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DEMOCRACY AND PROMOTING A DIALOGUE BETWEEN EUROPE AND AMERICA

DEMOCRACIA Y FOMENTO DEL DIÁLOGO ENTRE EUROPA Y AMÉRICA

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ABSTRACT

Although it is difficult to identify a clear concept of Democracy at an international level, and the relationship between Europe and Latin America is complex, promoting Democracy has been a factor that has fostered dialogue between the two regions. It might be interesting to understand if there is a common notion of Democracy. The analysis focuses on two major organizations in Europe and Latin America: The Council of Europe and the Organization of American States. Firstly, the paper will examine the concept of Democracy at the international level from the UN Charter to Resolution 62/7. Secondly, the paper will compare this concept with notions emerging within the Council of Europe and the Organization of American States (OAS). The concept emerging at the international level is reflected in Article 3 of the Additional Protocol to the European Convention on Human Rights (ECHR), which was opened for signature by member states on March 20, 1952, in Paris, and in Article 23 of the American Convention on Human Rights. It was adopted within the framework of the Organization of American States (OAS) in San José, Costa Rica, in 1969, and it entered into force in 1978. Thirdly, the proposal will examine the interpretations offered by the European and Inter-American Courts of Human Rights.

RESUMEN

Aunque resulta difícil identificar un concepto claro de democracia a nivel internacional, y la relación entre Europa y América Latina es compleja, la promoción de la democracia ha sido un factor que ha fomentado el diálogo entre ambas regiones. Podría ser interesante entender si existe una noción común de democracia. El objeto de análisis se centra en dos organizaciones de gran relevancia: el Consejo de Europa y la Organización de los Estados Americanos. En primer lugar, el artículo examinará el concepto de democracia en el ámbito internacional, desde la Carta de las Naciones Unidas hasta la Resolución 62/7. En segundo lugar, se comparará este concepto con las nociones que emergen dentro del Consejo de Europa y la Organización de los Estados Americanos (OEA). El concepto que se desarrolla a nivel internacional se refleja en el artículo 3 del Protocolo Adicional al Convenio Europeo

de Derechos Humanos (CEDH), abierto a la firma por los Estados miembros el 20 de marzo de 1952 en París, y en el artículo 23 de la Convención Americana sobre Derechos Humanos, adoptada en el marco de la Organización de los Estados Americanos (OEA) en San José, Costa Rica, en 1969, y que entró en vigor en 1978. En tercer lugar, el estudio abordará las interpretaciones ofrecidas por los tribunales de derechos humanos europeos e interamericanos.

KEYWORDS

Democracy, Unted Nations, European Court of Human Rights, Organizations of American States, Dialogue.

PALABRAS CLAVE

Democracia, Naciones Unidas, Corte Europea de Derechos Humanos, Organizaciones de Estados Americanos, Diálogo.

I. INTRODUCTION

It could be argued that the promotion of Democracy has the potential to encourage dialogue between Europe and Latin America. This approach has been adopted in the past and there is a strong possibility that it will continue to be employed in the future. Several factors have contributed to the emergence of opportunities for a dialogue focused on Democracy since Post-Second World War. Within these factors, reference can be made to the historical and legal framework, which, despite its distinct nature, has played a pivotal role in the promotion of international instruments. Moreover, a variety of initiatives centered on Democracy have been incorporated within these international instruments.

Democracy has become the hallmark form of government in the Western world since the modern age. Notwithstanding the efforts of doctrine and the contribution of international organisations, it remains challenging to identify a well-defined concept of Democracy in international law. Democracy is indeed 'polysemous'; it has multiple meanings and can be interpreted in different ways depending on the context in which it is found.

This phenomenon, however, can be explained by the fact that the principle of sovereignty in international law empowers each state to exercise its autonomy in determining its own governance system. In this regard, it is important to note that the form of government refers to the organisational structure and methods of exercising power in each territory.

Furthermore, international law recognises the statehood from the moment that the common elements that characterise it (government, territory, and permanent population)[1] are organised in a sufficiently stable and effective manner[2]. Indeed, to assess the independence of a state, international law stipulates that said entity must not be formally subordinate to another state system (*superiorem non recognoscens*). The form of government is constituted by the way, within a given legal system, the political power of the state is organised and exercised. In this regard, it should be noted that the government is the main element that characterises the state, as it is the principal organ responsible for controlling and managing the political, economic, social, and legal affairs of the community[3].

In consideration of the elements, it can be posited that the concept of Democracy at the external level is predicated on the principle of sovereign equality of states. Indeed, an analysis of this principle could give grounds for the conceptualisation of 'Intersubjective Democracy', a notion linked to the form of the state and which positions states on an equal footing with subjects of international law. This interpretation could be substantiated by Article 2 of the United Nations Charter, which stipulates in paragraph 1 that the Organisation is founded on the principle of the

1 Art. 1 of the Montevideo Convention on the Rights and Duties of States stipulates that: "The state as a person of international law should posses the following qualifications: a. a permanent population; b. a defined territory; c. government; and d. capacity to enter into relations with the other states". This Convention entered into force on December 26, 1934. Available at https://treaties.un.org/ [Last consultation on November 12,2025]

2 See GAETA, Paola, VINUALES, Jorge E., ZAPPALÀ, Salvatore, *Cassese's International Law*, Oxford University Press, Third Edition, 2020 and CRAWFORD, James, *The Creation of States in International Law*, Second Edition, Oxford University Press, 2007.

3 See TANZI, Attila, *Introduzione al diritto internazionale contemporaneo*, Settima Edizione, CEDAM, 2023.

sovereign equality of all its members. Concomitantly, in paragraph 4, it reaffirms that Member States must abstain from the threat or utilisation of force against the political independence of any other State. It may thus be concluded that it would be hard to argue for Democracy as a universal right, and even harder to argue for the existence of a well-defined form of 'Democratic' government, since the principles of state sovereignty and independence suggest answers that are far removed from such a conception.

As previously stated, Democracy has been a factor that has fostered dialogue between Europe and Latin America. In this regard, the present study seeks to analyse a common concept of Democracy in these regions.

From a methodological perspective, the paper undertakes a preliminary investigation of the United Nations framework before proceeding to analyse the concept of Democracy in these regions. The United Nations is widely regarded as the most significant international organization. The UN is an international organization whose primary objectives are to promote international peace and security, as well as to facilitate relations and cooperation between states in various fields, including the promotion of human rights. Furthermore, it may be beneficial to initiate the investigation with the UN framework, given its composition of members who vary in their democratic inclinations[4]. Thus, it may be appropriate, as a preliminary step, to identify a concept of Democracy that emerges at the international level and within the legal framework of the United Nations.

To determine whether a legal meaning can be derived from the term 'Democracy' in the UN framework, it is important to examine some key instruments. In this regard, examples include the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and General Assembly Resolution 2625 (XXV), adopted on October 24, 1970. Other examples include resolutions adopted by the United Nations General Assembly from 1994 to 2006, which preceded Resolution 62/7, adopted on November 8, 2007.

This investigation could prove significant, as understanding the concept of Democracy at the international level is a prerequisite for determining whether it is possible to discuss Democracy and promote a dialogue between Europe and Latin America. Moreover, this analysis is necessary because the paper focuses on the concept of Democracy in Europe and Latin America as seen in two fundamental inter-regional organisations that promote dialogue and guarantee fundamental rights: the European Court of Human Rights and the Organisation of American States.

In the ensuing study, following a rigorous analysis of the concept of Democracy within the legal framework of the United Nations, the study proceeds to examine this concept within the Council of Europe and the Organisation of American States (OAS). It is important to note that the analysis of these inter-regional organizations will

4 «The UN is an organization with almost universal membership; therefore, it consists of states that are more, less or not at all democratic. In fact, respect for democratic principles has never been a prerequisite for membership n the UN. Among the UN promoters, at least two countries – Russia and China – cannot be considered democracies. On the contrary, the UN Charter states that 'membership in the United Nations is open to all other peace-loving states which accept the obligation contained in the present Charter' (Art. 4)». LEVI, Lucio, FINIZIO Giovanni, VALLINOTO, Nicola, *The democratization of INTERNATIONAL INSTITUTIONS: first international democracy report*, Centre for studies on federalism, Routledge, 2014, Pag. 63.

focus on the relevant legal provisions and specific cases heard by their courts. This methodology could facilitate the determination of whether this common concept has influenced the promotion of such dialogue and whether it can continue to do so. The conclusion of this analysis will determine whether the concept of Democracy, in accordance with the legal framework of the United Nations, within the framework of the Council of Europe and the Organization of American States, is uniform, and whether this concept has the capacity to promote a dialogue focused on Democracy.

It is important to note that the concept of Democracy that emerges from the analysis of these inter-regional organizations will probably be in line with that recognized within the framework of the United Nations. This concept must therefore be consistent with the concept of Democracy at the international level and with the instruments referred to in this introduction.

II. THE CONCEPT OF DEMOCRACY WITHIN THE FRAMEWORK OF THE UNITED NATIONS

The establishment of a precise definition of Democracy within the context of international law is a complex undertaking. There is no such thing as a 'preferred model of Democracy'. Indeed, as previously stated to assess the independence of a state, international law stipulates that said entity must not be formally subordinate to another state system (*superiorem non recognoscens*). Furthermore, the concept of Democracy at the external level is predicated on the principle of sovereign equality of states.

Nevertheless, it may be possible to ascertain whether a legal meaning can be ascribed to the term 'Democracy'. In this regard, it is necessary to examine some key instruments in international law. In this regard, examples include the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and General Assembly Resolution 2625 (XXV), adopted on October 24, 1970. Other examples include resolutions adopted by the United Nations General Assembly from 1994 to 2006, which preceded Resolution 62/7, adopted on November 8, 2007. This resolution established the International Day of Democracy, which is celebrated annually on September 15 by the United Nations and its member states.

This analysis could prove significant, as understanding the concept of Democracy at the international level is a prerequisite for determining whether it is possible to discuss Democracy and promoting a dialogue between Europe and America. In other words, the present analysis focuses on two organisations, and therefore it is appropriate to begin by examining the concept that emerges at the international level. In this regard, it seems necessary to initiate the analysis with the United Nations.

2.1- Democracy and the United Nations Charter

In this space, The Charter of the United Nations, adopted by acclamation on June 26, 1945, at the conclusion of the San Francisco Conference, does not explicitly mention or refer to the concept of Democracy. Article 1 of the Charter states that one of the organization's primary objectives is "*to maintain international peace and security*"[5]. In this respect, the outcome is unsur-

5 «I lavori della conferenza di San Francisco si sono svolti in coincidenza della fine delle operazioni belliche in Europa e

prising, as the primary objective of the UN Charter on the political level was to maintain peace among the signatory States, who were veterans of two bloody and destructive conflicts. However, it is important to understand whether there is a link between the term "maintenance of international peace and security", as used in the Charter, and Democracy. This term has been used frequently and referred to countless times by the organs of the United Nations, starting with the Security Council, over the years.

At that historical juncture, the primary objective of the organization, as articulated by the I Commission on numerous occasions, was to maintain international peace and security[6]. Article 1 of the Charter establishes as the organization's primary objective the maintenance of international peace and security and provides for the possibility to take "*effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace*". Since the provisions outlined, it can be concluded that the phrase 'maintaining international peace and security' as outlined in Article 1 of the Charter has little bearing on Democracy, due to the legal considerations as well as the need not to disturb political relations with other states, particularly the Soviet Union. Indeed, as will be demonstrated in this article, the identification of a concept of Democracy was one of the factors that slowed down the preparatory work for the 1948 Universal Declaration.

At this juncture, it is important to meticulously examine the remaining paragraphs of Article 1 to ascertain whether there is a reference to Democracy or a legal definition. Article 1(2) of the Charter assigns the organization the purpose to "*develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace*". The provision assigns the organization the task of promoting friendly relations among states, as well as the possibility of taking action to strengthen universal peace. Furthermore, the right (or principle) of self-determination of peoples is included among the appropriate instruments for promoting friendly relations among nations. Today, the principle of self-determination of peoples has acquired customary character and is primarily based in the United Nations Charter, as reiterated in the preceding paragraphs. During the preparation of the Charter, the meaning of this principle was debated. It is noteworthy that states sought to ascertain whether the principle would be guided by the freely expressed will of peoples to choose their own form of government or by the right of peoples under colonial rule to unite with a state, integrate with a state, or become independent (right of secession)[7].

The prevailing orientation which subsequently influenced the present text of Article 1(2), is characterized by the affirmation of a nexus between the principle of 'equality of peoples' and the ri-

in Oriente. La Carta non è tanto il frutto ideale pacifista e wilsoniano quanto delle nuove esigenze storiche che il fallimento della sicurezza societaria e le paurose proporzioni e l'intensità della ultima conflagrazione hanno crudamente mostrate». MIELE, Mario, Primo commento alla Carta delle Nazioni Unite, *Rivista di Studi Politici Internazionali*, Vol. 13, 1946, p. 201-210.

6 «La pace è configurata non soltanto come assenza di guerra, ma anche come processo di tendenziale eliminazione delle cause di conflitto». MARCHISIO Sergio, *L'Onu: Il diritto delle Nazioni Unite*, Il Mulino, II Edition, 2012, p. 55-57.

7 See UNCIO VI, 296, Doc. 343, I/1/16. Avaiable at https://digitallibrary.un.org/ [Last consultation on July 26,2025]

ght of self-determination. In other words, as stated in the UN Charter, the principle of self-determination encompasses the right of peoples to 'govern themselves' and to freely determine their political status. Therefore, following a comprehensive analysis of the preparatory work for the UN Charter and the declarations of states, it is challenging to extrapolate the legal meaning of the term 'Democracy' from Article 1(2) of the Charter. Instead, the principle of self-determination, a concept primarily recognized at the international level by the UN Charter, could be argued to emphasize the importance of the people's aspirations rather than the adoption of a democratic model aimed at exercising this right. Therefore, regardless of external or internal valence, there are no elements in the UN Charter that would lead to self-determination being a democratic concept or even a Right to Democracy[8].

Article 1(3) of the UN Charter gives the organization the purpose to "*achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion*". The provision does not refer to maintaining international peace and security, but to cooperating to solve economic, social, and humanitarian problems at the international level. In addition, Article 1(3) aims to promote cooperation to encourage respect for human rights and fundamental freedoms regardless of sex, race, or religion. It is important to note that, during the preparatory work, the states paid special attention to the term 'international problems' to avoid including problems that were only relevant at the national level. This was because the organization's main objective was to ensure international peace and security. It could also be argued that adopting a democratic form of government is a choice that belongs to the state under international law. Therefore, it may be challenging to categories it as an 'international problem' under Article 1(3).

Finally, Article 1(4) sets out the organization's responsibility for establishing a center to coordinate the activities of nations aimed at achieving the goals set out in previous paragraphs.

In the absence of a discernible correlation between Article 1 of the UN Charter and Democracy, it is important to direct attention to Article 2 of the Charter. This is because it may be possible to establish a legal meaning for the term 'Democracy' by examining this provision. A primary analysis of Article 2 demonstrates that the organization's primary objective is to maintain international peace and security. Indeed, Article 2(1) of the Charter states that the Organization is founded on "*the principle of the sovereign equality of all its Members*" and to secure for each of them the rights and benefits deriving from their status as Member States "*shall fulfil in good faith the obligations assumed by them in accordance with the present Charter*", according to paragraph 2. Paragraphs 3 and 4 require States to settle international disputes by peaceful means "*in such*

8 This clarification may be necessary because an important doctrine that became widespread in the years before and after the fall of the Berlin Wall affirmed the international right to democratic governance. Among the arguments supporting this doctrine was the idea that democracy is linked to the self-determination of peoples. FRANCK, the main proponent of these doctrine, under consideration, argued that the principle of self-determination of peoples evolved as «the right of a people organized in an established territory to determine their collective political destiny in a democratic manner, would have internationally favored the formation of the right to democratic governance». FRANCK, Thomas. M., The emerging Right to Democratic Governance, *The American Journal of International Law*, Vol. 86, n. 1, 1992, p. 46-91.

a manner that international peace and security, and justice, are not endangered" and to refrain in their international relations "*from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations*"[9]. Lastly, Article 2 (7) makes it clear that "*Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter*".

Article 2 refers to concepts that have the capacity to contribute to the maintenance of peace and international security. It should be emphasized that Article 2 recognizes the principle of the sovereign independence of States. It is a fundamental principle of international law that each state has exclusive competence over its own internal affairs. Furthermore, the principle of the sovereign independence of States aligns with the fundamental principle of 'reges superiorem non recognoscentes'. This principle can also be understood as the 'prohibition of discrimination', meaning that each state has the right to contribute to the Organization's decisions through its various institutions[10].

Consequently, a thorough reading of Articles 1 and 2 of The United Nations Charter might make it difficult to ascertain the legal content of the term Democracy. Probably, this difficulty stemmed from the need to promote the maintenance of international peace and security at the San Francisco Conference. The identification of a particular concept of Democracy, or the expression of a predilection for a 'specific type of Democracy', could have occasioned a retardation in post-World War II developments at that juncture[11].

2.2- Universal Declaration of Human Rights and International Covenant on Civil and Political Rights: Democracy and the Right to Political Participation

The earliest occurrence of the term 'Democracy' within the UN legal framework can be found in the Universal Declaration of Human Rights (UDHR), which was adopted by the General Assembly in Resolution 217 (III) on December 10, 1948. In accordance with Article 21 of the Declaration, everyone has the right to participate

9 Paragraph 5 requires "*All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action*". Paragraph 6 requires "*The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security*". See Charter of the United Nations. Available at https://digitallibrary.un.org/ [Last consultation on July 26,2025]

10 «Art. 2 purports to provide legal 'principles' that create binding obligations of both the Organization and its members, which, in the area of international peace and security, are also extended to non-members (Art. 2 (6)). These principles also delineate, to a certain extent, the jurisdiction of the Organization from the freedom of action of the 'sovereign equals', is States, who are its members (paras 1 and 7). In other words, the principles provide the means to achieve the purposes». SIMMA, Bruno, KHAN, Daniel-Erasmus, NOLTE, George, PALAUS, Andreas, *The Charter of the United Nations, A commentary*, Oxford, Third Edition, 1, 2012, p. 122-123.

11 «The main stages in the construction of the United Nations system occurred in parallel with the development of the war conflict and were conditioned by the dynamics of inter-allied relations. "Le Nazioni Unite rimanevano dunque strettamente connesse agli esiti del conflitto, il progetto rooseveltiano prevedeva infatti la nascita dell'ONU come alleanza di guerra che si trasformava in organizzazione internazionale mentre la guerra era ancora in corso». MUGNAINI, Marco, *ONU: una storia globale*, Franco Angeli, n.2, 2021, Pag. 75.

in the government of their country, directly or through freely chosen representatives (paragraph 1) and the right of equal Access to public service in his country (paragraph 2). Furthermore, the third paragraph specifies that: "*the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures*".

To facilitate a comprehension of the concept of Democracy as articulated in the UDHR, it is necessary to consider the preparatory work. In this context, reference should be made to the *Draft Universal Declaration*, which was submitted to the delegates on December 16, 1947. Articles 26 and 27 of the draft Universal Declaration provided for the right of everyone to participate in the government of their country and specified that the state should guarantee this right through periodic, free, fair, and secret elections[12]. From the outset, the Soviet Union's delegation articulated its discord with the draft, asserting that it failed to adequately guarantee fundamental human rights. Furthermore, it also reserved the right to submit its own proposal for the Declaration of Human Rights later.

The delegations' divergent views on these concepts resulted in a meeting during Session III. The meeting was of particular significance as it saw considerable discussion of the concept of Democracy. During the meeting, the Chilean delegation argued that the word 'Democracy' should be removed from the draft because it is not clearly defined in international law. The Lebanese delegation shared this view. In this phase, the statements made by PAVLOV, the representative of the Soviet Union, were significant. According to PAVLOV, Democracy meant "*the participation of the citizens of a State in the work of its government*". He also specified that at an international level Democracy was "*the product of a society and not a model imposed from outside*". Furthermore, the French delegation stated that the concept of Democracy that emerged from the meeting was based on the idea of "*government of the people, by the people, for the people*"[13]. Therefore, it could be observed that, at this point, the concept of Democracy, based on citizens participating in the community's political activities, began to emerge. This concept has the potential to foster a "common vision" amongst the various delegations, including that of the Soviet Union. Furthermore, the article on which the delegations had differing views was Article 2, which concerns the 'Democratic State'[14].

It could be argued that the concept of Democracy, as defined by the right to 'periodic and genuine elections' and interpreted as participation in the community's political activities, began to emerge with the UDHR. Firstly, from a legal perspective, it is crucial to acknowledge that while the 1948 Declaration lacked legal binding, its status as a non-mandatory document signified a pivotal starting point for subsequent initiatives aimed at recognizing and guaranteeing the fundamental rights of the individual. Secondly, it should be noted that Section 3 of the standard is characterized by excessively generic terminology,

12 The draft recalled the US proposal that had been submitted a few weeks earlier. See E/CN.4/36, November 26, 1947. Available at https://digitallibrary.un.org/ [Last consultation on July 26,2025]

13 See E/CN.4/SR.51. Available at https://digitallibrary.un.org/ [Last consultation on July 26,2025]

14 Article 2 of the Draft Declaration, following a proposal submitted by the delegations of the United States, Panama and the Philippines, specified that 'in the exercise of his rights, everyone is limited by the rights of others and by the just requirements of the democratic state'. However, not all states agreed with this formulation, starting with the delegation of the Soviet Union.

from which it is difficult to derive a well-defined concept of 'will of the people' and 'genuine elections. Consequently, it could be argued that Article 21 of the 1948 UDHR identifies mechanisms to promote Democracy. The concept of Democracy that emerges from Article 21 is the right to "*periodic and genuine elections*".

The concept of Democracy, as delineated in Article 21 of the Universal Declaration of Human Rights and based on citizens' participation in their community's political activities, is also enshrined in the *International Covenant on Civil and Political Rights* (ICCPR)[15]. The Covenant was adopted in New York on December 16, 1966. It was opened for signature with the International Covenant on Economic, Social and Cultural Rights on December 16, 1966, and it entered into force in March 1976.

Prior to the examination of the provision, it may be necessary to consider the work that preceded the 1966 Covenants. This can be done by following the approach taken in this paper with the United Nations Charter and the 1948 Universal Declaration. In this regard, it is important to note that the elaboration of the Covenants took place in a historical context that was significantly different from that of 1945 and 1948. This context was characterized by a very different General Assembly membership, marked by the entry of developing countries to the United Nations[16]. Furthermore, it should be noted that the focus of states at this phase was on the Human Rights Committee, which was established under Article 28 of the Covenant[17].

Article 25 of the ICCPR provides that "*Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors*[18]*; (c) To have access, on general terms of equality, to public service in his country*". A thorough examination of the provision reveals that the Covenant not only acknowledges the right to participate in the political activities of the community as outlined in Article 21 of the UDHR, but also delineates procedural mechanisms aimed at promoting Democracy[19]. Indeed, Article 25, in addition to affirming the right to "*periodic and gen-*

15 The Covenant was opened for signature at New York on 19 December 1966. As of June 2025, 174 states are parties to the treaty. See https://treaties.un.org/ [Last consultation on July 26,2025]

16 The elaboration and approval of the Covenants received more and better support than the 1948 Declaration, when the great Western powers had more influence. The geographical and political expansion of the 1966 Covenant, as well as the greater openness of states, are noteworthy. TUOSTO, Caterina, *Il sistema delle Nazioni Unite per la tutela dei diritti umani: limiti e proposte di riforma*, Editoriale scientifica, 2012, pp. 104-111.

17 See A/6546. Available at https://digitallibrary.un.org/ [Last consultation on July 26,2025]

18 «L'alinéa b) de l'article 25 énonce des dispositions spécifiques concernant le droit des citoyens de prendre part à la direction des affaires publiques en tant qu'électeurs ou en tant que candidats à des élections. Il est essentiel que des élections honnêtes soient organisées périodiquement, conformément à l'alinéa b), pour garantir que les représentants soient responsables devant les citoyens de la façon dont ils s'acquittent des pouvoirs législatives ou exécutifs qui leur sont dévolus». ZANGHI, Claudio, PANELLA Lina, *Les paradigmes démocratiques et les droits de l'homme dans le bassin de la Méditerranée*, Giappichelli editore, 2010, p. 43-73.

19 «The General Comment provides the jurisprudence that gives teeth to the Covenant's obligation to hold "genuine periodic elections". It establishes a checklist that, if followed, will result in a functioning electoral democracy-and, if combined with adherence to the other obligations in the basic human rights treaties, a functioning liberal democracy». RICH R., Bringing Democracy into International Law, Journal of Democracy, Vol. 12, n. 3, 2001, pp. 20-34. See also KHALIFA, A. Alfadhel, The

uine elections", specifies that they "*shall be by universal and equal suffrage and held by secret ballot, guaranteeing the free expression of the will of the electors*".

Article 25(1) recognizes the right of every citizen to participate in the conduct of public affairs. It is thus important to understand the implications of this right. In this regard, the General Comment on Article 25 adopted by the Human Rights Committee at its 1510th meeting on 12 July 1996 (during its LVII Session) and published by the Office of the UN High Commissioner for Human Rights is relevant. The General Comment clarifies that the participation in public affairs, as delineated in Article 21(a), is a comprehensive notion that encompasses the exercise of political power. According to the General Comment, article 21(a) refers to the exercise of legislative, executive, and administrative power, covering all aspects of public administration and the formulation and implementation of policies at international, national, regional, and local levels[20]. Furthermore, the General Comment states that the constitution or laws of the state should determine the allocation of powers and how citizens exercise their right to participate in the conduct of public affairs. It could thus be argued that the rule is indicative of a prevailing trend in which citizens play an active role in the conduct of public affairs, either by serving as members of legislative bodies or by holding elected office[21].

It could also be argued that, unlike the terminology employed in other international instruments, Article 25 of the ICCPR recognizes the rights referred to in the provision as belonging to the 'citizen' and not to the individual in a generic sense. This could be explained by the fact that the rights set out in Article 25 are contingent on citizenship status. Nevertheless, this does not obviate the possibility for States to extend these rights to non-citizens. Furthermore, according to a significant doctrine, the Covenant's decision to refer to citizens is closely linked to the right to vote and the necessity of ensuring the continuity of the democratic principles set out in Article 21 of the UDHR[22].

2.3- Resolution 62/7: Democracy as a universal value

To ascertain whether a concept of Democracy can be identified within the UN framework, it is important to direct one's attention to Resolution 62/7, which was adopted by the General Assembly on November 8, 2007. This resolution is significant for two reasons. Firstly, World Democracy Day was established, and it is now celebrated by the United Nations and its member States on 15 September each year. Secondly, it confirmed the

Privilege to Democracy in International Law, *Journal of the Philosophy of International Law*, Vol. 7, n. 2, 2016.

20 The General Comment also extends the scope of this right to public debate and dialogue with political representatives. See CCPR/C/21/Rev.1/Add.7, Office of the High Commissioner for Human Rights.

21 "Public affairs extend to the exercise of political power, specifically in the exercise of legislative, executive, and administrative powers". TOWLE, Zachary, Why Article 25 of the International Covenant on Civil and Political Rights Should Be Explicitly Excluded from Derogation under Article 4, *Suffolk Transnational Law Review*, Vol. 41, n. 2, Summer 2018, p. 479-538.

22 BOUGHMAR affirmed that : «la précision permet de bien distinguer la citoyenneté de la nationalité dont elle découle et à laquelle chaque enfant à droit en vertu de l'article 24(3) du Pacte. Dans le même temps, l'article 25 permet de rappeler implicitement que l'octroi de la nationalité et donc celui de la citoyenneté reste à la discrétion de chaque état Partie». BOUGHMAR, Mouloud, Article 25, *Le Pacte International relatif aux droits civils et politiques, Commentaire article par article*, sous la direction d'Emmanuel Decaux, Economica, 2011, p. 529-560.

orientation expressed by the General Assembly in resolutions adopted between 1994 and 2006[23].

A comprehensive examination of the resolution reveals several significant aspects. These could support the development of a concept of Democracy at the international level. Primarily, it should be noted that Resolution 62/7 stressed that "*democracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing*". Secondly, the Resolution reaffirmed that "*democracy is a universal value based on the freely expressed will of people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives*".

In Resolution 62/7, the plenary institution of the United Nations reaffirmed that while democracies share common features, there is no single model of Democracy and that "*democracy does not belong to any country or region*". It also reaffirmed "*the necessity of due respect for sovereignty, the right to self-determination and territorial integrity*". In accordance with Resolution 62/7, it can be argued that a single model of Democracy does not emerge in public international law. In addition, the General Assembly acknowledged the importance of respecting the principle of sovereignty.

Nevertheless, it should also be noted that the General Assembly recognized the efforts of the United Nations and its member States to promote Democracy. Indeed, the General Assembly sought to encourage States to share their experiences in accordance with the principles set out in the UN Charter. These activities are also in line for funding from the *United Nations Democracy Fund* (UNDEF), a trust fund established in 2005 to promote Democracy around the world[24]. It is also noteworthy that Resolution 62/7 was adopted by consensus. This demonstrated that the member States were in accord regarding the concept of Democracy outlined in the Resolution. The statements issued by several States, including Russian Federation, were of particular significance. These States expressed support for the resolution's content and affirmed that the United Nations should undertake a path aimed at promoting and consolidating Democracy[25].

Consequently, it could be argued that Democracy within the UN framework is "*universal value based on the freely expressed will of people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives*". This concept is also in line with Resolution 2625 (XXV) adopted by the General Assembly, on October 24, 1970. The General Assembly has reaffirmed the principles of international law as set out in the UN Charter. The following principles are of relevance in this context: the importance of the principle of non-intervention in the internal affairs of the State, as well as respect for political independence and territorial integrity[26]. In view of the

23 Resolution 49/30 of December 7, 1994; Resolution 50/133 of December 20, 1995; Resolution 51/31 of December 6, 1996; Resolution 52/18 of November 21, 1997; Resolution 53/31 of November 23, 1998; Resolution 54/36 of November 1999; Resolution 55/43 of November 27, 2000; Resolution 56/96 of December 14, 2001; Resolution 56/269 of March 27, 2002; Resolution 58/13 of November 17, 2003; Resolution 58/281 of February 9, 2004; Resolution 60/253 of May 2, 2006; Resolution 61/226 of December 22, 2006. Available at https://digitallibrary.un.org/ [Last consultation on July 26,2025]

24 See https://www.un.org/democracyfund/ [Last consultation on July 26,2025]

25 See A/62/PV.46. Available at https://digitallibrary.un.org/ [Last consultation on July 26,2025]

26 ARANGIO-RUIZ affirmed that: «The impact of the declaration on existing international law—and in particular on the law of the United Nations (and mainly on the Charter)—can thus be described in the sense that the declaration could be considered per

considerations, it is important to note that there is not a single, universally applicable model of Democracy. Nevertheless, it is possible to assert that the concept of democracy that is emerging is the right to 'political participation'.

III. THE CONCEPT OF DEMOCRACY IN THE COUNCIL OF EUROPE AND THE ORGANIZATION OF AMERICAN STATES: INTERPRETATIONS BY THE EUROPEAN COURT OF HUMAN RIGHTS AND THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Following an analysis of the concept of Democracy within the legal framework of the United Nations, it is pertinent to examine two inter-regional organizations: the Council of Europe and the Organization of American States (OAS). This analysis could assist in determining whether the two organizations share a common concept of Democracy, and whether this concept could be utilized to promote a dialogue between them. The Additional Protocol to the European Convention on Human Rights and the American Convention on Human Rights are two examples of this. To ascertain whether a shared concept could have facilitated dialogue between Europe and Latin America, reference could be made to the legal systems of these two organizations. While the study could have also considered the European Union, it has opted to focus exclusively on the Council of Europe and the Organization of American States to avoid unduly broadening the scope of the research.

3.1- The European Convention on Human Rights and Article 3 of the Additional Protocol No. 1

The first instrument that could be analyzed is the European Convention on Human Rights (ECHR). It was signed in Rome on November 4, 1950, by the 13 countries of the Council of Europe[27] and it came into force on September 3, 1953[28]. The ECHR was adopted to protect civil and political rights.

se neither as a part of customary or general international law, nor as an authentic determination or interpretation of custom or treaty. The declaration places itself below general—written or unwritten— international law, below existing treaties, and, in particular, below the Charter of the United Nations. That does not exclude, of course, that the declaration could have an impact on the formation, development and application of rules of international law, whether customary or conventional. This relationship between the declaration's provisions on one side and the United Nations Charter on the other, and between the declaration and other rules or principles of international law, is confirmed by paragraphs 2 and 3 of the declaration». ARANGIO-RUIZ, Gaetano, *The United Nations Declaration on Friendly Relations and the System of the Sources of International Law*, Sijthoff & Noordhoff International Publishers B.V., ALPHEN AAN DEN RIJN, The Netherlands, 1979.

27 The Council of Europe was created in 1949 with 10 founding members. It is Europe's oldest intergovernmental organisation, representing 46 Member States. The creation and early work of the Council of Europe was in part a reaction to the serious human rights violations encourented in Europe during World War II. SCHMAL, Stefanie, BREUER, Martner, *The Council of Europe: Its Law and Policies*, Oxford University Press, 2017.

28 The first 13 States that signed the European Convention on Human Rights (ECHR) on November 4, 1950, were Belgium, Denmark, France, Greece, Ireland, Iceland, Italy, Luxembourg, the Netherlands, Norway, Sweden, the United Kingdom and Turkey. Until June 2025, the ECHR has been ratified by Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Moldova, Monaco, Romania, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, Russian Federation. On 16 March 2022, the Committee of Ministers of the Council of Europe decided that the Russian Federation had ceased to be a member of the Council of Europe. See https://www.echr.coe.int/ [Last consultation on July 26,2025]

The Preamble of the ECHR states that "*fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy*"[29]. Even though the Convention was adopted after the 1948 Universal Declaration, the Preamble makes no explicit reference to the right to "*periodic and genuine elections*". This choice could be characterized by a fear of encroaching on areas traditionally reserved for States. In other words, the identification of a possible well-defined concept of Democracy at the time could have had a deleterious effect on good international relations.

Nevertheless, the relevant elements that lend support to a concept of Democracy can be found in the Additional Protocol No. 1 to the European Convention on Human Rights. It was opened for signature on March 20, 1952, and it came into force on May 18, 1954[30]. Article 3 of Additional Protocol No. 1 states: "*The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature*". The provision establishes the undertaking to organize free elections by secret ballots, thereby ensuring that individuals can exercise their right regarding the choice of the legislative body. Therefore, it could be argued that the individual rights protected by Article 3 are the right to vote and stand for election in parliamentary elections, and the right of the elected candidate to benefit from parliamentary elections. They meet the standards set out in the text of the European Convention on Human Rights[31].

A reading of Article 3 of the Additional Protocol No. 1 delineates a concept of Democracy that is in line with what has been affirmed in the UN framework. The European Court of Human Rights identified this Article as being of paramount importance within the ECHR system, as it establishes a fundamental principle that is intrinsic to the concept of Democracy[32]. Its objective is twofold: firstly, to ensure the protection of individual rights; and secondly, to safeguard public interests[33].

29 The preamble to the Convention asserts that European countries have a common heritage of political tradition, ideals, freedom and the rule of law, which are the principles of liberal democracy and the underlying values of the Convention itself. Hence, it is fair to say that the Convention was designed to maintain and promote the ideals and values of a democratic society. Moreover, the Convention was to achieve all this by providing a collective guarantee, if not of all applicable rights and freedoms, then at least of those considered "essential for a democratic way of life". ZAND, Joseph, The Concept of Democracy and the European Convention of Human Rights, *Indiana International & Comparative Law Review*, Vol. 27, n. 1, 2017, pp. 15-42.

30 Until May 2025, the Additional Protocol has been ratified by Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Moldova, Romania, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Turkey, Ukraine, United Kingdom, Russian Federation. It has been signed by Monaco and Switzerland. On 16 March 2022, the Committee of Ministers of the Council of Europe decided that the Russian Federation had ceased to be a member of the Council of Europe. See https://www.echr.coe.int/ [Last consultation on July 26,2025]

31 STARITA, Massimo, Art. 3, *Protocollo addizionale, Commentario breve alla Convenzione europea dei diritti dell'uomo*, Bartole, Sergio, De Sena, Pasquale, Zagrebelsky, Vladimiro (ed.), Padova, 2012.

32 O'CONNEL, Rory, *Law, Democracy and the European Court of Human Rights*, Cambridge University Press, October 2020.

33 Unlike the majority of other Convention rights, it is primarily concerned with a positive obligation – to hold democratic elections. «There is a strong link with Article 10: free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system». LEACH, Philip, *Taking a Case to the European Court of Human Rights*, Oxford University Press, Third Edition, 2011, Pag. 430. See also *Bowman vs. UK*, No. 24839/94, para. 42.

The European Court of Human Rights has clarified that Article 3 is applicable solely in the context of the election of a "legislature". The provision appears to impose an obligation on the states. However, in *Mathieu-Mohin and Clearfayt vs. Belgium* the Court found that this concept does not refer to the national parliament alone but must be interpreted "*in the light of the constitutional structure of the State in question*" and, therefore, the distribution of legislative power[34]. Furthermore, Article 3 of the Additional Protocol encompasses both the right to vote and the right to stand for election to the legislature[35]. In this regard, the Court has affirmed that the evaluation of electoral legislation must be contextualized within the broader framework of the States's political evolution[36]. This clarification may be necessary since it appears that the court has tended to exclude the application of Article 3 to referendum[37]. It may thus be concluded that the rule is inapplicable also to local elections[38].

It is crucial to note that the Court in *Gorzelik vs. Poland* affirmed the role of civil society for the proper functioning of Democracy. As it has been stated many times in the Court's judgments "*not only is political democracy a fundamental feature of the European public order but the Convention was designed to promote and maintain the ideals and values of a democratic society*"[39].

Another salient point that merits attention is the Court's focus on the electoral process. While the Court acknowledged the practical organization of the elections, it also considered the intricacies of the matter or the features specific to each State. The Court emphasized that the proper management of electoral rolls is an essential prerequisite for conducting free and fair elections. In the case of *Georgian Labour Party vs. Georgia*, the Court emphasised that "*The effectiveness of the right to stand for election is undoubtedly contingent upon the fair exercise of the right to vote. The mismanagement of an electoral roll could diminish the candidates' chances of standing equally and fairly for election*"[40]. Furthermore, to safeguard the pluralism, the Court emphasized that the candidates "*must be ensured a reasonable opportunity to present their candidates at elections*"[41].

34 See *Mathieu-Mohin and Clearfayt vs. Belgium*, No. 9267/81, Series A, No. 113, para. 47.

35 In *Hirst vs. UK* the Court of Human Rights has noted that: «there are numerous ways of organizing and running electoral system and a wealth of differences, inter alia, in historical development, cultural diversity and political though within Europe which it is for each Contracting State to mold into their own democratic vision». See *Hirst vs UK*, No. 74025/01.

36 See Russian Conservative Party of Entrepreneurs and Others vs. Russia, No. 7602/06, *Georgian Labor Party vs. Georgia*, No. 9103/04, *Political Party Patria and Others vs. Moldova*, No. 5113/15.

37 «The Court has declared complaints concerning referendums inadmissible, mostly on the grounds that the complaint in question is incompatible ratione materiae with the provisions of the Convention. There have also been cases in which the Court has declared the complaint inadmissible ratione personae. For instance, in the Ouardiri case, the Court held that a Swiss Muslim and Muslim associations were not entitled to claim against the vote on the Swiss ban on minarets, because they could not sufficiently prove that they were victims of a violation of the Convention as they did not intend to build minarets». KOVÁCS, Kristza, Parliamentary Democracy by Default: Applying the European Convention on Human Rights to Presidential Elections and Referendums, *Jus Cogens*, Vol. 2, 2020, pp. 237-258. See also *Ouardiri and Ligue des Musulmans de Suisse v Switzerland*, Judgement of the Court of 8 July 2011

38 See *X v. UK*, No. 5155/71; *Booth-Clibborn v. UK*, No. 11391/85; *Gordizia v. Moldova*, No. 53180/99; *Cherepkov v. Russia*, No. 51501/99; *Salleras Llineares v. Spain*, No. 52226/99.

39 See *Gorzelik and Others v. Poland*, No. 44158/98, Para. 89.

40 See *Georgian Labour Party v. Georgia*, No. 9103/04.

41 See *United Communist Party of Turkey v. Turkey*, No. 19392/92, para. 44.

A reading of Article 3 might suggest that the State must guarantee freedom of expression for voters. Indeed, in *Aziz vs. Cyprus* the Court affirmed that "*electoral rules should not exclude some persons or groups of persons from participating in the political life of the country and, in particular, in the choice of the legislature*"[42]. Furthermore, the Court suggested that states may improve their electoral systems and the choice for a specific way to organize this right fall within the margin of competence of States[43].

Another key issue on which the Court ruled was the importance of considering the broader context[44]. The variety of situations stipulated in the constitutions and electoral legislation of a multitude of member states of the Council of Europe demonstrates the diversity of possible approaches in this area[45]. For instance, in *Ždanoka v. Latvia*, the Court took the view that the applicant's former position in that party, coupled with her stance during the events of 1991, still warranted her exclusion from standing as a candidate to the national parliament. It specified that "*Article 3 of Protocol No. 1 is phrased in collective and general terms, although it has been interpreted by the Court as also implying specific individual rights. The standards to be applied article for establishing compliance with Article 3 of Protocol No. 1 must therefore be considered to be less stringent than those applied Articles 8-11 of the Convention*". Furthermore, the Court finds that "*the impugned restriction pursed aims compatible with the principle of the rule of law and the general objectives of the Convention, namely the protection of the State's independence, democratic order and national security*" [46].

It can thus be deduced that the right under discussion may be subject to limitations, with a view to ensuring the integrity of the state and the effective functioning of public institutions. Such limitations would be determined by the specific circumstances prevailing at any given time. For instance, in *Miniscalco v. Italy*, the applicant had been refused candidacy in regional elections as a consequence of his ultimate conviction for abuse of office[47]. In this case, the Court determined that the contested measure was consistent with the pressing necessity to guarantee the effective operation of public authorities. In a case with notable similarities, *Galan v. Italy*, the applicant had been removed from an elected position consequent to a criminal conviction for corruption[48].

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42 See *Aziz v. Cyprus*, No. 69949/01 and *Mathieu-Mohin and Clearfayt v. Belgium*, No. 9267/01.

43 «La Convention n'impose donc pas aux états l'obligations d'adopter un système électoral détermine, tel le scrutin proportionnel ou le scrutin majoritaire, et s'accommode de la variété des system électoraux européens : l'article 3 ne garantit pas une juste représentation». SUDRE, Frédéric, *Droit européen et international des droits de l'homme*, Presses Universitaires de France, XI édition, 2012, Pag. 639. See also *Hirst vs. The United Kingdom*, No. 74025/01, para. 62, and *Mathieu-Mohin and Clearfayt v. Belgium*, No. 9267/01, para. 54.

44 «The cases demonstrate the complexity of dealing with extremist political parties whose goals or activities are characterized as being incompatible with the human rights and democratic principles on which they rely in order to convey their message, but which would be at great risk if they were to be elected». STEINER, Henry J., ALSTON, Philip, GOODMAN, Ryan, *International Human Rights in Context: Law, Politics, Morals*, Oxford University Press, Third Edition, 2008, p. 980-1001.

45 MOWBRAY, Alastair, "Contemporary Aspects of the Promotion of Democracy by the European Court of Human Rights", *European Public Law*, Vol. 20, 3, 2014, p. 469-498.

46 See *Ždanoka v. Latvia*, No. 58278/00, Para. 115, Para. 118.

47 See *Miniscalco v. Italy*, No. 55093/13. See also *Hirst v. The United Kingdom*, No. 74025/01, *Anchugov and Gladkov v. Russia*, No. 11157/04, and *Frodl v. Austria*, No. 22201/04.

48 See *Galan v. Italy*, No. 63772/16. «Non è stata considerate compatibile con l'art. 3 Protocollo n. 1 l'esclusione generale di coloro che sono sotto tutela o curatela per infermità mentale, indipendentemente dalla considerazione della gravità dell'infermità». ZAGREBELSKY, Vladimiro, CHENAL, Roberto, TOMASI, Laura, *Manuale dei diritti fondamentali in Europa*, Il

Furthermore, in *Campagnano v. Italy*, the Court has imposed restrictions on this right intended as a moral rebuke[49], and in *Tanase v. Moldova* to safeguard the position of the political party[50].

Consequently, it can be argued that the concept of Democracy emerging in Article 3 of Additional Protocol No. 1 is the right to 'political participation'. It is consistent with the preceding paragraph's discussion of the United Nations framework. Furthermore, within the framework of the Council of Europe the concept of Democracy has dual purposes: firstly, to ensure the protection of individual rights and the 'political participation'; and secondly, to safeguard public interests, the state's independence, democratic order, and national security. In this way, the Court "*serve the interests of each State's democratic system by maintaining its openness, integrity, and effectiveness*"[51].

It is important to note that the wording of Article 3 of the Firs Additional Protocol offers guarantees like those of Article 25 of the International Covenant on Civil and Political Rights. Furthermore, Article 3 is characterized by its extensive scope, which is attributable to the comprehensive case of the European Court of Human Rights, wherein the rights and guarantees are delineated with great particularity. The concept of Democracy that is being considered is not limited in a restrictive sense to the right to vote, but rather extends to 'political participation'.

3.2- The American Convention on Human Rights and the Inter-American Democratic Charter

The second instrument that can be analyzed is the American Convention on Human Rights (or Pact of San José). It was signed at San José (Costa Rica) on November 22, 1969, and it came into force on July 18, 1978. Within the framework of the OAS[52], this instrument is the principal mechanism for the protection of human rights[53].

Article 23, paragraph 1, of Pact of San José affirms the "*right to Participate in Government*" and it states: "*Every citizen shall enjoy the following rights and opportunities: a) to take part in the conduct of public affairs, directly or through freely chosen representative; b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; c) to have access, under general conditions of equality, to the public service of his country*". In addition, Article

Mulino, p. 377-381.

49 See *Campagnano v. Italy*, No. 77955/01.

50 See also *Tanase v. Moldova*, No. 7/08; *Vito Sante Santoro v. Italy*, No. 36681/97; *Vincenzo Tajani v. Italy*, No. 3638/02.

51 See speech by Judge Costa on June 5, 2008, Available at https://www.echr.coe.int/ [Last consultation on November 12,2025]

52 «The Organization of American States (OAS) is a regional multilateral organization focused on human rights, electoral oversight, social and economic development, and security in the Western Hemisphere. This international organization's object was to foster mutual understanding and co-operation among the nations of the western hemisphere. This led to the adoption on 30 April 1948 by the Ninth International Conference of American States, at Bogotá, Colombia, of the Charter of the Organization of American States. This co-ordinated the work of all the former independent official entities in the inter-American system and defined their mutual relationships». HEATH-BROWN, Nick, Organization of American States (OAS), The Statesman's Yearbook, 2016, p. 66-67.

53 «The States Parties have two general obligations under the Convention: the obligation to respect and ensure human rights, and the obligation to adopt the domestic laws necessary to this end». HENNEBEL, Ludovic, The Inter-American System for Human rights: operations and achievements, *International Human Rights Law in a Global Context*, GOMEZ ISA, Felipe, DE FEYETER, Koen (eds.), HumanitarianNet, 2009, p. 805-852.

23, paragraph 2, specifies that the law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only based on age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings. A thorough analysis of Article 23 of the Convention suggests that its concept of Democracy is closely aligned with that expressed in Article 21 of the Universal Declaration of Human Rights, and in Article 25 of the International Covenant on Civil and Political Rights.

It could be argued that this concept aligns with the provisions of the OAS Charter. It is asserted that the Charter restricts the meaning of representative Democracy to the selection of governing officials, perceiving this as a vital component for the stability, peace, and development of the region[54]. However, it is important to note that not all-American States have ratified the Convention, and that adherence to the Charter of the OAS does not entail automatic adherence to the Pact of San José[55]. This has not encouraged the accession of new States to the organization.

It should be noted that the OAS General Assembly has clarified certain aspects related to the concept of Democracy as it emerges from the Charter of the OAS through Resolution 1080 (XXI-0/91). This Resolution was adopted in Santiago de Chile at the fifth plenary Session, held on June 5, 1991. It affirms that: "*The Preamble of the Charter of the OAS established that representative democracy is an indispensable condition for the stability, peace, and development of the region; One of the basic purposes of the OAS is to promote and consolidate representative democracy, with due respect of for the principle of non-intervention*"[56]. Furthermore, in Resolution 1080 the General Assembly resolved to instruct the Secretary General to call for the immediate convocation of a meeting of the Permanent Council in the event of any occurrences giving rise to the sudden or irregular interruption of the democratic political institutional process or the legitimate exercise of power by the democratically elected government of any of the Organization's member States. The purpose of this meeting, within the framework of the Charter, is to examine the situation and decide on convening an ad hoc meeting of the Ministers of Foreign Affairs or a special session of the General Assembly, all of which must take place within a ten-day period. Therefore, it can be posited that the General Assembly has endorsed a concept that is congruent with that examined in this paper. In view of the above, the General Assembly of the OAS sought to establish a mechanism to promote Democracy within the organization, whilst respecting the principle of non-interference in the internal affairs of States[57].

54 Authoritative doctrine has stated that "Confined within the restrains of the OAS Charter, holding elections is an element of sovereignty, a right that every state has to organize itself as it sees fit", and to "develop its cultural, political and economic life freely and naturally". LLOYD, Marchall B., *Organization of American States: Law, Policy, and Governance in the Western Hemisphere*, William S. Hein & Company, Incorporated, 2023.

55 Among the states that have not acceded to the Convention are the United States and Canada, as they wish to avoid judicial review of their legal acts. Indeed, the Covenant provides for review by the Inter-American Commission. TANZARELLA, Palmina, Il sistema interamericano di protezione dei diritti umani nella prassi della Corte di San Josè, *I diritti dell'uomo*, Vol. 1, 2010, p. 12-29.

56 Organization of American States General Assembly Resolution 1080 (XXI-O/91): Representative Democracy, 5th June 1991 (AG/RES. 1080 (XXI-O/91), OXIO 267.

57 LEVITT, Barry S., A Desultory Defense of Democracy: OAS Resolution 1080 and the Inter-American Democratic Charter, *Latin American Politics and Society*, Vol. 48, n. 3, September 2006.

Within the framework of the OAS, attention should also be paid to the Inter-American Democratic Charter (IADC). The Charter was adopted by the General Assembly of the OAS in Lima on September 11, 2001. It asserts that Democracy should be regarded as the prevailing form of government throughout the Americas and signifies a collective pledge to uphold and fortify the democratic system in the region. Article 1 states: "*The peoples of the Americas have a right to democracy, and their governments have an obligation to promote and defend it*".

The IADC supports a concept of Democracy that is consistent with the arguments presented in the earlier sections of this paper. This could stem from two aspects. Firstly, the adoption of the IADC was preceded by the Declaration of Quebec City in April 2001. In this Declaration, the OAS adopted a multi-themed Plan of Action at the Quebec Summit, recognizing the importance of ensuring free, fair, and regular elections[58]. Secondly, the preamble of the Charter emphasizes the importance of the American Convention on Human Rights, as it contains principles of freedom, equality, and social justice, which are intrinsic to Democracy. Article 23 of the IADC outlines a concept of Democracy that aligns with what has been affirmed in the UN legal framework. It states: "*Member States are responsible for organizing, conducting, and ensuring free and fair electoral processes. Member States, in the exercise of their sovereignty, may request that the Organization of American States provide advisory services or assistance for strengthening and developing their electoral institutions and processes, including sending preliminary missions for that purpose*". Therefore, the IADC affirms the right to political participation. To promote this right, the Organization of American States can offer assistance for the strengthening and development of member States 'electoral institutions and processes[59].

Within the OAS legal framework, the concept of Democracy — understood as encompassing the right to political participation and the right to vote — has been affirmed by the Inter-American Court of Human Rights[60] in Yatama v. Nicaragua case. The Court examined whether Nicaragua's refusal to allow members of an indigenous regional political party to register for municipal elections (and the subsequent appeals procedure under Nicaragua's Electoral Law No. 331) violated the victims' rights to judicial guarantees under Article 8(1) and judicial protection under Article 25 of the

58 The Plan of Action at the Quebec Summit calling for members to: Share best practices and technologies with respect to increasing citizen participation in electoral process… while safeguarding the electoral process that allows for full participation of all persons to vote without discrimination; Enhance electoral mechanism by way of technology to guarantee impartiality and verification of elections with support from the OAS and other organization deploying election when requested; and Convene meetings, with support from the OAS and Inter-American Development Bank ("IDB"), with experts to examine issues related to election results regarding political party registration, access of political parties to funding and to the media, campaign financing, and other natters. LLOYD, Marchall B., Ob. Cit., p. 13.

59 Furthermore, «Articles 17 and 18 establish, in the first place, a preventive mechanism of guaranteeing the democratic institutions, the main characteristic of which is the consent of the state for any kind of action that the OAS organs will undertake. The use and the eventual effectiveness of the preventive mechanism are somewhat questionable, since it requires the consent of the respective state, which is not very often the case». SARANTI, Vasiliki, "A System of Collective Defense of Democracy: The Case of the Inter-American Democratic Charter", *3 Goettingen Journal of International Law*, n. 2, 2011, p. 675-714.

60 Located in San Jose, the Inter-American Court of Human Rights was established by the American Convention on Human Rights. It is an autonomous judicial organ of the Inter-American human rights system, whose judges are elected by a majority if Member States to the Convention. See Article 53, American Convention on Human Rights.

American Convention on Human Rights (ACHR), in conjunction with Articles 1(1) and 2. It has considered the right to vote: "*uno de los elementos esenciales para la existencia de la democracia y una de las formas en que los ciudadanos ejercen el derecho a la participación política*" (paragraphe 198). Furthermore, it was specified by the Court that this right encompasses the possibility for all citizens to elect their representatives "*libremente y en condiciones*" (freely and without conditions)[61]. Therefore, it could be argued that the decision is based on the right of political participation[62].

It is important to note that the Inter-American Court of Human Rights affirmed the centrality of the IADC. Indeed, in *San Miguel Sosa et. al. v. Venezuela* the Court noted that "*the democratic principle permeates the Convention and, in general, the Inter-American System, in which the relationship between human rights, representative democracy and political rights in particular, is embodied in the Inter-American Democratic Charter*"[63].

In the context of the jurisprudence of the Inter-American Court of Human Rights, attention could be paid to a request submitted in December 2024 by Guatemala for an advisory opinion to the Inter-American Court of Human Rights. It addresses, among other things, whether States: "*are States obliged to guarantee and promote democracy as a human right protected by the American Convention on Human Rights, as a means for social, political and economic development and the effective exercise of human rights; or, under both assumptions*?". Guatemala argues that the answer to this question is affirmative, citing the Inter-American Democratic Charter and the political rights enshrined in the American Convention on Human Rights (ACHR). Guatemala also refers to *obiter dicta* in the case law of the Inter-American Court of Human Rights (IACHR), as well as to academic literature and statements by the Mexican National Human Rights Commission[64]. According to Guatemala, there is a human right to Democracy that is in line with current developments in international law.

Furthermore, this state recognizes the right to Democracy referred to in Article 26 of the Inter-American Democratic Charter. This right can be traced back to the concept of representative Democracy. A critical examination of the Court's reasoning is important if the legitimacy of the assertion that a right to Democracy exists is to be determined. However, it is reasonable to expect that the Court will reaffirm the principles establi-

61 Inter-American Court of Human Rights, *Yatama v. Nicaragua*, Judgment of June 23, 2005. See also CAMPBELL, Maria Sophia, The Right of Indigenous Peoples to Political Participation and the Case of Yatama v. Nicaragua, *Arizona Journal of International & Comparative Law*, Vol. 24, n. 2, 2007, p. 499-540. See also Advisory Opinion OC-6/86 of May 9, 1986, No. A 6, para. 34.

62 Authoritative academic scholarship has compared the Yatama v. Nicaragua judgment with jurisprudence from the European Court of Human Rights. It has been observed that the European Court of Human Rights adopted a comparable interpretative approach, particularly in the wake of the Yatama v. Nicaragua judgment. IORNS MAGALLANES, Catherine J., Indigenous Political Representation: Latin America and International Human Rights Law, *Journal of New Zealand Studies*, Special Issue Parallels Pats, Convergent Futures? Comparing New Zeland, Iberian and Latin American, GILMOUR N., MURRAY W.E. (eds.), 2011, p. 93-107.

63 AMOR VÁZQUEZ, Ecab, In defense of a human right to democracy: Reflections on the pending Advisory Opinion before the Inter American Court of Human Rights, *Blog of European Journal of International Law*, July 2025. Available at https://www.ejil.org/ [Last consultation on July 26,2025]. See *San Miguel sosa et al. v. Venezuela*, No. C 348.

64 GARCIA ESCOBAR, Gabriela, Towards a Human Right to Democracy? Some Initial Thoughts on Guatemala's Request for Advisory Opinion to the Inter-American Court of Human Rights, *Blog of European Journal of International Law*, June 2025. Available at https://www.ejil.org/ [Last consultation on July 26,2025]

shed in its previous jurisprudence, commencing with *Yatama v. Nicaragua* case, and will remain within the interpretative framework established by the Inter-American Democratic Charter.

In addition, in the context of the jurisprudence of the Inter-American Court of Human Rights, further analysis of other rulings by the Court relating to the concept of Democracy can be undertaken. In *Palacio Urrutia et al. V. Ecuador* the Court affirmed that "*there is a close relationship between freedom of expression and democracy, since they allow the existence of pluralism in the public sphere, which in turn is based on a spirit of openness and tolerance*"[65]. Furthermore, the Court emphasized that the right to freedom is the "*cornerstone upon which the very existence of a democratic society rests*"[66].

In *Gadea Mantilla v. Nicaragua* the Court noted that "*el derecho al voto es esencial para la democracia, permitiendo a los ciudadanos expresar su voluntad y ejercer su participación política. Para el alcance de una democracia representativa es necesaria la existencia de institucionalidad y mecanismos de carácter procedimental que permitan y aseguren el efectivo ejercicio del derecho, previniendo o contrarrestando situaciones o prácticas legales o de facto que impliquen formas de estigmatización, discriminación o represalias para quien lo ejerce*"[67].

From the Court's perspective, Democracy should be understood not only as a system of voting, but also as a concept encompassing the 'political participation' in the Democratic life of the state. This concept is based on the promotion of representative Democracy as fundamental to the selection of government officials, considering it a key component for stability, peace, and development in the region. Furthermore, the Inter-American Court of Human Rights' decision to interpret a concept of Democracy that encompasses freedom of expression.

A thorough analysis of the American Convention on Human Rights and the Additional Protocol to the European Convention on Human Rights illuminates a concept of Democracy that is predominantly characterized by the right to 'political participation'. This approach has been confirmed by the case law of both the European Court of Human Rights and the Inter-American Court of Human Rights. Furthermore, it is consistent with the UN legal framework.

The concept of Democracy that emerges in the Inter-American Charter of Human Rights is similarly expansive in nature. In this instance, however, it can be argued that the objective is to prevent and consolidate Democracy. Within the context of this inter-regional organization, the concept of Democracy is characterized by its extensive scope, which is closely associated with the principle of freedom of expression[68]. Accor-

65 See *Palacio Urrutia et al. v. Ecuador*, No. 13.015. See also *Álvarez Ramos v. Venezuela*, para 124, No. C 380.

66 See *Palacio Urrutia et al. v. Ecuador*, No. 13.015, para. 87.

67 See *Gadea Mantilla v. Nicaragua*, No. C 543, para. 87. See also *San Miguel Sosa y otras v. Venezuela*. No. C 348, and Resolución de la Corte Interamericana de Derechos Humanos de 6 de febrero de 2017, párr. 111.

68 «El Sistema Interamericano de Derechos Humanos (SIDH) y, en concreto, el Convención Interamericana de Derechos Humanos (CADH) recogen de forma amplía el derecho a la libertad de expresión. Esta última, en su artículo 13, reconoce dicho derecho mediante un extenso precepto. En el mismo se protege la libertad de pensamiento y expresión, por cualquier medio; se prohíbe la censura previa, aunque no las responsabilidades ulteriores, siempre que estén fijadas por ley y sean necesarias para asegurar los derechos o la reputación de los demás o busquen asegurar la seguridad nacional, el orden o la moral públicas; se permite la censura previa de espectáculos públicos con el objeto de proteger la moral de la infancia o la adolescencia; y

ding to the court, this right has dual significance. Firstly, it refers to the right to freely express one's opinion. On the other hand, it is linked to the need to obtain accurate information, particularly in an electoral context. This concept, therefore, refers to the need to ensure the proper exchange of ideas and information[69]. The pluralism that strengthens Democracy[70].

In conclusion, it can be argued that Democracy should be understood as the right to 'political participation', as evidenced by the aforementioned tools.

IV. DEMOCRACY AND PROMOTING A DIALOGUE BETWEEN EUROPE AND LATIN AMERICA

A comprehensive analysis of the concept of Democracy, as evidenced in the legal frameworks of the United Nations, the Council of Europe, and the Inter-American Charter of Human Rights, along with the pertinent jurisprudence, has suggested the potential value of assessing the efficacy of this concept in fostering dialogue between Europe and Latin America.

It is crucial to note that there is not an international instrument that fosters dialogue between these inter-regional organizations (the Council of Europe and the Organization of American States) with an explicit focus on Democracy. This absence may be associated with the complexity of identifying a predetermined model of Democracy or the presence of a right to Democracy. Indeed, the concept of Democracy that emerges from the instruments analyzed in this work is simply 'the right to political participation'. This concept is shared by both regions, and it is aligned with respect for sovereignty and the principle of non-interference in internal affairs. It is consistent with the findings of the analysis of the judgments of the European Court of Human Rights and the Inter-American Court of Human Rights, as referenced in the previous paragraph. Moreover, this concept has the potential to facilitate dialogue between the two inter-regional organizations. Specifically, it has the potential to not only promote Democracy but also to safeguard it.

As previously noted, there is currently no international instrument in place to promote an explicit dialogue between the two regional organizations with a focus on Democracy. Nevertheless, there are international instruments, among other objectives, aimed at promoting and counteracting the backsliding of Democracy in these organizations. Furthermore, as demonstrated in the preceding section, there is a shared concept of Democracy in the two regions. This could encourage dialogue between them.

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se prohíbe toda propaganda a favor de la guerra, así como la apología del odio nacional, racial o religioso que inciten a la violencia y acciones similares». HIGUERA, Rubén, García, "Libertad de expresión, equidad y democracia: análisis de la jurisprudencia de la Corte Interamericana de Derechos Humanos", *Andamios*, 17, núm. 2 (2020), p. 17-57.

69 See *Kimel v. Argentina*, Series C No. 164, para. 53; *Ivcher Bronstein vs. Perú*, Series C No. 680388, para. 146; *Ricardo Canese vs. Paraguay*, Series C No. 111, para. 77; *Granier y otros (Radio Caracas Televisión) vs. Venezuela*, Series C No. 293, para. 135.

70 «De modo natural se vinculan pluralismo y liberalismo para enfatizar el deber de proteger la diversidad de creencias, concepciones del mundo y proyectos de vida. Es decir, de colocar a resguardo del poder político las diferencias que se refieren al ámbito privado. En esta lectura, el centro de gravedad es puesto en la dimensión negativa de los derechos, de protección de la expresión singular de las ideas y formas de vivir. Sin embargo, en términos amplios, la concepción pluralista de la democracia que se propone apunta más bien a la función positiva de la opinión pública, a su valor político». SAHUÌ, Alejandro, "Democracia y Corte Interamericana de Derechos Humanos: Participación, oposición y acceso a la justicia", *Araucaria. Revista Iberoamericana de Filosofía, Política, Humanidades y Relaciones Internacionales*, 46, 2023, p. 461-482.

It is reasonable to hypothesize that this dialogue is already underway and has been developing over the last few years. Form a formal perspective, the following instruments could facilitate dialogue between the two organizations: A Memorandum of Understanding between the Council of Europe and the Organization of American States (OAS); The San José Declaration, which establishes a Permanent Forum of Institutional Dialogue between the European Court of Human Rights, the IACHR and the African Court on Human and Peoples' Rights; The San José Declaration II, in turn, serves as a reaffirmation of the institutional dialogue objective articulated in the San José Declaration of July 18, 2018.

The Memorandum of Understanding between the Council of Europe and the Organization of American States was signed on September 19, 2011, in New York. Article 1, paragraph 2, states that The Secretariat General of the Council of Europe and the General Secretariat of the OAS agree to co-operate in areas of common concern[71]. Furthermore, it also identifies some matters as priority areas in which co-operation should be developed. These include: "*democracy building electoral matters, good governance and civil society*". This objective is confirmed by the concept of democracy that emerged in the framework of the two organizations. Indeed, it is evident that the measure demonstrates a commitment to promoting Democracy through electoral processes, good governance, and civil society. This is aligned with the right to political participation.

The San José Declaration is a Joint Declaration of the Presidents of the African Court on Human and Peoples' Rights, the European Court of Human Rights, and the Inter-American Court of Human Rights. It was signed in San José on the July 18, 2018, on the 40th Anniversary of the entry into force of the American Convention on Human Rights and the creation of the IACHR. The presidents have agreed to establish a Permanent Forum of Institutional Dialogue between their respective Courts. It aims to straighten the protection of human rights and the access to international justice of the people to contribute "*to state efforts to strengthen their democratic institutions and human rights protection mechanism*"[72]. It could be argued that the purpose of the forum was also to promote the jurisprudential dialogue between the courts to promote the protection of human rights and strengthen democratic institutions[73]. Furthermore, the pivotal role of the forum was reaffirmed in 2019 in the Kampala Declaration[74].

The San José Declaration II was signed in San José on May 26, 2023, during the *Dialogue among Regional Human Rights Courts*. The three courts have agreed on the following: The States of the three regions under their respective jurisdictions

71 Available at https://www.echr.coe.int/regional-human-rights-courts [Last consultation on July 26,2025]

72 The Permanent Forum will meet in private and public sessions at the headquarters of each Court on a rotating basis, as often as the participating Courts deem necessary. The private work meetings will be sessions in which the three Courts will engage in dialogue on: a) the principal institutional, normative, and jurisprudential developments of each Court; b) the impact, difficulties and challenges of the work undertaken by each Court, and c) mechanisms to strengthen cooperation between the Courts, among other issues. Declaration of San José. Available at https://www.oas.org/en/ [Last consultation on October 20,2025]

73 CASTELLANA, Angelo, Organizzazione degli Stati Americani: Le attività nel 2018, *La Comunità Internazionale*, Vol. 75, No. 4, 2020, Pag. 738.

74 The Kampala Declaration was signed on October 29, 2019, during the *First International Human Rights Forum* between the African Court on Human and Peoples' Rights, the European Court of Human Rights, and the Inter-American Court of Human Rights. Available at https://www.african-court.org/wpafc/kampala-declaration-october-2019/ [Last consultation on October 20,2025]

must ensure the effective protection of democracy, human rights, and sustainable development; Democracy, good governance and effective access to justice and independence of the judiciary are essential for the protection and realization of human rights and effective Democracy underpinned by the rule of law. Therefore, unlike the first Declaration, the San José Declaration II states that "*democracy and good governance are essential for the protection and realization of human rights*". Furthermore, it also references "*an effective democracy underpinned by the rule of law*"[75].

The potential for these instruments to facilitate dialogue between the European Court of Human Rights and the Inter-American Court of Human Rights is important. It could also serve to facilitate constructive dialogue with the African Court of Human and Peoples' Rights. However, it should be noted that this dialogue has been in existence for some time. Indeed, the San José Declaration recognizes "*the antecedents of institutional and jurisprudential dialogue, the previous shared work and efforts between the African Court on Human and Peoples' Rights, the European Court of Human Rights and the Inter-American Court of Human Rights that allowed the sharing of the conceptual and jurisprudential standards of each Court for the common benefit*".

The doctrine has posited that the dialogue between these two courts has evolved over time, with interpretations of the concept of Democracy also developing in relation to freedom of expression. In this regard, the dialogue has been able to promote and to support the "*democratic standard*" and the "*standard of double protection*"[76]. Indeed, reports published by the courts demonstrate a discourse within these institutions that has also had a bearing on the interpretation of the term "Democracy". Therefore, this dialogue is already underway, and the fact that the concept of Democracy emerging in the IADC has also been taken up by the European Court demonstrates its importance. While there are common characteristics shared by the two courts' concepts, there is also a slight difference in the approaches taken by these courts. This approach has enriched the concept of Democracy for both.

After the San José Declaration, the three courts began publishing the *Joint Law Report*. The purpose of this report is twofold: firstly, to highlight the points of convergence between the three international courts, and secondly, to identify certain points of divergence, thereby enabling an open dialogue to be maintained between them.

In *Joint Law Report* 2019 the Inter-American Court of Human Rights emphasized that its jurisprudence also encompasses the rights to freedom of thought and expression as components of the concept of Democracy. Indeed, in the case of *Álvarez Ramos v. Venezuela*, the Inter-American Court reiterated its consistent case law that: "*the right to freedom of thought and expression*

75 For an analysis of the various objectives of the courts see: San José Declaration II. Available at https://www.echr.coe.int/ [Last consultation on October 20,2025]

76 According to this authoritative doctrine «The American jurisprudence has been able to draw significantly on the experience of the Court of Human Rights. Although the Inter-American Court has also stressed that it is often useful to compare the American Convention with other international instruments to discuss specific aspects concerning the manner in which a certain right has been formulated, that approach should never be used to read into the Convention restriction that are not grounded in its text». BERTONI, Eduardo Andres, The Inter-American Court of Human Rights and the European Court on Human Rights: A Dialogue on Freedom of Expression Standard, *European Human Rights Law Review*, Vol. 3, 2009, p. 332-359.

is established in Article 13 of the Convention. Also, Article 4 of the Inter- American Democratic Charter, an instrument that interprets the OAS Charter and the Convention itself, considers this a fundamental component of democracy"[77]. Furthermore, following in accordance with a line of jurisprudence that had been affirmed in the case of *Herrera Ulloa v. Costa Rica*, the IACHR specified that: "*Without effective freedom of expression, exercised in all its forms, democracy is enervated, pluralism and tolerance start to deteriorate, the mechanisms for control and complaint by the individual become ineffectual and, above all, a fertile ground is created for authoritarian systems to take root in society*"[78].

To complete this analysis on the dialogue between the courts, it would be pertinent to direct one's attention to the *Joint Law Report* 2020 and *Joint Law Report* 2021.

In *Joint Law Report* 2020 the European Court of Human Rights affirmed a concept of Democracy that pays particular attention to elections and procedural safeguards as a means of ensuring observance with the rule of law. Indeed, in *Mugemangango v. Belgium* the Court emphasized that "*Procedural safeguards for the effective examination of electoral disputes serve to ensure the observance of the rule of law in this field, and hence the integrity of the election, so that the electorate's confidence and the legitimacy of parliament are guaranteed. In that respect, these safeguards ensure the proper functioning of an effective political democracy and thus represent a preliminary step for any parliamentary autonomy*"[79]. In addition, the report cites a case that aligns closely with the Inter-American Court of Human Rights' jurisprudential orientation concerning the concept of Democracy. In the case of *Magyar Kétfarkú Kutya Párt v. Hungary* the European Court of Human Rights confirmed the necessity to promote and safeguard the freedom of expression "*to protect democracy itself, since any restriction on freedom of expression in this context without sufficiently foreseeable regulations could harm open political debate, the legitimacy of the voting process, its results and, ultimately, the confidence of citizens in the integrity of democratic institutions and their commitment to the rule of law*"[80]. It is conceivable that the present case could serve to confirm the presence of a dialogue between the courts. A comparable interpretation was offered in the previously mentioned Inter-American Court of Human Rights cases.

In *Joint Law Report* 2021 the Inter-American Court provided clarification on the concept of Democracy. Firstly, it asserted that in Inter-American System there is a relationship between representative democracy, human rights, and political rights[81]. In *Petro Urrego v. Colombia* the Court proceeded to analyses the various interpretations of Article 23 of the Inter-American Charter of Human Rights. According to the IACHR Article 23 of the IADC recognizes the rights of citizens, which have an individual and collective dimension, pro-

77 See *Álvarez Ramos v. Venezuela*. Judgement of August 30, 2019, para. 91.

78 See *Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C, No. 107, para. 116.

79 See *Mugemangango v. Belgium*, GC, No. 310/15, 10 July 2020.

80 See *Magyar Kétfarkú Kutya Párt v. Hungary*, GC, No. 201/17, 20 January 2020.

81 The Inter-American Democratic Charter refers to the peoples' right to democracy and stresses the importance, under representative democracy, of the permanent participation of citizens within the framework of the legal and constitutional order in force. Furthermore, it indicates that one of the constituent elements of representative democracy is «the access to and the exercise of power in accordance with the rule of law». African Court on Human and Peoples' Rights, European Court of Human Rights, Inter-American Court of Human Rights, Joint Law Report 2021, Pag. 80.

tecting both those who participate as candidates and their electors. Furthermore, the Court offers an interpretation aimed at promoting the right to political participation. Specifically, the IACHR held that: "*the State must facilitate ways and means to ensure that these political rights can be exercised effectively, respecting the principles of equality and non-discrimination. Political participation may include diverse and wide-ranging activities that the population carries out individually or on an organized basis in order to intervene in the appointment of those who will govern a State or who will be in charge of managing public affairs, as well as to influence the development of State policies through direct participation mechanisms or, in general, to intervene in matters of public interest, such as the defense of democracy*"[82].

It is important to note that the cases referred to in these reports should be read in conjunction with the judgments analyzed in the previous paragraph. Indeed, they could be regarded as the zenith of the numerous rulings to which they refer. The concept that emerges from this analysis is Democracy understood as 'political participation'. This concept has been corroborated within the framework of the United Nations and within the framework of the two inter-regional organizations referenced in this paper.

Considering the analysis presented in this section, it may first be argued that the relationship between the European Court of Human Rights and the Inter-American Court of Human Rights constitutes one of the areas where meaningful dialogue between Europe and the Americas can be fostered. This dialogue has evolved in recent years and is likely to be further strengthened in the future. Indeed, it has been analyzed that the dialogue between the two courts has been important in promoting a concept of Democracy that has evolved over the years.

Firstly, regarding the concept of Democracy, it may be observed that the framework established by the European Convention on Human Rights is in alignment with that of the Inter-American system. Indeed, these courts uphold a concept of Democracy understood as the 'right to political participation'. It is argued that this Democracy possesses the capacity to function as a catalyst for fostering dialogue between Europe and Latin America because the two organizations subscribe to a common conceptualization[83].

Secondly, it should be noted that although the Inter-American Court has developed a broad interpretation of Democracy. The concept of Democracy that emerges within the framework of the OAS places particular emphasis on freedom of expression[84]. In this regard, reference can be made to the *Joint Statement on the Media and Elec-*

82 See *Petro Urrego v. Colombia*, Judgment of July 8, 2020, Series C No. 406, para. 93.

83 «En democracia se exige que las elecciones sean también plurales, en tanto que deben permitir la participación de diversas fuerzas políticas y ofrecer una variedad de opciones que representen el espectro completo de ideas e intereses presentes en la sociedad. Solo bajo estas condiciones, las elecciones pueden ser considerarse verdaderamente democráticas y capaces de reflejar la voluntad genuina del conjunto del electorado». SENTÍ NAVARRO, Carla, La libertad de expresión durante periodos de campana electoral, *Derechos humanos: una declaración*, coordinador Anón, José, Garcia, *tirant lo blanch*, 2025.

84 «La libertad de expresión sería un instrumento esencial para la democracia, ya que la segunda solo puede ser calificada como tal cuan do los individuos pueden formarse una opinión y decidir conociendo las opciones más relevantes en liza. Esta función dentro del proceso democrático obliga a interpretar el contenido del derecho de forma que tenga en cuenta su rol a la hora de estructurar la esfera pública». HIGUERA, Rubén, García. "Libertad de expresión, equidad y democracia: análisis de la jurisprudencia de la Corte Interamericana de Derechos Humanos", Andamios, 17, núm. 2 (2020), p. 24.

tions. Indeed, in *Joint Statement on the Media and Elections* the organization emphasized that "*States should put in place effective systems for preventing threats and attacks against the media and others exercising their right to freedom of expression, and for investigating such attacks when they do occur, bringing those responsible to justice and compensating victims. This obligation takes on particular significance during election periods*"[85].

The rulings of the two courts underscore a necessity to uphold the principle of non-intervention in States' internal affairs. This position is in line with international law and consistent with the content of United Nations General Assembly Resolution 62/7. Indeed, public international law attaches importance to the principle of sovereign equality of States and the principle of non-interference in the internal affairs of States. It is important to note that the rulings cited did not specify the measures that the state should take. Indeed, despite the Inter-American Court's promotion of a broad concept, it respects the principle of non-interference in internal affairs. In the context of the European Court of Human Rights, it is noteworthy that the Court has repeatedly underscored the importance of ensuring that 'political participation' is facilitated through established mechanisms. However, it fails to provide any specifications as to what these mechanisms might be. Rather, it leaves the determination of their nature to the individual states.

The concept that emerges in judicial proceedings and is consistent with international law suggests that organizations should refrain from interfering with the mechanisms that guarantee the right to 'political participation'. These internal mechanisms may regulate this right. For instance, in the case *Castafieda Gutman v. Mexico* the Inter-American Court noted that "*In the sphere of political rights the guaranteed obligation is especially relevant and is implemented, among other mechanisms, by the establishment of the organizational and institutional aspects of the electoral processes, and by the enactment of norms and the adoption of different types of measures to implement the rights and opportunities recognized in Article 23 of the Convention*"[86]. Furthermore, in the ECHR suggested avoiding excessive fragmentation of the political landscape. For instance, the conditions relating to the number of signatures required for the submission of an electoral list do not constitute an obstacle to the people's opinion on the choice of their representatives[87].

Thirdly, an important element emerging from the dialogue mechanisms between the two Courts, as well as from their respective interpretations, is the shared understanding that '*democracy and good governance are essential to ensuring the rule of law*'[88]. This is one of the reasons why dialogue on Democracy is always so significant. Moreover, it has been posited that, to ensure the preservation of Democracy, this right to political participation may be subject to limitations. It is evident that such restrictions do not constitute

85 Available at https://www.oas.org/en/topics/default.asp [Last consultation on November 12,2025]

86 VIDMAR, Jure, "Judicial Interpretations of Democracy in Human Rights Treaties", *Cambridge Journal of International and Comparative Law*, 3, No. 2, 2014, p. 532-555. See also *Castafieda Gutman v. Mexico*, Series C No. 2202/2012.

87 See *Asensio Serqueda v. Spain*, No. 23151/94; *Federación Nacionalista Canaria v. Spain*; No. 56618/00; *Mihaela Mihai Neagu v. Romania*, No. 66345/09.

88 BEHREND, Jaqueline, WHITEHEAD, Laurence, *Mounting Pressures on the Rule of Law: Governability for Development and Democracy in Latin America*, Routledge Taylor & Francis Groups, 2025.

an impediment to the promotion of Democracy. Rather, they are measures that guarantee the consistent enjoyment of this right.

Thus far, the analysis has shown that the concept of Democracy as interpreted by the European Court of Human Rights (ECHR) and the Inter-American Court of Human Rights is similar, in that both courts are based on instruments that aim to promote human rights in their respective contexts. This similarity is conducive to promoting dialogue between the two courts and facilitating the comparison and integration of their respective case law and interpretative practices. In a historical context characterized by the need to safeguard Democracy, dialogue between the two organizations represents, in my view, an opportunity to promote and consolidate Democracy.

To ensure a comprehensive overview within the framework of inter-regional these regional organizations, it is also important to mention two documents that are both very important in terms of the concept of Democracy. These demonstrate the potential for dialogue between the organisations.

In the context of the OAS, it is important to refer to a recent resolution by the Inter-American Commission on Human Rights. Resolution 1/2024 states that the activities of election observers contribute to protecting the rights enshrined in Article XX of the American Declaration of the Rights and Duties of Man and Article 23 of the American Convention on Human Rights, both of which mention the right to vote and to be elected by universal suffrage in periodic elections. This resolution can be analysed to reveal factors that can enrich the concept of democracy. Indeed, according to the Commission "*In the case of national observers, election monitoring is a form of political participation and a way of exercising political rights by looking after, defending, and fostering the principles that should prevail in election processes, including transparency, certainty, legality, fairness, and universal suffrage by secret ballot among a plurality of political options*"[89]. Therefore, it can be posited that these elements are consistent with the need to promote democracy, but also to safeguard it.

In the context of the Council of Europe, reference to the 'Venice Commission' is important. The European Commission for Democracy through Law, also known as the 'Venice Commission' is the Council of Europe's advisory body on constitutional matters. The primary function of the Commission is to collate, develop, and disseminate the constitutional and legal experience of its member states, thereby contributing to the development of a unified constitutional heritage[90]. In December 2024, the Commission published a report on the importance of election observers as defenders of human rights. The Commission estates that "*election observation is about assessing to which degree a State complies with international human rights law in organising and running elections, and it is therefore grounded in the international human rights obligations voluntarily adopted by the States. Election observers contribute to the enjoyment of human rights in the context of elections, and they can be thus considered human rights defenders*"[91].

89 See Resolución No. 1/2024, *Las personas observadoras como defensoras de derechos humanos*, CIDH, April 2024.

90 See https://www.coe.int/en/web/venice-commission [Last consultation on October 18,2025].

91 See Report *on election observers as human rights defenders*, CDL-AD(2024)039, Strasbourg, December 11, 2024. Available at https://www.coe.int/en/web/venice-commission [Last consultation on October 18,2025].

Consequently, within the framework of these two organizations, not only is the importance of the right to 'political participation' affirmed, but also the need to ensure that they are conducted properly. It is important to note that the observations articulated in this resolution by the Inter-American Commission were subsequently reaffirmed by the Venice Commission. It is thus apparent that the potential for dialogue between the two organisations has been significant over the years, and that this potential remains to be developed.

V. FINAL REFLECTIONS

As it was demonstrated in the preceding paragraphs, a concept of Democracy emerges that is in accordance with the legal framework of the United Nations, the European Convention on the Human Rights, and the American Convention on Human Rights. The conclusions of this analysis indicate the presence of a concept of Democracy that is common to the international organisations examined in this paper.

Following an examination of the concept of Democracy that emerges in the two inter-regional organizations and that could promote dialogue between them, this section of the paper presents some reflections.

The promotion of Democracy in Latin America has proven to be a challenging endeavor. Indeed, when considering the historical development of this region, it is possible to identify two distinct phases in the promotion of Democracy. The initial phase under consideration is that of the 1950s and 1960s. In this phase, several significant innovations were observed in several Latin American countries, including Chile, Uruguay, Costa Rica, Colombia, Peru, Venezuela, El Salvador, and Guatemala. It is characterized by several factors, including the establishment of the United Nations, the emergence of a new post-war cultural climate, and the values of Western democratic models, driven by the Allied victory in World War II. This phase is characterized by an absence of consolidation in the development of Democracy[92]. This was followed by a series of *coups d'état*. The emblem is representative of the *coup d'état* that took place on September 15, 1973. The political design implemented by Pinochet was based on respect for the pre-established order and hierarchies. A new model of statehood began to emerge, diverging from the political, economic, and social imagery previously promoted by Allende[93].

The second phase under consideration is that of 1990s and 2000s. A turnaround can be observed at this phase due to the necessity to focus on the economic sphere and the most effective means of promoting dialogue with the outside world[94]. In this context, attention began to be paid to the holding of free elections, the for-

92 CECCHERINI, Eleonora, Le democrazie incerte in America Latina. Le ragioni di un mancato consolidamento, *DPCE Online*, 3, 2020, p. 4057-4078.

93 LARRES, Klaus, *Dictators and autocrats, securing power across global politics*, Routledge, Taylors & Francis Group, 2021, p. 71-90.

94 «From an optimistic perspective and based on the post-Cold War reforms of the OAS, some academics argue that the PAS has become an important regional player. According to a more cautious interpretation, it may be argued that the creation of other subregional organizations, such as MERCOSUR or UNASUR, are attempts made by the Central and South American countries to build organizations that might be more democratic and effective at a sub-regional level than the in tackling their traditional problems as well as facing the global and regional challenges posed by the post-Cold War era». GUEDES DE OLIVEIRA, Marco, Aurélio, "Organizations of American States", LEVI, Lucio, FINIZIO Giovanni, VALLINOTO, Nicola (eds.), *The democratization of*

mation of constitutional governments and the protection of political rights. For instance, the constitutional reforms in Cuba and Venezuela, which were designed to promote participatory models, were of great significance[95]. Furthermore, in the context of democratic governance, it became crucial to ensure the autonomy of democratically elected governments from external influences, particularly those stemming from criminal activities.

The promotion of democracy in Europe was also initially a difficult undertaking. The evolution of the concept of Democracy in Europe following the Second World War was significantly influenced by the experience of totalitarianism, which resulted in the necessity to establish new guarantees. Furthermore, the relevant elements that lend support to a concept of Democracy can be found in the First Additional Protocol to the European Convention on Human Rights. This concept was established in a subsequent phase following the ECHR. The historical underpinnings of the European Convention on Human Rights (ECHR) can be traced back to a period where rights were predominantly understood in a defensive context, with the primary objective being the safeguarding of fundamental freedoms. Probably, identifying a well-defined concept of Democracy at that historical juncture could prove to be a challenging endeavor.

This brief reflection is very important to understand that a dialogue focused on Democracy is always an important opportunity. It has been so in the past and should continue to be so in the future.

It could be argued that the concept of Democracy that emerges from the instruments analyzed in this paper could be in line with the context described above. In this respect, the Inter-American Court of Human Rights' decision to interpret a concept of Democracy that encompasses freedom of expression may not be coincidental. Therefore, the promotion of a dialogue between Europe and America focused on Democracy could be a central area for future challenges, given the potential positive results that the dialogue between the two organizations has had and could continue to have. In the preceding paragraph, it was demonstrated that the concept of democracy that emerges in the IADC is interpreted in a manner that also incorporates freedom of expression. On the other hand, the European Court of Human Rights interprets the right to protection as a fundamental right that must be guaranteed. The two concepts under consideration are consistent with the concept of 'political participation'. This interpretation can be defined as a 'common bases', yet the various interpretations that the courts have given to the concept can be useful for promoting Democracy. Dialogue on democracy is always an important opportunity.

It should be noted that Democracy is one of the areas of study of the Latinobarómetro. It is an annual public opinion study that explores the perceptions, attitudes, behavior, and values of the population of 18 Latin American countries[96]. The study is based on surveys. The subjects explored

INTERNATIONAL INSTITUTIONS: first international democracy report, Centre for studies on federalism, Routledge, 2014, p. 412-418.

95 DELLA MALVA, Mirko, Democrazia o autoritarismo? La partecipazione popolare in America latina tra istanze innovative e derive populiste. I casi di Venezuela e Cuba, *Nomos. Le attualità nel diritto*, 3, 2024.

96 Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, Uruguay, and Venezuela.

encompass a wide array of topics, including, but not limited to, the economy, welfare, institutional trust, democracy, governance, and security. The study, undertaken to enhance the survey's efficacy, is conducted by Latinobarómetro Corporation[97] in collaboration with the United Nations Development Programme (UNDP)[98]. The most recent report highlights that even in countries with formal commitments to minority rights, a significant gap persists between these principles and actual conditions. The report argues that Latin Americans remain subject to a lingering authoritarian legacy that has endured for over three decades, despite multiple failed attempts at democratic transitions[99]. Consequently, despite the achievements over the years, a dialogue between Europe and America focused on Democracy has not yet ended and will have to continue in the future.

To conclude, it can be said that discussions between Europe and America should continue to focus on Democracy. Despite their distinct historical paths, both regions share a concept of Democracy understood as the 'right to political participation'. Although they share a common foundation, the two concepts of Democracy have different characteristics. Nevertheless, the dialogue between the regional courts has broadened their scope, revealing significant potential.

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97 Latinobarómetro Corporation a non-profit NGO based in Santiago de Chile. See https://www.latinobarometro.org/ [Last consultation on July 26,2025]

98 The United Nations Development Programme (UNDP) is the UN's global development network, advocating for change and connecting countries to knowledge, experience, and resources to help people build a better life. See https://www.undp.org/ [Last consultation on July 26,2025]

99 Avaiable at https://www.latinobarometro.org/ [Last consultation on July 26,2025]

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