

CJI/RES. 159 (LXXV-O/09)

**THE ESSENTIAL AND FUNDAMENTAL ELEMENTS
OF REPRESENTATIVE DEMOCRACY AND THEIR RELATION
TO COLLECTIVE ACTION WITHIN THE FRAMEWORK OF
THE INTER-AMERICAN DEMOCRATIC CHARTER**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

CONSIDERING that the General Assembly, in its resolution AG/RES. 2515 (XXXIX-O/09) took note “of the importance of the Committee’s continuing consideration of issues related to the Inter-American Democratic Charter and in particular ‘the promotion and strengthening of democracy’ by following up on the Inter-American Democratic Charter, assisting with its implementation by member states, supporting member states in their efforts to modernize and strengthen democratic institutions...”;

RECALLING that the Inter-American Democratic Charter declares in article 1 that “The peoples of the America have a right to democracy and their governments have an obligation to promote and defend it” and that “Democracy is essential for the social, political and economic development of the peoples of the Americas”;

BEARING IN MIND that article 2 of the Inter-American Democratic Charter sets forth that “The effective exercise of representative democracy is the basis of the rule of law and of the constitutional regimes...” and that “Democracy is essential for the social, political, and economic development of the peoples of the Americas”;

BEING AWARE also that articles 3 and 4 of the Inter-American Democratic Charter establish, although in a non-exhaustive manner, essential elements of representative democracy and the fundamental components of the exercise of democracy;

REAFFIRMING that in accordance with Resolution CJI/RES.I-3/95: “the international legal regulations with regard to the effective exercise of representative democracy in the States of the Inter-American System form a specific and special order;” and that “the effective exercise of representative democracy constitutes a legally protected interest or value in the Inter-American System”;

TAKING INTO ACCOUNT the Report of the General Secretary on the Inter-American Democratic Charter in fulfillment of resolutions AG/RES. 2154 (XXXV-O/05) and AG/RES. 2251 (XXXVI-O/06) [CP/doc.4184/07]; the Reports “Legal Aspects of the Interdependence between Democracy and Economic and Social Development” (CJI/doc.190/05 rev.3) and “Follow-up on the Application of the Inter-American Democratic Charter” (CJI/doc.317/09 corr.1), as well as the Report “Improving the Administration of Justice in the Americas: Protection of and Guarantees for Judges and Lawyers in the Exercise of their Functions” (CJI/doc.7/99);

REAFFIRMING Resolution CJI/RES.I-3/95 in which it is stated that: “The principle of non-intervention and the right of each State in the Inter-American System to elect its political, economic and social system with no outside intervention and to organize itself in the manner most convenient thereto may not include any violation of the obligation to effectively exercise Representative Democracy in the above-mentioned system and organization”;

RESOLVES:

1. To remind that the Inter-American Democratic Charter was conceived as a tool to update, interpret and apply the fundamental Charter of the OAS, and represents a progressive development of International Law.

2. To affirm the right of every State to choose its political, economic and social system without any outside interference and to organize itself in the way best suited to it. This right is limited by the commitment to respect the essential elements of representative democracy and the fundamental components of the exercise of such as enumerated in the Inter-American Democratic Charter as follow:

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

2.2 “Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy.

The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy.”

3. The Declaration of Santiago de Chile adopted at the Fifth Meeting of Consultations of Ministers of Foreign Affairs held in August 1959 enunciated some of the essential attributes of Democracy that are fully in effect and should be taken into account along with essential elements and fundamental components spelled out in the Inter-American Democratic Charter. Such attributes are:

“(1) The principle of the rule of law should be assured by the separation of powers, and by the control of the legality of governmental acts by competent organs of the state; (2) The governments of the American republics should be the result of free elections; (3) Perpetuation in power, or the exercise of power without a fixed term and with the manifest intent of perpetuation, is incompatible with the effective exercise of democracy; (4) The governments of the American states should maintain a system of freedom for the individual and social justice based on respect for fundamental human rights; (5) The human rights incorporated into the legislation of the American states should be protected by effective judicial procedures; (6) The systematic use of political proscription is contrary to American democratic order; (7) Freedom of the press, radio, and television, and, in general, freedom of information and expression, are essential conditions for the existence of a democratic regime; (...).”

4. To emphasize that there is a vital link between the effective exercise of representative democracy and the rule of law which is expressed concretely in the observance of all the essential elements of representative democracy and the fundamental components of the exercise of same.

Therefore democracy does not consist only in electoral processes, but also in the legitimate exercise of power within the framework of the rule of law, which includes respect for the essential elements, components and attributes of democracy mentioned above.

5. To point out that the risks to the democratic institutional political process or to the legitimate exercise of power (article 17 of the IADC); situations that might affect the development of democratic institutional political process or the legitimate exercise of power (article 18 of the IADC); breakdown of the democratic order (articles 19 and 21 of the IADC), and alteration to the constitutional order that seriously affects democratic order (articles 19 and 20 of the IADC) are situations which must be seen in the light of validity of the essential elements of representative democracy and the fundamental components of the exercise of same.

6. To indicate that, given the importance of the effective and transparent exercise of the judicial function in the democratic order, it is necessary to strengthen independent Judicial Powers

invested with autonomy and integrity, professional, non-partisan and subject to a non-discriminatory regime of selection.

7. To stress that the essential elements of representative democracy and the fundamental components of same are of great value in preventing and anticipating the very causes of the problems that affect the democratic system of government, in light of the Declaration of Managua for the Promotion of Democracy and Development [AG/DEC.4 (XXIII-O/93)].

8. The Committee will keep working on this matter.

This resolution was adopted unanimously at the session held on August 11, 2009, by the following members: Drs. Jaime Aparicio, Mauricio Herdocia Sacasa, Jorge Palacios Treviño, Hyacinth Evadne Lindsay, Fabián Novak Talavera, João Clemente Baena Soares, Freddy Castillo Castellanos, David P. Stewart, Ana Elizabeth Villalta Vizcarra and Jean-Paul Hubert.