
Is Democracy in Peril in the Americas?: The Demise of Tobar and the Resurrection of Estrada

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By the final years of the Cold War, most countries in the Americas started showing weariness of authoritarianism and civil strife, and the bright future ahead only seemed to allow for the consolidation of democracy. This general trend, evidenced in the outburst of democratic fervor that shaped most of the 1990s and the early 2000s, had a deep impact in the most remote latitudes of the continents, bringing dictatorships both from right and left to an end. Even Cuba, perhaps the most intransigent vestige of the Cold War years in the continents, seemed to exhibit some signs of progress, including the later reopening of the American Embassy in Havana in 2015¹ and the end of six decades of government by the Castro brothers.² The times of the “Washington Consensus,” characterized by economic opening and neoliberal policies, were followed by the “Pink Tide,” a shift towards democratically-elected governments with a clear inclination towards the left of the political spectrum. By the 2010s, a reverse trend came to question the predominance of the left, allowing for center- (if not outright) right politicians to grasp power through elections.

Though an alternation in the political orientation of governments is generally deemed healthy in any democracy, the political transitions of

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power have been problematic in the Americas as of late. The ideological battle seems so disputed that it is hard to tell whether there is any preponderance, and most of the countries in the continent seem to swing from one end of the range to the other in a haphazard fashion. As a result, the interaction between the different political forces shows a tendency towards antagonism, which is evidenced in the opposing definitions of democracy embraced by each group. Within these increasingly polarized societies, the most common outcome is the rise of authoritarianism, no matter the political orientation.

It comes as a natural consequence that international alliances change swiftly, making political alignments in accordance with the short-term goals of the administration in power rather than the long-term policies of the state. It is within this volatile political context that a problem—one purportedly overcome long ago in the region, the product of a commitment

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that once seemed rooted in the deep democratic convictions that permeated throughout the Americas—has come to the forefront again. The virulent arguments surrounding the recognition of governments have made their comeback, shattering what seemed to be a widespread consensus that had lasted for decades. In this sense, who is the legitimate government representing a society, what constitutes an interruption in the democratic order of a state,

and whether it should be validated or not are only some of the queries that the current scenario poses. The main idea of this work is to look into the political complexities the Americas are currently undergoing from an international law perspective and determine which are the prevailing rules when it comes to the recognition of governments.

RECOGNITION OF GOVERNMENTS

The sheer fact that “every independent State is entitled to be represented in the international sphere by a government”³ might seem self-evident.⁴ However, given that international law is a decentralized legal system in which states—its primary subjects—are sovereign and equal, finding universally acceptable rules that determine who has the authority to speak on behalf of each state is challenging since “[a]s a matter of legal

theory, the recognition problem involves nearly all the principles which we regard as fundamental to our system of international jurisprudence.”⁵ As recognition involves the government of one state recognizing the government of another state, it is relational in essence. The absence of clear legal rules—despite the involvement of agreed-upon principles—and a chaotic State practice⁶ have allowed for the use of recognition of governments as an instrument of international politics.

Moving away from international law to international politics implies further departing from the fundamental legal principle of sovereign equality of states, making recognition “a powerful weapon in the hands of the rich and strong state: an essential to the life of a government in a weak state.”⁷ In this regard, it is clear that the recognition of governments can be easily affected by the asymmetries of international politics while neutralizing the levelling effects of international law.

DIFFERENT APPROACHES TO RECOGNITION IN THE AMERICAS

In historical terms, two opposing doctrines dealing with the recognition of governments can be identified: the doctrine of legitimacy and the doctrine of effectiveness. Their origins can be traced to the foreign policy espoused by U.S. Founding Father Thomas Jefferson and the Holy Alliance—the coalition formed in the aftermath of the Napoleonic Wars by Austria, Prussia and Russia to contain the spread of the liberal principles of the French Revolution.

First, the doctrine of legitimacy maintains that “every government that comes to power in a country depends for its legality, not upon mere *de facto* possession, but upon its compliance with the established legal order of that country. Legality in municipal law determines the legality in international law.”⁸ Therefore, if a government rises to power through illegal means, it should not be recognized by the international community. This doctrine was best known as the Tobar doctrine, named after former Ecuadorian Minister of Foreign Affairs, Carlos Rodolfo Tobar y Guarderas, who in the first decade of the twentieth century affirmed that “governments which had risen to power through extra-constitutional means should not be recognized.”⁹ The upshot of the Tobar doctrine would be, therefore, “that a successful revolutionary regime should not be recognized until a constitutional reorganization of the country has taken place.”¹⁰ This idea permeated to such extent the Americas that it was also known as the “doctrine of constitutional legitimacy.”¹¹ The doctrine has had several names throughout its history. In addition to the Tobar doctrine, it has

also been dubbed the Wilson doctrine, named after former U.S. President Woodrow Wilson and implied in his famous 1913 Mobile Speech.¹² It has also been referred to as the Betancourt doctrine, as former President of Venezuela, Rómulo Ernesto Betancourt Bello expressed in the late 1950s and early 1960s that his country should sever its diplomatic relations with governments whose origin was extra-constitutional.

Regardless of titles or origins of the various doctrines of legitimacy in the Americas, one tenet is clear—before recognition is granted to a government, the recognizing state has to assess whether the government to be recognized has reached power through lawful means. It therefore becomes evident that in order to legally recognize a new government, the recognizing state must necessarily analyze the domestic legal system of the other country and form a conclusion about the legality of the political process. Besides giving a fair amount of leeway for political considerations and bargaining, this practice clearly impinges on the principle of non-intervention in the domestic affairs of states, one of the foundations of international law.

In contradiction to the doctrine of legitimacy, the doctrine of effectiveness advocates for the recognition of any government which has *de facto* control over the population of a territory, irrespective of the means through which power was seized. As a consequence, from this perspective, “[t]o hold that a government which establishes itself and maintains a peaceful administration, with the acquiescence of the people for a substantial period of time, does not become a *de facto* government unless it conforms to a previous constitution would be to hold that within the rules of international law, a revolution contrary to the fundamental law of the existing government cannot establish a new government.”¹³

In the context of the Americas, this position shaped what came to be known as the Estrada doctrine, named after former Minister of Foreign Affairs of Mexico, Genaro Estrada Félix, who in the early 1930s adopted it as Mexico’s approach to the recognition of governments. Estrada believed that recognition was “an insulting practice implying judgment upon the internal affairs of foreign States,” and declared that therefore, “the Mexican Government would henceforth confine itself to the maintenance or the non-maintenance of diplomatic relations with foreign governments without pronouncing judgment upon the legality of those governments.”¹⁴ In other words, it fully reflects the understanding that “so far as international law is concerned, the legality or otherwise of the revolution is a matter of indifference.”¹⁵

While both the Tobar and Estrada doctrines are from the early twentieth century, more modern approaches try to include additional aspects

when dealing with the recognition of governments, such as governance and human rights. In this sense, using recognition as an incentive would allow the international community to foster compliance with these higher standards.¹⁶ As a matter of fact, every time the government changes or is challenged in a state, the rest of the states have to enquire into certain elements in order to determine who are the authorities entitled to act on behalf of the population of that state; and these elements will depend on the theory embraced by the recognizing state.

Even though “[n]on-recognition of a particular regime is not necessarily a determination that the community represented by that regime does not qualify for statehood,”¹⁷ this does not mean that non-recognition has no consequences. Indeed, the effects of recognition (or the lack thereof) might differ depending on the government subject to it. In cases “where the degree of authority asserted by the new administration is uncertain, recognition by other states will be a vital factor. But where the new government is firmly established, non-recognition will not affect the legal character of the new government.”¹⁸ In other words, a new government may rely on recognition by external states for internal legitimacy.

LATIN AMERICAN ATTEMPTS TO INSTITUTIONALIZE THE RECOGNITION OF GOVERNMENTS

Despite the contradicting theoretical approaches to the topic of recognition of governments, it is important to clearly state that, if there is a specific “Latin American tradition”¹⁹ dealing with the matter, then it is beyond doubt influenced by the Tobar doctrine. In connection with this point, it must be noted that as early as 1907, Costa Rica, Guatemala, Honduras, Nicaragua and El Salvador signed the Additional Convention to the General Treaty of Peace and Amity in the context of the Central American Peace Conference.²⁰ According to its Article 1, the parties established their shared duty not to recognize any government that might seize power in any of the five signatory states through a *coup d'état* or a revolution against a recognized government. The United States, though not a party, gave its whole-hearted approval, as this commitment aligned with the Wilson doctrine of recognition.²¹ The principles enshrined in the 1907 Additional Convention were further developed in the 1923 Treaty of Peace and Amity, signed by the same five Central American republics.²² This Treaty added that “even if the people had constitutionally recognized their country, recognition ought not to be accorded if the choice of headship or vice-headship of the State should fall upon persons connected with the

coup d'état or revolution.”²³ Thus, even if a coup was later to be legitimized through a change in the Constitution, that government would not be recognized by the rest of the signatory states. In this regard, it is evident that democracy became the key factor when dealing with the recognition of new governments in the Americas.

From an Inter-American perspective, the Charter of the Organization of American States (OAS) includes, amid its essential purposes, the promotion and consolidation of representative democracy and makes explicit reference to the principle of non-intervention.^{24, 25} In addition, Article 3.d) of the Charter proclaims that “[t]he solidarity of the American States and the high aims which are sought through it require the political organization of those States on the basis of the effective exercise of representative democracy.” In the aftermath of the Cold War, the promotion of democracy in the region became one of the main concerns of the OAS, as evidenced in the sequence of instruments adopted by the organization in the first years of the 1990s. For instance, the Santiago Commitment to Democracy and the Renewal of the Inter-American System provided for the urgent meeting of the Permanent Council “in the event of any occurrences giving to the sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically elected government in any of the Organization’s member states.”²⁶ The following year the members of the OAS issued the Declaration of Nassau, through which they reaffirmed their commitment “to the strengthening, defense and promotion of representative democracy and human rights in the Hemisphere.”²⁷ The members asserted their “strongest and most categorical rejection of any attempt against the democratic institutional order in any of the member states,” thus embracing the idea of “democratic solidarity.”²⁸ Similarly, through the Declaration of Managua for the Promotion of Democracy and Development,²⁹ the OAS member states expressed their conviction that “no problem . . . justifies a breach of the system of representative democracy,” adding that “the strengthening of democratic systems requires, in particular cases, efforts to achieve national reconciliation and thereby foster a democratic culture based on the balance and independence of the branches of government, on dialogue and the search for consensus.”³⁰

All these developments adopted within the context of the OAS culminated, in a time span of a decade, in the adoption of the Interamerican Democratic Charter, which established that “[t]he peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.”³¹ Furthermore, through Article 19 of the Charter, it was prescribed that “an unconstitutional interruption of the democratic

order or an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state, constitutes, while it persists, an insurmountable obstacle to its government's participation in sessions of the General Assembly, the Meeting of Consultation, the Councils of the Organization, the specialized conferences, the commissions, working groups, and other bodies of the Organization."³²

In addition to these hemisphere-wide commitments to democracy, there have also been some sub-regional attempts pursuing similar goals. In this regard, developments in South America provide excellent examples, and two parallel efforts coexist.

The first example in South America is the Common Market of the Southern Cone (MERCOSUR),³³ an attempt by the Argentine, Brazilian, Paraguayan and Uruguayan governments to establish a common market in order to achieve economic development through integration. Since its inception in the early 1990s, the organization had evolved in such a way that in only a decade the commitment to democracy had become part of its foundation. In connection with this evolution, it must be highlighted that the Treaty of Asunción, through which MERCOSUR was established, makes no reference whatsoever to democracy or the legitimacy of the governments of the member states,³⁴ though only after several years, the quest for democracy was part and parcel of the organization. Notwithstanding the absence of any reference to democracy in its parent treaty, only one year after the creation of MERCOSUR, the Las Leñas Presidential Declaration identified democratic institutions as a *conditio sine qua non*, or mandatory requirement, for the existence and development of the Common Market.³⁵ In the following years, non-MERCOSUR members in the region, such as Bolivia and Chile, began to adhere to the terms of the Las Leñas Presidential Declaration. By 1996, the Presidential Declaration on Democratic Commitment in MERCOSUR reaffirmed the principles set four years earlier in Las Leñas.³⁶ Moreover, the four member states of MERCOSUR, plus Bolivia and Chile, signed the "Ushuaia Protocol on Democratic Commitment," establishing that a breach in the democratic order of any of the Parties to the Protocol would trigger consultations between all of them and the affected state.^{37,38} The Protocol also allowed for sanctions ranging from the suspension of the right to participate in the different organs of the respective integration process to the suspension of the rights and duties arising from such process.³⁹ The impact of this trend was such that not only other countries joined the Protocol; it also became a prerequisite for states who wanted to acquire membership or associated status to MERCOSUR to adhere to the 1996 Presidential Declaration and the Ushuaia Protocol.

The second initiative that aspired to consolidate democracy in South America was the Union of South American Nations (UNASUR), which originally was composed of twelve states.⁴⁰ Its Constitutive Treaty, signed in Brasilia on May 23, 2008, included the strengthening of democracy in the region as one of the principles enshrined in its Article 2. This aspect was even further developed in the Additional Protocol on the Commitment to Democracy.⁴¹ However, UNASUR has since nearly collapsed. Only Guyana, Suriname and Venezuela retain their membership, and therefore, scrutinizing the different instruments adopted in its decade-long life might prove futile, as the organization has utterly failed to offer solutions for the problems of the region.

THE TWENTY FIRST CENTURY AS A CHALLENGE TO DEMOCRACY IN THE AMERICAS

Thus far, it is clear that within the context of the Americas, the Tobar doctrine prevailed over the Estrada doctrine. This is particularly true with regards to Latin America, as some of the treaties referred to above evidence.

This reflects, beyond doubt, the deep democratic sentiment that spread through the continents during the decade that followed the collapse of the Soviet Union.

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The ease that characterized this period of political stability and consolidation of democratic values in the Americas was only challenged by certain sporadic events that did not have major implications for the

region.⁴² For example, the coup that ousted Jean-Bertrand Aristide from the Haitian Presidency in 1991 came to an end when the UN Security Council adopted Resolution 940/94 reinstating the overthrown President.⁴³ In addition, the incidents taking place in Paraguay in 1996 and 1999, in which General Lino Oviedo was one of the protagonists, were dealt with internally without significant international repercussions.⁴⁴ But this relative peace would not last long, as the first decade of the twenty first century started to raise the alarms of anti-democracy in the region. At this point, it must be noted that as opposed to the twentieth century, the debate was no longer between antagonistic doctrines, that is to say, between that of Tobar and Estrada, or legitimacy and effectiveness. From the 1990s onwards, it is undisputed that the Tobar doctrine has prevailed; the challenge now comes

from the definition of democracy itself. In this regard, while paying lip service to the doctrine of legitimacy, the different political actors come to question how this legitimacy should be assessed.

As early as 2002, the political turmoil in Venezuela shook the basis of the continent. The increasingly polarized Venezuelan society took the streets and within the context of massive demonstrations both for and against the Bolivarian government, President Hugo Rafael Chávez Frías was ousted on April 12 and replaced by Pedro Carmona, the head of a momentary interim government. Though the situation was immediately submitted to the OAS, the regional organization did not have the chance to pronounce its verdict on the matter of recognition as, only two days later, Chávez was reinstated as the President of Venezuela.⁴⁵ Even though the incidents only lasted a couple of days, it had long term consequences not only for the country but for the Americas at large, and it revealed that regional mechanisms could play a key role in upholding democratically elected governments.⁴⁶

Certainly more complex than the 2002 Venezuelan situation, the 2009 crisis in Honduras provides an excellent case for the analysis of the political tensions in the region. In an attempt to secure his reelection, then President José Manuel Zelaya Rosales called for a referendum. However, this action was opposed by the Supreme Court, who ordered his arrest, and the armed forces apprehended him on June 28, 2009 and sent him by plane to Costa Rica. In Zelaya's place, Roberto Micheletti Baín (the then-President of the Honduran Congress) was appointed President of Honduras, a move backed both by the Legislative and the Judiciary.⁴⁷ These events led to the immediate suspension of Honduras from the OAS, which was decided on July 5, 2009.⁴⁸ After an eventual call for official presidential elections, on January 27, 2010, Porfirio Lobo Sosa was sworn in as the President of Honduras. The following year, new President Sosa signed an agreement with former President Zelaya, sponsored by Chávez and Juan Manuel Santos Calderón (then Presidents of Venezuela and Colombia, respectively), which allowed for the return of the deposed president on May 28, 2010.⁴⁹

In this case, the interim administration headed by Micheletti did not achieve the recognition neither of the regional governments nor the OAS, which can be easily justified considering that the illegitimate origin of his government called for the application of the Tobar doctrine. A facet that is harder (if not impossible) to reconcile with the tradition of the region is the reaction of the international community to the election of Lobo. Initially, Lobo's elected government was only recognized by the United States and

other American regional allies, but a large majority of the States of the Americas did not consider Lobo's government as legitimate. Furthermore, it cannot be disregarded that the suspension of Honduras from the OAS was decided during Micheletti's government, but the readmission to the organization was not the consequence of the democratic election of President Lobo. Rather, Honduras was only re-admitted after the agreement that enabled President Zelaya to return to Honduras was adopted.⁵⁰ This is, to say the least, hardly reconcilable with international law. Zelaya's comeback is by no means legally relevant, though its political symbolism cannot be denied. In the case of Honduras, it appears that the OAS sought to tailor a solution that would accommodate to the political mood of the region prevailing at that time, notwithstanding the applicable law.

The events taking place in Ecuador on September 30, 2010 constitute another interesting example of democratic instability in the Americas. After a massive demonstration by the police forces, then-President Rafael Correa Delgado was taken to the police hospital, which was surrounded by officers opposing his government. After declaring that he had been taken captive and that a coup was developing, some members of President Correa's cabinet summoned his supporters, who rallied in the areas encompassing the hospital in an attempt to outbalance the police.⁵¹ Though it is highly contested whether this was a mere police mutiny or an actual coup, the situation was debated in the context of the OAS, who repudiated the occurrence and expressed its support for Correa's government relying on the Tobar doctrine.⁵²

A particularly controversial situation that exposed the inherent contradictions of the regional system was the political morass in which Paraguay found itself during the year 2012. In mid-June, eleven farmers and six policemen were killed in a flare-up of rural conflicts. Outrage over their deaths led to the impeachment of then-President Fernando Lugo Méndez, who was granted only twenty-four hours to offer the rebuttal to his impeachment. Through this rapid procedure, the Legislature forced out President Lugo on June 22, 2012 and appointed Federico Franco Gómez (then Vice-President) to replace him.⁵³ Though the governments of the region did not recognize new President Franco's government, condemnation was not widespread, and he was allowed to conclude his term. Indeed, the Permanent Council of the OAS did not reach an agreement on the issue and, in consequence, Paraguay was never suspended. In MERCOSUR, on the other hand, Paraguay's suspension was swiftly decided. However, there is controversy as to why this suspension was so immediate. Paraguay had historically vetoed the admission of Venezuela as a member, but after its

suspension, it was no longer able to do so. Venezuela thus achieved membership in July 2012.⁵⁴ This situation, which could be regarded as secondary, rises suspicion as to whether the suspension enforced by MERCOSUR was earnestly inspired in democratic values or in spurious political interests. As a matter of fact, it seems that MERCOSUR and the OAS have different standards when it comes to appraising the democratic nature of governments as, despite the fact that both organizations embrace the Tobar doctrine, the conclusions to which each of them arrived seem contradictory. However, after Horacio Cartés Jara was sworn in as the President of Paraguay on August 15, 2013, Paraguay was offered readmission to MERCOSUR. Still, the return of Paraguay to the bloc was delayed for almost a year, showing that many times, when the confidence in the regional mechanisms is lost, isolationism grows at the expense of integration.⁵⁵

In clear contrast with the example of Paraguay, the events that took place in Brazil in 2016 demonstrate how disparate the outcomes of political crises can be in the Americas. On May 12, 2016, during her second term in office, Brazilian President Dilma Rousseff was impeached, and later removed on August 31, 2016 for hiding deficits in the federal budget. Her Vice President, Michel Temer Lulia, was then appointed by the Senate to complete the presidential term, which came to an end on January 1, 2019.⁵⁶ Looking at the precedent of Paraguay, one might assume that either the OAS or MERCOSUR (if not both) would take a stance and adopt measures in the face of this sudden change of authorities. But, far from that being the case, both organizations abstained from pronouncing on the episode—and Brazil was never suspended from either of them. In this particular case, it seems like the impeachment of Rousseff did not affect in any way the legitimacy of Temer's government, which might cast some doubt on whether the doctrine ruling the case was Tobar or Estrada.

Another extant democratic crisis that never seems to come to an end is the one Peru has been going through, as evidenced by the four Presidents it has had since the last Presidential elections were held in 2016.⁵⁷ In March 2018, then-President Pedro Kuczynski Godard quit just one day before he was impeached by the Peruvian Congress for corruption charges.⁵⁸ Martín Vizcarra Cornejo, until then Vice-President, was immediately sworn President of Peru and began pressing an anti-corruption agenda.⁵⁹ However, corruption endemic in the politics of Peru, this endeavor led to clashes with Congress, precipitating the strong animosity that has dominated the political scenario since then. By September 30, 2019, hostility was so evident between the Executive and the Legislative that President Vizcarra decided to dissolve Congress. This decision, however, got him ousted from power,

and Congress appointed then Vice-President Mercedes Aráoz Fernández in his place, who quit the following day.⁶⁰ The OAS, meanwhile, reacted lukewarmly by stating that it was for the Supreme Court to establish the validity of the dissolution of Congress. Peru's Constitutional Court decided on January 14, 2020 that Vizcarra's decision to dissolve Congress, adopted on September 30, 2019, was legal.⁶¹ Nevertheless, this would by no means bring such intricate dispute to a conclusion. On November 10, 2020, Vizcarra was removed from power under corruption accusations—just like his predecessor.⁶² In the end, Congress lost the legal battle with regards to its dissolution but managed to oust President Vizcarra, replacing him with Manuel Merino de Lama, who governed the country for only five days. On November 16, 2020, Francisco Sagasti Hochhausler, the current President, was invested.⁶³ The OAS seemed satisfied, but only after expressing its concern. The Peruvian example shows, once again, that the Tobar doctrine was disregarded; or at least that the standards applied were fairly different from those guiding the Paraguayan and Brazilian cases.

After almost fifteen years in power, the long reign of Evo Morales Ayma in Bolivia has finally seemed to conclude. Having won the 2005, 2009 and 2014 elections, Morales sought to run once again for President of Bolivia in 2019.⁶⁴ Morales held a referendum on the issue on February 21, 2016, and the Bolivian electorate rejected his proposal to run for a fourth presidential election in a row.⁶⁵ Despite this popular vote, on November 28, 2017, the Plurinational Constitutional Tribunal ruled that preventing Morales from running again would violate his human rights, allowing him therefore to advance towards another reelection.⁶⁶ Therefore, on October 20, 2019, the presidential elections were held—though under serious suspicions of fraud. Indeed, the OAS expressed that there were “deliberate actions to manipulate the result of the election.”⁶⁷ At that point, Morales agreed to call for a new election, but the armed and police forces withdrew their support and asked him to leave office.⁶⁸ In consequence, then Second Vice-President of the Senate, Jeanine Áñez Chávez sworn in on November 12, 2019,⁶⁹ governing for almost one year before investing her successor, Luis Arce Catacora, who won the 2020 presidential elections as the candidate of the “Movement Toward Socialism” party, the same as deposed President Morales.⁷⁰

The transitional period during which President Áñez ruled the country becomes of fundamental importance, as it clearly reveals the inconsistencies of the rules dealing with the recognition of governments. To start with, it must be highlighted that the OAS did not adopt any measures against Bolivia during these events, abstaining from characterizing Morales'

removal from office as a coup. Furthermore, though some countries in the region opposed the recognition of her government (mainly Mexico, Uruguay and Venezuela); Brazil, Colombia, Guatemala, the United States and the United Kingdom hastened to recognize Áñez as the head of the new government of Bolivia. The erratic reaction not only of the governments of the Americas but also of other regions, added to the premeditated silence of the relevant international organizations, constitutes irrebuttable evidence of how far the recognition of governments is from being ruled by international law. This particular example shows that many times both the Tobar and Estrada doctrines fall short in providing for a solution; the only answer appears to come from *realpolitik*. Furthermore, one must bear in mind that in early March 2021, only four months after she had left the Bolivian Presidency, Áñez was imprisoned over allegations of sedition, terrorism and conspiracy.⁷¹ Whether this will be regarded as having an impact in the rule of law and the democratic system is still to be determined.

If there is one paradigmatic case that rocked the foundations of democracy in the Americas, it is Venezuela. The crisis is still under way, and continues to remind the region that when law is sacrificed in the altar of politics, democracy is thoroughly vanquished. After the passing of Chávez on March 3, 2013, Nicolás Maduro Moros was appointed interim President for a month.⁷² By April 14, 2013, Maduro had already won the presidential elections.⁷³ Without taking a stance on whether the Bolivarian Republic is a true democracy or not, it can be affirmed without hesitations, to say the least, that Venezuela raises serious concerns in terms of separation of powers and checks and balances.

On April 2017, after the OAS had summoned a Meeting of Consultation of Ministers of Foreign Affairs to discuss the political turbulence in Venezuela, Maduro announced the withdrawal of his country from the organization, a decision that only entered into effect two years later, on April 27, 2019.⁷⁴ At the same time, on August 5, 2017, MERCOSUR suspended Venezuela in accordance with Article 5 of the Ushuaia Protocol, understanding that there was a breach in the constitutional order.⁷⁵ On May 20, 2018, parliamentary elections took place, which the National Assembly of Venezuela considered fraudulent. In consequence, the Legislative appointed Juan Guaidó Márquez, its President, as Acting President of Venezuela.⁷⁶ Guaidó's government was immediately recognized as the legitimate government of Venezuela by Argentina, Brazil, Canada, France, Germany, Japan, Spain, the United Kingdom and the United States. All these countries, based on the application of the Tobar doctrine and the understanding that the Maduro administration had lost its legitimacy, had

recognized Guaidó's government as the one rightly representing the people of Venezuela. In contradiction, China, Iran, Russia and Turkey refused to grant recognition to Guaidó under the belief that Maduro was the lawful leader of the country.⁷⁷

Within this complex context, a failed attempt to suspend Venezuela from the OAS (June 2018)⁷⁸ was followed by the emergence of a new regional actor: the Lima group, a set of governments of the Americas which seeks for a peaceful solution that will allow Venezuela to overcome its deep crisis through the restoration of democracy. In its first declaration, issued on August 8, 2018, the twelve States in this group requested the liberation of political prisoners in Venezuela and the return to democracy through free elections.⁷⁹ Up to this point, the region seemed to follow the dictates of the Tobar doctrine.

In addition to its continuing suspension from MERCOSUR, Venezuela is no longer a Member State of the OAS. Therefore, since these two regional avenues are closed, the solution to its political issues must come from the different countries of the Americas. But a realistic assessment of the political context leaves no space for optimism. For example, while the Argentine government had initially recognized Guaidó as the President of Venezuela, after the 2019 presidential elections in Argentina, the new government decided to derecognize Guaidó and re-recognize Maduro, a move with no legal justification whatsoever.⁸⁰ Similarly, the Bolivian government headed by Áñez had also recognized Guaidó; while Arce, the current President of Bolivia, decided to recognize once again Maduro instead.⁸¹ This seems to suggest, yet again, that rather than sticking to either of the doctrines of recognition—be it Tobar or Estrada—the governments of the recognizing states tend to make their political stances prevail over legal considerations. In the example under analysis, there was no alteration in the political situation of Venezuela, the only change happened to occur in the political orientation of the governments of Argentina and Bolivia. But, should this be relevant? Can the recognition of a government be subject to the electoral fluctuations of the recognizing states?

These politically motivated shifts in the recognition of governments in Venezuela are by no means exclusive of Latin American countries. For example, the European Union decided on January 9, 2021 to stop recognizing Guaidó as the interim President of Venezuela, considering that he was filling such position as the head of the National Assembly, and lost this position after the last legislative elections took place. Since the parliamentary elections held on December 6, 2020 allowed Maduro's supporters to regain control of the National Assembly, the bloc concluded that Guaidó

no longer represented the Venezuelan National Assembly. Considering that the European Union affirmed that the New National Assembly does not represent the people of Venezuela because elections leading to its new composition were undemocratic, it is hard to find out which legal criterion was applied in this case. However, there still is one un-rebuttable conclusion: the Tobar doctrine has not been the guiding principle.

Historically, there has always been the assumption that when it comes to democracy, “the Americas” is too broad a category. In this sense, there is widespread agreement that the democratic system is strong in North America (more specifically, the United States and Canada), while the recurrent political crises which pervade Latin America show its institutional weaknesses and democratic deficit. But earlier this year there was a very peculiar occurrence that caught off guard not only the Americas, but the world at large. Traditionally regarded as the beacon of democracy, the United States and its Constitution were adopted as a model by many Latin American countries to shape their own political structures, based on the principles of popular sovereignty, limited government, separation of powers and checks and balances. However, the image of a mob storming the Congress of the United States on January 6, 2021 astonished every person who still had some faith in this much-degraded democracy.⁸² Though not necessarily connected to the recognition of governments, the unprecedented events following the November 3, 2020 presidential election certainly show the “Latin Americanization” of American politics. After questioning the results of the election in different courts and losing more than sixty cases, former President Trump still believed President Biden had stolen the elections.⁸³

Another indicator of America’s weakening democracy is that since the entry into force of the Constitution of the United States in 1789, there were only four cases in which Presidents were subject to impeachment processes.⁸⁴ The first two took place in a time span of almost two centuries following the inception of the Constitution; the last two happened in the last two years. Even though these clashes between the different branches might be regarded as a healthy symptom of a functioning democracy, they can also be interpreted as signs of exhaustion of the system.

Although the crisis in the United States was never close to forcing the international community to pass judgment on who was the legitimate government, this unparalleled events replicate, to an extent, the now common struggles between the different branches of government which can sometimes lead to interruptions of the institutional order, not only in Latin America, but in all of the Americas.

CONCLUSIONS: IS INTERNATIONAL LAW UPHOLDING DEMOCRACY, OR IS “DEMOCRACY” UNDERMINING INTERNATIONAL LAW?

The evolution depicted in the present work is in some way unfortunate. The last decade of the twentieth century augured well for the consolidation of democracy in the Americas. States seemed to have confidence in the benefits of an increasingly integrated region, and both individual States and international organizations were enthusiastically committed to sustain the democratic order. But this democratic optimism would only spread through the 1990s and the 2000s.

The unquestionable preponderance of the legitimacy doctrine, better known in the American context as the Tobar doctrine, had allowed for the widespread belief that protecting the long-term interests of the region through international law was more important than pursuing the short-term interests of individual states through politics. But by the end of the 2000s, there seemed to be a resurgence of the doctrine of effectiveness, conveyed in the American context under the Estrada doctrine. Though still true, this conclusion only exposes the most superficial consequences of the process undergone; there are deeper causes that must be explained.

In the first place, it has to be pointed out that the twenty-first century brought about quantitative changes. In this regard, it is easy to notice that from 2009 onwards, the number of coups (or at least so-called coups) increased significantly, forcing the States of the Americas and the regional organizations to adopt positions on the matter, and either grant or refuse recognition to one of the contending political forces. But the most relevant aspect that emerged in the current century is qualitative, which is the main reason why the legal rules dealing with the recognition of governments have lately proved to be so deficient. From this perspective, when looking at the different incidents referred to in the preceding pages, one can notice that the only “traditional” coups were the ones attempted in Paraguay in 1996 and 1999, in Venezuela in 2002 and in Ecuador in 2010. Only these cases involved the rise of police or armed forces, or both, supported by different sectors of the civil society. This was previously the typical feature of most coups taking place in the Americas during the twentieth century.

Yet most of the cases dealt with in the present work, with the exception of those mentioned in the previous paragraph, show intricate interactions between the different branches of government, giving rise to complexities with actual impact in the separation of powers. Even though this might seem to be a mere technicality, its implications are huge. At the end of the day, even though undermining the separation of powers might end

up killing a democratic regime, the principle of non-intervention in the domestic affairs of States prevents foreign actors (be them states or international organizations) from passing judgment on the way the Legislative, Executive and Judiciary interact.

The real challenge faced today is that the different branches of government are reinterpreting the balance of powers and feel entitled to redefine the concept of democracy according to their specific political interests. Ultimately, the current state of affairs does not challenge the validity of the rules dealing with the recognition of governments, which every government pays lip service to; the problem is how the different states and international organizations define democracy. The disparity in the way the different situations were tackled only allows to conclude that there is no common pattern in the Americas. As mere examples, the difference in how MERCOSUR dealt with the crises in Paraguay (2012) and Brazil (2016) can only puzzle an impartial observer.

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Furthermore, the harsh sanctions adopted by the OAS against Honduras (2009) found no correlation in the cases of Paraguay (2012), Brazil (2016), Bolivia (2019) or even Venezuela (ongoing).

If the aim of the current work was limited to describe the recent reactions to the allegedly unconstitutional changes of government in the Americas, then this could well be its end. Still, rather than focusing on the past, there ought to be more stress on the future. From this viewpoint it is important to mention that between late 2019 and early 2020, social revolts throughout the Americas claimed several lives. In Chile, for example, a mere increase in the metro fare seemed to spark a nationwide campaign against the policies adopted by Chilean President Sebastián Piñera Echenique, who had already governed the country between 2010 and 2014.⁸⁵ After approximately thirty deaths, the confronting parties agreed to discussing the prospects of adopting a new Constitution. Accordingly, on October 25, 2020, a plebiscite was held, being its outcome favorable to the celebration of a Constituent Assembly whose members will be elected in May 2021.⁸⁶ The example of Ecuador is also dissimilar, as the main reason behind the circumstances taking place between October and November 2019 was allegedly the austerity plan adopted by Lenín Moreno, which

meant a significant cut on subsidies.⁸⁷ But, other than the economic slowdown, many argue that the motivation behind the protests was the prosecution of former President Correa for corruption charges.⁸⁸

The deviation from the democratic path that the Americas are currently experiencing is also apparent when analyzing the outcome of elections therein. It has become commonplace for politicians to deny their defeat in the ballot, and claim that they are the rightful winners. This remains true with respect to former President Trump, who challenged the results of the November 2020 presidential election in the United States. It is also true in the case of Yaku Pérez, who still claims that fraud prevented her from making it to the second round after the February 2021 presidential election in Ecuador.⁸⁹ Additionally, though at some point Salvadoran President Nayib Bukele stated that the February 2021 parliamentary elections were marred by fraud, he ended up accepting the favorable results.⁹⁰

The lack of transparency in the political processes in the region—added to the absolute disregard for the Tobar doctrine—which only a decade ago seemed to be one of the driving forces behind the integration of the Americas—leaves the recognition of governments in the most absolute of lawlessness. The only pattern that appears to be followed, both by states and international organizations, is political convenience. Though unpredictable and volatile, it is the sole commonality that can be identified in all the cases examined. This is the reason why, with the decline of the Tobar doctrine, politicians with doubtful democratic credentials embrace the Estrada Doctrine without explicitly acknowledging it.

One might enquire, at this point, why this matters in the complex scenario that the world is going through due to the impact of the COVID-19 pandemic. The answer is as simple as it is compelling: during 2021 elections will be held in El Salvador (presidential second round, in April); Peru (presidential and parliamentary, in April); Mexico (parliamentary, in June); Argentina (parliamentary, in October); Paraguay (municipal, in October); Chile (presidential, in November); Honduras (presidential and parliamentary, in November) and Nicaragua (presidential and parliamentary, in November). These are more than enough reasons to rethink the recognition of governments in the Americas and enquire whether it currently fosters the cause of democracy or hinders it. *f*

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