discussed *supra* notes 224–225, the author served as a member of the Technical Advisory Group that helped shape the ISP process and draft its language over the course of two years, and in that capacity worked closely with foreign and environment ministry officials from Argentina and Mexico, who regularly monitored the process of developing the ISP. As discussed *supra* note 225, the Mexican government hosted the final meeting in which the language of the ISP was debated. Argentine and Mexican NGOs also played a prominent role in formulating the ISP, and the participation of non-state actors from Mexico was facilitated by the location of the final drafting meeting: Mexico City. Participant lists of ISP meetings and notes of meetings, including the Mexico City meeting, are on file with author. While causal claims cannot be proved, the participation of government officials and non-state actors from both countries as an integral part of the ISP development process over the course of two years leaves open at least the possibility that they were influenced, inspired, or at least informed by the process. The ISP certainly facilitated the formation and strengthening of an epistemic community of governmental and non-governmental actors concerned with greater public access to development decision-making in both of these countries, and connected them with others from throughout the region with similar interests. While offering proof of the mechanisms through which such a community worked is beyond the scope of this Article, the NGO community’s potential to affect policy outcomes should not be discounted.

ate normative claims.³⁰⁵ Summits are highly public events where government leaders seek both to affirm and to define societal values through dialogue and consensus. Non-state actors reflecting a broad cross-section of civil society collaborate in summit preparatory meetings and agenda setting. At times, governments invite non-state actors to participate directly as *ex officio* members of negotiating teams.³⁰⁶ Even some arenas of public protest against summits or their agendas have been funded and sanctioned by government.³⁰⁷ This speaks less of co-option than of an effort to engage interested parties, including vocal dissidents, in the dialogue on regional values and policies. The most radical dissenters—those who outright reject summit initiatives and turn to street rallies or violence to convey their message—also use summit venues to stage their theatre, thus implicitly acknowledging that even outsiders find some utility in the broader summit process.³⁰⁸

305. For a discussion of new international legal process theory, see Mary Ellen O'Connell, *New International Legal Process*, in RATNER & SLAUGHTER, *supra* note 2, at 84–86; see also Harold Hongju Koh, *The 1994 Roscoe Pound Lecture: Transnational Legal Process*, 75 NEB. L. REV. 181, 183–86 (1996) (discussing transnational legal process as the “theory and practice of how public and private actors . . . interact in a variety of public and private, domestic and international fora to make, interpret, enforce, and ultimately, internalize rules of transnational law”). While the case studies discussed above focus on regional policy and international norms, the impact of summits on domestic policy is also worth exploring. An argument might be made that summit attention to participatory democratic mechanisms has led to increased interest in these mechanisms at the national level, a claim that transnational process theorists such as Harold Koh might find interesting. See *id.* at 205 (“Once nations begin to interact, a complex process occurs, whereby international legal norms seep into, are internalized, and become embedded in domestic legal and political processes.”).

306. The author has spoken with several individuals who have served in this capacity, including individuals invited by the governments of Canada, Germany, and the United States. See also UNAIDS Programme Coordinating Board Communique (January 2009) at 2, available at [http://www.unaidspcbngo.org/pcb/blog/UNAIDS_PCB_NGO_Delegation_Communique_on_the_23rd_PCB_mtg_final%20\(1\).doc](http://www.unaidspcbngo.org/pcb/blog/UNAIDS_PCB_NGO_Delegation_Communique_on_the_23rd_PCB_mtg_final%20(1).doc) (last visited October 31, 2009) (noting that some states included civil society in their own national delegations at a UN conference on HIV in 2008); *Taking Issue: The Sustainable Development Issues Network* Volume 5, Issue 10 (April 15 2005) at 1, available at http://www.bpwn.nl/archief/th4_sust/050415-TI.doc (last visited Oct. 31, 2009) (noting that, since the Johannesburg World Summit on Sustainable Development, “the Dutch have included a Youth, a Women and a NGO representative in their national delegation”).

307. Canada partially funded the People's Summit as an alternative to the official summits both in Santiago in 1998 and Quebec City in 2001. Interviews by author with representatives of Canada's Permanent Mission to the OAS. President Hugo Chavez of Venezuela was a keynote speaker at the People's Summit in Mar del Plata in 2005. See *Terminó la Cumbre de los Pueblos*, NACIÓN (Arg.), Nov. 4, 2005, available at http://www.lanacion.com.ar/nota.asp?nota_id=753463 (last visited Oct. 31, 2009).

308. For example, regional firebrand Hugo Chavez, President of Venezuela, used the occasion of the 2005 summit in Mar del Plata, Argentina, to stage a massive public rally outside of the formal diplomatic proceedings. The rally was aimed at generating public sentiment in favor of his own government's policy positions and against those of his favorite target, the United States. See Elisabeth Bumiller, *In Latin America, Messy Foray for Bush*, INT'L HERALD TRIB., Nov. 6,

The cases also suggest that summits promote conforming behavior among state agencies and regional organizations through interaction and the internalization of norms.³⁰⁹ Linking these institutions to civil society actors lays a foundation for cooperative follow-up, and it produces expectations among societal *demandeurs* who are in a position to monitor implementation and promote further progress.³¹⁰ This may strengthen the propensity of states to comply with obligations by putting NGOs in a better position to perform “parallel and supplementary” monitoring functions.³¹¹

Summits also provide a mechanism that can reinforce state efforts to advance policy goals when these goals are both consistent with the value-laden currents of the summit process and supported by the summits’ epistemic communities. Peru, for example, sought regional affirmation to secure the position of its elected leaders at a critical moment in its history, and its interim President, Valentín Paniagua, used the summit process to advance the IADC and bolster fragile domestic institutions after eight years of autocratic rule.³¹² After its former President, Alberto Fujimori, had threatened to return and rule his country, Paniagua used a moment of democratic respite to secure some assurances from Peru’s neighbors, through the IADC, against the possibility that Fujimori might make good on his threat. Peru was substantially aided by the historical summit rhetoric of democracy and an array of pro-democracy groups and like-minded countries that had coalesced around the summit process to form a supportive epistemic

2005, available at <http://www.nytimes.com/2005/11/06/world/americas/06iht-letter.html> (last visited Oct. 31, 2009); Jordana Timerman, *Chávez and Maradona Lead Massive Rebuke of Bush*, NATION, Nov. 5, 2005, available at <http://www.thenation.com>.

309. For a discussion of the importance of these factors in shaping normative responses, see Harold Hongju Koh, *Transnational Public Law Litigation*, 100 YALE L.J. 2347, 2400 (1991).

310. Even more aspirational statements of principle embodied in summit commitments can promote expectations, which, over time, can be converted to hard commitments through the efforts of interested state and non-state actors. These statements formed part of the basis for claims for greater access to the FTAA negotiation process by organizers of the Americas Trade and Sustainable Development Forum (ATSDF), who were able to cite summit commitments dating back to 1994 in their effort to open up the trade ministerial meetings in Quito in 2002 and Miami in 2003. See *supra* notes 263–267 and accompanying text. Non-state actors involved in the summit process have also been involved in summit follow-up projects, which monitor compliance with summit mandates. See, e.g., THE SUMMITS MUST NOT END UP AS EMPTY PROMISES: HEMISPHERIC REPORT 2006–2008, (2009) available at [http://www.civil-society.oas.org/documents/123_ENG_informe%20hemisf%C3%A9rico%20\(ingl%C3%A9s\).pdf](http://www.civil-society.oas.org/documents/123_ENG_informe%20hemisf%C3%A9rico%20(ingl%C3%A9s).pdf) (last visited Oct. 31, 2009) (report of a summit commitment monitoring project implemented by Corporación Participa, among others, and funded by the U.S. government through the National Endowment for Democracy, and by the Canadian International Development Agency and the OAS).

311. See CHAYES & CHAYES, *supra* note 28, at 250–53.

312. See *supra* notes 243–255 and accompanying text.

community.³¹³ While the IADC remains a relatively young instrument, and it has yet to be tested by a returning exile like Fujimori, it did appear to operate as designed in the first two cases that arose after its adoption.³¹⁴ More recently, following the military ouster of Honduran President Ernesto Zelaya in June 2009, IADC procedures were invoked and OAS member states presented a largely unified front by suspending Honduras membership and by cutting off aid and other financial flows to the country.³¹⁵

Examples such as the IADC also show the utility of summits as proactive mechanisms that allow states to move from a problem-oriented, reactive mode to one of setting goals and aspirations. While the IADC grew partly out of Peru's experience with Fujimori, and in that sense interest in such a mechanism can be seen as a reaction, broader regional support for the IADC can be seen as a proactive move to create a framework for response and to create disincentives to future democratic disruptions. Canada's effort to create a mechanism for NGO accreditation within the OAS is another example of a proactive approach. It was not a response to any crisis or any new demand on the part of NGOs. Until Canada began pushing to formalize access, NGOs that had historically chosen to work with the OAS or to seek to influence its policies had found informal avenues and

313. See Haas, *supra* note 3, at 569–70 (describing the idea of “epistemic communities”).

314. The IADC was invoked in response to the coup attempt in Venezuela in April 2002. See Denis Paradis, Secretary of State for Latin America and Africa, Statement to the 29th Special Session of the General Assembly of the Organization of American States (Apr. 18, 2002), available at <http://www.oas.org/speeches/speech.asp?sCodigo=02-0347> (last visited Aug. 2, 2009). It was not invoked in Haiti in February 2004, despite the arguments by some, including Jean Bertrand Aristide, that what took place was effectively a coup. See Mark Weisbrot, Co-Director for the Center of Economic and Policy Research, Statement to OAS Meeting Between Civil Society Organizations, the Secretary General, and Heads of Delegations (June 6, 2005), available at <http://www.commondreams.org/cgi-bin/print.cgi?file=/news2005/0606-20.htm> (last visited July 30, 2009).

315. At the time this Article went to press there was still no consensus resolution of the controversy surrounding Zelaya's ouster, although it appeared that OAS member states, including the United States, were taking a wait-and-see approach and were poised to recognize the results of a planned November 29, 2009 election. Mary Beth Sheridan, *Honduras Accord is on Verge of Collapse; Ousted President Says U.S. Lacks Commitment to Reinstatement*, WASH. POST Nov. 12, 2009, at A3. A full analysis of how the IADC worked in the wake of the Honduran coup (or not) will need to be conducted with the benefit of time, more complete information, and hindsight, but it appears even from contemporaneous and incomplete reports that the instrument worked at least in some of the ways it was planned to work by providing a framework for regional response and coordination—and for normative pressure. The Charter did not prevent a coup, but that was not its purpose. Instead it provided a basis for regional democracies to speak and act with a degree of purpose and to seek some measure of unity through a deliberative process.

mechanisms to do so.³¹⁶ Canada sought broader participation in OAS political bodies and regularized access to documentation, among other things, as a means of improving the system at a time when it had the luxury to do so, and it found an advantage in working through the summit process and its network of democracy groups, instead of working solely through the OAS itself, which had been historically resistant to an accreditation scheme.³¹⁷

Inter-American summits have also helped place the negotiation of prescriptive agreements in the broader context of regional values. In the case of the FTAA, summit commitments called for attention to regional social concerns that would otherwise be anathema to a traditional trade negotiation.³¹⁸ While many have argued against the FTAA, and indeed trade agreements in general, as a neo-colonial instrument that will benefit the wealthy at the expense of the poor,³¹⁹ summit instruments have at least called for some effort to balance economic goals with social concerns, and they have lent support to those who would bring social concerns to the negotiating table. Nascent efforts to open the FTAA negotiating process to non-state actors can also be traced to explicit commitments made through the summit process.³²⁰ While the current breakdown in FTAA negotiations reflects a deeper global policy dispute about the terms under which multilateral trade accords will proceed,³²¹ the summit process has offered a stage upon which the issues at the heart of the quarrel can be publicly contested, and it may eventually provide a vehicle to resolve contests that otherwise would have no forum.

316. See Report on Juridical and Political Affairs, *supra* note 283, at 4–6; see also Org. of Am. States, Permanent Council, *Nongovernmental Organizations With Which the Organization of American States Has Established Cooperative Relations*, OAS Doc. CA/CAJP-962/94 (Sept. 1, 2004), available at <http://www.civil-society.oas.org/Permanent%20Council/CP-CAJP-962-94-septiembre%20de%201994-eng.htm> (last visited Aug. 2, 2009) (describing the range of cooperation between NGOs and various OAS organs prior to the creation of a formal accreditation mechanism).

317. Recall that efforts at reform through internal processes had proceeded at a snail's pace and produced a proposal that was more of a step backward than forward. See *supra* notes 281–284 and accompanying text.

318. See *supra* notes 268–276 and accompanying text; see also Miami Plan of Action, *supra* note 101, ¶ 9(2) (calling for trade expansion to be pursued in a manner consistent with environmental policies and concerns for workers' rights).

319. See Dannenmaier, *supra* note 15, at 1087–89.

320. See Miami Plan of Action, *supra* note 101, ¶ 9(2).

321. FTAA negotiations became stalled—along with global WTO negotiations—over disputes about agricultural subsidies and industrial market access that appeared to defy compromise in the Doha round. See *So, What Next?*, 12 BRIDGES, Dec. 2008–Jan. 2009, at 1, 1 (“WTO Director General Pascal Lamy told the [WTO] membership on 12 December that his consultations with capitals had not revealed ‘a readiness to spend the political capital’ needed to reach an agreement.”).

The inter-American summit process has also promoted international policy transparency more broadly, both through the access it provides to non-state actors seeking to monitor and influence the agenda and through the stage it sets for leaders to carry their policy messages to a broader audience. The former is facilitated in part because the process has been open from the outset, and because non-state actors have found ways to engage delegations and promote their agendas.³²² The latter is facilitated in part because summit commitments are negotiated with a view toward a broader audience and because language is less technical and more accessible.³²³ The effort to explain policy priorities through public international forums has the potential to be transformative. At the least, it opens up opportunities to engage the public in new and potentially meaningful ways. Government officials and civil society leaders recognize that audiences for summits are members of their diverse societies, and they thus seek to make policy goals and principles transparent. The downside, of course, is additional precatory language that is vague, aspirational, and unenforceable. But this language, though broad and aspirational, can serve to clarify and reinforce “international society’s values”³²⁴ in a way that more technical treaties often cannot and these values are an important touchstone for norms that guide state behavior.

Institutional theorists should recognize inter-American summits as a valuable tool of international law because summits rely heavily on cooperative models and institution building.³²⁵ In each of the cases described above, there is evidence that commitments of the inter-American summit process have resulted in administrative changes and institutional adaptations at the regional level. Summits may be viewed either as supporting existing institutions—they certainly breathed new life into the OAS in the past decade—or as being institutions in their own right. In either case, summits potentially have

322. See *supra* notes 103–134 and accompanying text

323. See *supra* notes 135–202 and accompanying text

324. See Mary Ellen O’Connell, *New International Legal Process*, 93 AM. J. INT’L L. 334, 336 (1999). O’Connell describes the relationship between legal process theory to international legal process theory and explains that, for legal process theorists, “acceptable answers” about law’s purposes “should be guided by society’s values.” *Id.* She concludes that new international legal process theory “would advocate knowledge of the legal system and valuing institutional settlement in line with international society’s values.” *Id.* at 339.

325. For a discussion of institutionalist theory, see Kenneth Abbott, *International Relations Theory, International Law, and the Regime Governing Atrocities in Internal Conflicts*, in RATNER & SLAUGHTER, *supra* note 2, at 134–35; see also Robert O. Keohane, *International Relations and International Law: Two Optics*, 38 HARV. INT’L L.J. 487, 489 (1997) (“The ‘instrumentalist optic’ focuses on interests and argues that rules and norms will matter only if they affect the calculations of interests by agents. International institutions . . . can make a difference, but only when their rules create specific opportunities and impose constraints which affect state interests.”).

independent effects on behavior by changing the context of interaction, facilitating negotiation and implementation, reducing transaction costs,³²⁶ providing constituent-derived information, inserting expert actors, and facilitating the pooling of information.

Inter-American summits have also constructed frameworks for institutional cooperation. Some of these frameworks have been formalized through the OAS system, such as the Summit Implementation Review Group³²⁷ and the Inter-American Working Group on Sustainable Development.³²⁸ Some cooperative frameworks remain informal and fluid.³²⁹ Summits serve to motivate and facilitate this cooperation and to clarify the cooperative agenda. They also offer a mechanism for ratifying institutional advancements and arrangements that emerge through the cooperative process.

Finally, inter-American summits provide a potentially important negotiating space for heads of state, and for their advisors and agencies in the process of negotiating summit agendas, which might create strong inter-personal relationships and networks. These interactions may promote greater trust and affinity among participants because they are not crisis driven, and in most cases they do not involve high stakes. In this respect, the broader, more aspirational nature of summit commitments gives diplomats an opportunity to interact and work toward consensus on statements of principle and programs of cooperation. This forward-looking, relatively positive negotiation space might help build relationships among and even informal networks of officials who might serve to foster deeper collaborative efforts and to diffuse tensions and facilitate progress when crises arise.

326. Of course it is possible, perhaps likely, that additional process features will result in some increased transaction costs, particularly in the short term, as mechanisms and institutional infrastructure are created to manage the process. But these costs should be offset by the increased animation of a public that can help shape and implement policy.

327. See *supra* notes 95–96 and accompanying text.

328. This is a group of inter-governmental organizations including OAS technical units concerned with sustainable development issues that was convened by the Head of the Unit for Sustainable Development and Environment (now the OAS Department of Sustainable Development). See Org. of Am. States, Working Group on Sustainable Development, *Work Schedule of the CEPICDI Working Group on Sustainable Development, October/December 2006*, OAS Doc. Ser.W/IV CEPICDI/GT/DS/doc.62/06 (describing Working Group plans for a ten-year follow up on the Santa Cruz Summit).

329. Examples include the Civil Society Task Force of the Esquel Group Foundation, which convened monthly meetings of state and non-state actors to discuss regional issues, the inter-American summit process in Washington, D.C., and the Partners of the Americas Civil Society Forum, which has hosted regional workshops and internet forums relating to the regional summit process. See, e.g., Esquel Group, Task Force, <http://www.esquel.org/taskforce> (last visited July 30, 2009); Advances and Challenges Facing Civil Society Within the Framework of the Summits of the Americas, http://www.partners.net/images/partners/EN/Documents/PDF/monterrey_report.pdf (last visited July 30, 2009).

VIII. CONCLUSION

The cases reviewed in this Article offer examples of state and non-state actors working in the inter-American system, and they demonstrate unique participatory aspects of the summit process that advance policy and normative goals. The cases suggest that inter-American summits have a discernable normative push, at least in part because they exhibit process features such as transparency, openness, and inclusive agenda setting that emphasize value formation and collaboration among state and non-state constituencies. Inter-American summits can be seen to serve a legitimizing and value-internalization function that is meaningful in international lawmaking, even when direct outcomes are not hard law.

By pursuing democratic objectives within a process that itself has democratic features, inter-American summits have produced a mutually reinforcing phenomenon: increasing their own jurisgenerative potential even as they expand public access to the traditionally insular world of international decision making. Given that the discourse of democracy has become increasingly salient in the Western Hemisphere, and globally, the importance of this phenomenon should not be discounted.

The case studies from the inter-American region demonstrate that head of state summits can satisfy the democracy concerns that animate both access critics and access proponents. Where summits include the type of process features that have become integral to the summit of the Americas system—open consultations, information sharing, cooperative dialogue, and government financial support—they engage and build epistemic communities that are concerned with summit agenda items, such as the environment, healthcare, women's rights, and the preservation and expansion of democratic domestic institutions. Summits of this type do not represent a move toward a formal, electoral "new order," but they do offer an open, transparent, and network-driven model of deliberative democracy. Yet the outcomes are neither forced upon state leaders nor formulated behind their backs. In every case, state officials are at the center of negotiations and heads of state and government sign final commitments. Where necessary, state legislators still ratify or adopt outcomes that require changes in domestic law.

Thus, despite greater openness and participation, states do not compromise fundamental claims about decision-making authority. In fact, as the Peru and Canada case studies show, state leaders often initiate proposals that are developed and strengthened through the summit process in a way that might not otherwise be possible. The process

itself—which takes place within a supportive and reinforcing epistemic community—demonstrably advances state goals and outcomes, and the active participation of domestic constituencies helps to deepen commitment to the outcomes within those constituencies.

The cases presented in this Article each deal with state objectives that call upon values that are widely shared by active communities of interest. The specific policy objectives were thus amenable to progress with the full participation of non-state actors. It is probable that other state goals that are less broadly shared would have less purchase in the kind of deliberative international process that summits can offer. Yet even where a state goal is controversial, there is reason to believe that public access can support positive outcomes. The FTAA case study, for example, shows that deliberative processes can yield positive outcomes even where deep controversy exists. This Article assesses only an initial sample and additional work is needed to determine the extent to which issue variables would advance or impede successful outcomes in a deliberative international setting.

The Article also samples a set of case studies within a regional system that itself has unique features. All state participants in the inter-American summit process are nominal democracies, and while some key actors have demonstrated less-than-democratic tendencies, this formal feature might also lead to more positive outcomes for deliberative processes. Certainly, the willingness of regional summit participants to pursue a democracy agenda, and to do so in a participatory manner, can be tied to their shared political traditions. But it should be recalled that the position of access critics is that increased participation in an international setting threatens the democratic values of democratic states, so it is valid to test this claim within a community of democracies. Certainly, as summits are studied for their broader potential as deliberative mechanisms, the variables of state political systems and regional political heterogeneity will need to be separately assessed.

No claim is made that the inter-American summits are representative of all summits, or that their process features are universal; indeed, summits follow many forms and produce varied results. But summits held in the Western Hemisphere do share many features in common with other summits, making them a useful model to examine. In addition to issue and system variables discussed above, further research is needed to determine how far claims about normative push and legitimization may extend beyond the inter-American experience. Even where summit processes are less open and transparent, as many regional models seem to be, the jurisgenerative potential of summits is a

feature worth examining. While these issues are beyond the scope of this Article, the work presented herein may help frame issues for future research.