

Warning: Proceed with Caution—  
A Comparative Analysis of UNASUR’s  
Democratic Protocol and the Democracy  
Clauses of the Treaty on European Union

Laurel Paige Purdy\*

I.	INTRODUCTION .....	278
II.	DEVELOPMENT OF THE EUROPEAN UNION .....	279
	A. <i>Brief Historical Discussion of the European Union</i> .....	279
	B. <i>Drafting of the Treaty on European Union (Treaty of Maastricht)</i> .....	281
III.	DEVELOPMENT OF THE UNION OF SOUTH AMERICAN NATIONS .....	283
	A. <i>Brief Historical Overview of the Union of South American Nations</i> .....	283
	1. The Andean Community.....	284
	2. The Common Market of the South.....	284
	3. The Emergence of UNASUR .....	286
	B. <i>Drafting of the South American Union of Nations Constitutive Treaty</i> .....	286
	C. <i>The Addition of the Democratic Protocol</i> .....	288
IV.	COMPARING AND CONTRASTING THE DEMOCRATIC PROTOCOL WITH THE RELEVANT TREATY ON EUROPEAN UNION PROVISIONS .....	289
	A. <i>Specificity</i> .....	289
	B. <i>Weight of the Sanctions Imposed</i> .....	291
	C. <i>Practical Effect of the Democracy Clauses: Theoretical/Functional</i> .....	291

---

\* © 2011 Laurel Paige Purdy. J.D. candidate 2012, Tulane University Law School. Senior Research Editor, *Tulane Journal of International and Comparative Law*, Volume 20. The author graduated from Tulane University in 2009 with a B.A. in Latin American Studies from the Roger Thayer Stone Center for Latin American Studies and a B.A. in International Development from the Payson Center for International Development. The author would like to acknowledge the helpful contributions of Dr. Jörg Fedtke, A.N. Yiannopoulos Professor in Comparative and International Law at Tulane University Law School. The author would also like to thank her friends and family for their continuing love and support, specifically her parents, William and Kimberly Purdy, and her fiancé Justin Hall, who offer her encouragement and inspiration on a daily basis.

V.	THE EFFECT OF ARTICLES 2 AND 7 OF THE TREATY ON EUROPEAN UNION ON INDIVIDUAL MEMBER STATES: THE EU SANCTIONS THE AUSTRIAN MINISTERS.....	293
VI.	THE AUSTRIA SANCTIONS IN THE CONTEXT OF THE DEMOCRATIC PROTOCOL?: EXPLORING THE LASTING IMPACTS OF UNASUR'S NEW PROVISION.....	295
	A. <i>The Language of the Democratic Protocol May Prevent Preemptive Sanctions</i> .....	296
	B. <i>The Weight of the Sanctions Imposed by the Democratic Protocol May Be Crippling to UNASUR's Member States</i> .....	297
	C. <i>The Democratic Protocol Provides Member States with Insight into the End of Sanctions</i> .....	299
VII.	CONCLUSION .....	300

#### I. INTRODUCTION

With modern concern for concepts such as transparency and human rights, the notion of democratic government is championed worldwide. Throughout the world, Western nations stress the importance of the development of democratic structures and institutions through international and supranational organizations. For example, the United Nations, the United States Agency for International Development (USAID), and the World Bank all emphasize the importance of democracy in developing nations.<sup>1</sup>

Institutions with the purpose of regional integration have also recently embraced the notion of democratic government. In the Treaty on European Union (also known as the TEU or Treaty of Maastricht), the European Union (EU) declared “democracy” a fundamental value.<sup>2</sup> The Union of South American Nations (UNASUR) also promotes the concept of democratic government, signing the Additional Protocol to the Constitutive Treaty on Commitment to Democracy on November 26, 2010.<sup>3</sup> Both the TEU and the Democratic Protocol require member states

---

1. See *Open Government Initiative*, USAID, <http://www.usaid.gov/open/> (last updated July 19, 2011); *About UNDEF*, UNITED NATIONS, <http://www.un.org/democracyfund/AboutUNDEF.htm> (last visited Oct. 16, 2011); *About Us*, WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,pagePK:50004410~piPK:36602~theSitePK:29708,00.html> (last updated June 29, 2011).

2. See Consolidated Version of Treaty on European Union art. 2, Mar. 30, 2010, 2010 O.J. (C 83) 1 [hereinafter TEU].

3. See *Additional Protocol to the Constitutive Treaty of UNASUR on Commitment to Democracy*, OFFICE OF THE PRESIDENT, REPUBLIC OF GUYANA (Nov. 26, 2010), <http://opnew>.

to maintain democratic governments, or certain sanctions may be imposed by the supranational organization.<sup>4</sup>

This Comment will explore the democracy clauses of both the TEU and the Democratic Protocol to the Constitutive Treaty. First, it will explore the historical development of the EU and the drafting of the TEU in 1992. Next, this Comment will trace the history of regional integration in South America, discuss the language of UNASUR's Constitutive Treaty, and explain the 2010 addition to the treaty, the Democratic Protocol. Third, this Comment will distinguish key language from articles 2 and 7 of the TEU from provisions of the Democratic Protocol. Fourth, the author will explore the case study of the Austrian elections of 1999, which resulted in seven months of EU sanctions on the Austrian government and its representatives in the Council of Ministers. Next, this Comment will compare and contrast the EU sanctions against Austria, key provisions of UNASUR's Democratic Protocol, and articles 2 and 7 of the TEU. Finally, this Comment will conclude by exploring some of the lasting implications that could be caused by UNASUR's Democratic Protocol, and how this document may affect the future of UNASUR's member states.

## II. DEVELOPMENT OF THE EUROPEAN UNION

### A. *Brief Historical Discussion of the European Union*

The concept of European unity is rooted in the novel ideas of Jean Monnet, a French diplomat, who asserted that the central coal and steel areas of Western Europe could be managed by a single, supranational, political entity.<sup>5</sup> Monnet proposed two important supranational entities prior to the 1957 Treaty of Rome that set the stage for European regional integration: the European Coal and Steel Community (ECSC) and the European Defense Community (EDC).<sup>6</sup> The ECSC became effective in July 1952, with the core mission of allowing a single, supranational body to govern the coal and steel industries in Western Europe.<sup>7</sup> While the ECSC did not succeed as a practical economic institution, the Community was considered a successful political instrument.<sup>8</sup> The

---

op.gov.gov/index.php?view=article&catid=34:bulletins&id=1108:additional-pr... [hereinafter *Democratic Protocol*].

4. See *Democratic Protocol*, *supra* note 3, arts. 1-7; TEU arts. 2, 7.

5. See Stephen A. Schuker, *The European Union: From Jean Monnet to the Euro*, in *THE EUROPEAN UNION: FROM JEAN MONNET TO THE EURO* 15, 20 (Dean J. Kotlowski ed., 2000).

6. *Id.* at 24-26.

7. *Id.* at 24.

8. *Id.* at 24-25.

ECSC assisted the stabilization of the relationships between Western European nations, notably the key relationship between France and Germany.<sup>9</sup> Another important step toward the regional integration of Europe was the French proposal to form the EDC at the 1950 Council of Europe. This proposal acted as a response to the United States' encouragement of German rearmament.<sup>10</sup> In theory, the EDC was to function as a supranational military that would integrate German units.<sup>11</sup> Even though this proposal was eventually rejected and made little practical sense to Europe at the time, the proposal of the EDC fostered a pro-integration sentiment in Europe during the early 1950s.<sup>12</sup>

The 1957 Treaty of Rome was another great thrust toward the regional integration of Europe.<sup>13</sup> The Treaty of Rome introduced both the European Economic Community (EEC) and European Atomic Energy Community (Euratom).<sup>14</sup> Other nations feared French President Charles de Gaulle's return to power would terminate all attempts at supranational integration; therefore, other countries were mindful of the French agenda of social legislation and agricultural subsidies.<sup>15</sup> While de Gaulle's return to power in 1958 sparked an era of stagnant integration, he did focus on the political integration of the "original six" (Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany), leading to the Franco-German Treaty of 1963.<sup>16</sup> From 1958 to 1971, trade within the EEC (which is widely thought of as the precursor to the first pillar of the EU) increased six-fold.<sup>17</sup> In order to rival the EEC, Britain established the European Free Trade Association (EFTA) in 1959.<sup>18</sup>

European struggles with the U.S. dollar in the 1960s led the nations of Europe to seek a regional answer for currency issues, forming the Economic and Monetary Union (EMU).<sup>19</sup> Additionally, after Georges Pompidou replaced de Gaulle as President of France, the enlargement of the EEC was encouraged. Due to this pro-integration sentiment, Britain, Denmark, and Iceland entered the EEC in 1973.<sup>20</sup> With the addition of these nations, the EFTA was no longer considered a credible rival to the

---

9. *Id.* at 25.

10. *Id.*

11. *Id.* at 25-26.

12. *Id.* at 26.

13. *Id.*

14. ALEX WARLEIGH, EUROPEAN UNION: THE BASICS 13 (2d ed. 2009).

15. *See* Schuker, *supra* note 5, at 26.

16. *See id.* at 27.

17. *Id.*

18. *See* WARLEIGH, *supra* note 14, at 13.

19. *See* Schuker, *supra* note 5, at 27-28.

20. *Id.* at 28.

EEC.<sup>21</sup> This era of regional integration was followed by a period marked by stagnant regional organization efforts due to the first oil crisis in the 1970s and the drain of the European welfare state on economic growth.<sup>22</sup>

Following another decade of little regional integration, the EEC became influential after 1983 when numerous European nations' economies improved.<sup>23</sup> The EEC also increased its membership during the 1980s, expanding to Greece in 1980 and to Portugal and Spain in 1986.<sup>24</sup> The Single European Act of 1986 encouraged a customs union and an internal single market for the EEC, which was marked by the free flow of labor and capital, technological progress, and overall regional development.<sup>25</sup> Following the reunification of Germany in 1990 and the fall of the Soviet Union in 1991, a landmark surge toward the regional integration of Europe occurred with the signing of the Maastricht Summit of 1992.<sup>26</sup>

#### *B. Drafting of the Treaty on European Union (Treaty of Maastricht)*

The 1992 Treaty of Maastricht was the first treaty to centralize the EEC and rename it “the European Union.”<sup>27</sup> While politicians and European leaders were pleased to agree to the Treaty of Maastricht, not all citizens of the individual European nations were ready to back this integration effort.<sup>28</sup> The Treaty of Maastricht passed by only a narrow majority of votes in France, and the Treaty as a whole failed in Denmark.<sup>29</sup> One of the key developments of the TEU was to rebrand the EEC as the “European Union,” a title that promoted more cohesive integration.<sup>30</sup> The TEU enhanced the effort of European integration by adding key improvements to the prior conceptualization of European

---

21. See WARLEIGH, *supra* note 14, at 13.

22. See Schuker, *supra* note 5, at 28.

23. See *id.* at 29.

24. See WARLEIGH, *supra* note 14, at 14.

25. See Schuker, *supra* note 5, at 29.

26. See *id.* at 29-30.

27. See WARLEIGH, *supra* note 14, at 38.

28. See *id.* at 29.

29. *Id.* Ultimately, the TEU was ratified in Denmark after the implementation of an exemption clause that allowed Denmark to “opt-out” of the European Monetary Union and choose not to implement the unified currency. See *Denmark: EMU Opt-Out Clause*, EUR. COMM'N, [http://Europa.eu/legislation\\_summaries/economic\\_and\\_monetary\\_affairs/institutional\\_and\\_economic\\_framework/125061\\_en.htm](http://Europa.eu/legislation_summaries/economic_and_monetary_affairs/institutional_and_economic_framework/125061_en.htm) (last updated Aug. 8, 2006).

30. WARLEIGH, *supra* note 14, at 38.

integration, including the detailed plan to adopt the euro and EU citizenship.<sup>31</sup>

In order to become a “union” rather than a “community,” the TEU designed three central pillars for the EU.<sup>32</sup> The first pillar, the European Community, included all of the provisions and legislation that the EU nations previously agreed to apply at a supranational level.<sup>33</sup> Pillars two and three, the “Common Foreign and Judicial Policy” and the “Justice and Home Affairs” pillars, respectively, were applied at an “intragovernmental” level, meaning that policies stemming from these pillars still vest power in the independent entities of Member States.<sup>34</sup> The Treaty of Maastricht is organized into six titles and fifty-five articles.<sup>35</sup>

Title I of the TEU is of central importance to this Comment, and discusses general provisions that govern the EU.<sup>36</sup> Article 1 establishes the Member States as a “Union,” discusses the treaties that will govern the Union, and describes the central objectives of the Union.<sup>37</sup> Article 2 discusses the core values of the EU. “The Union is founded on the values of respect for human dignity, freedom, *democracy*, equality, the rule of law and respect for human rights. . . .”<sup>38</sup> Article 3 discusses the central goals and objectives of the EU, including the promotion of peace, the establishment of an internal market, a centralized form of currency, a dedication to promote EU values on a global scale, and a means by which the EU’s objectives may be established.<sup>39</sup> Article 4 states that EU Member States shall respect the individual national identities of Member States, and all powers not conferred on the EU should be left to the individual Member States.<sup>40</sup> The Treaty of Maastricht states in article 5 that EU competencies are governed by the principles of proportionality and subsidiarity.<sup>41</sup> Article 6 of the TEU discusses other treaties to which the EU agrees to adhere, including the definition of fundamental human rights in the European Convention for the Protection of Human Rights

---

31. *Id.*; see also Consolidated Version of the Treaty on the Functioning of the European Union art. 20, Sept. 5, 2008, 2008 O.J. (C 115) 47, 56-57 [hereinafter TFEU] (explaining the rights provided to citizens of the EU).

32. *Id.* at 39.

33. *Id.*

34. *See id.*

35. *See* TEU.

36. *See id.* tit. I.

37. *Id.* art. 1.

38. *Id.* art. 2 (emphasis added).

39. *Id.* art. 3.

40. *Id.* art. 4.

41. *Id.* art. 5.

and Fundamental Freedoms.<sup>42</sup> Article 7 discusses the avenues the EU may explore if a Member State breaches one of the core values discussed in article 2:<sup>43</sup>

On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure.<sup>44</sup>

Article 7 continues by stating what may be done to sanction a Member State that violates the core values of article 2:<sup>45</sup>

[T]he Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.<sup>46</sup>

Articles 2 and 7 play a central role in the development and enforcement of the core value of democracy in EU law.

### III. DEVELOPMENT OF THE UNION OF SOUTH AMERICAN NATIONS

#### A. *Brief Historical Overview of the Union of South American Nations*

The Union of South American Nations (UNASUR) is an effort that began in 2004 that aimed to integrate the two central trading blocs of South America: the Andean Community and the Common Market of the South (MERCOSUR).<sup>47</sup> In order to fully understand the development of UNASUR, it is necessary to take a brief look at the history of both the Andean Community and MERCOSUR.

---

42. *Id.* art. 6.

43. *Id.* art. 7.

44. *Id.*

45. *Id.*

46. *Id.*

47. *South America Nations Found Union*, BBC NEWS (May 23, 2008, 10:00 PM), <http://news.bbc.co.uk/2/hi/americas/7417896.stm>.

## 1. The Andean Community

In 1969, five South American nations (Bolivia, Chile, Colombia, Ecuador, and Peru) signed the Cartagena Agreement with the intent of improving the South American standard of living through economic cooperation and integration.<sup>48</sup> Initially, the Andean Community followed a strategy of “import substitution,” meaning that the nations relied on high duty fees on imported products to protect national industry.<sup>49</sup> This model drove South American economies to a point of crisis, causing stagnation in the process of South American integration.<sup>50</sup> In a 1989 meeting at Galapagos, Ecuador, the Andean Community decided to shift away from the “import substitution” strategy to an open development plan based centrally on trade and an open market.<sup>51</sup>

In 1993, the Andean Community created a free trade zone and eradicated trade tariffs between Andean Community nations.<sup>52</sup> This free trade area created jobs, promoted trade among nations, and expanded the influence of the Andean Community in member states.<sup>53</sup> In recent years, the Andean Community has taken steps to expand their influence in member states by putting international integration not only in an economic context, but by drafting policies to place the Andean Community in both the social and political arenas within the individual member states.<sup>54</sup>

## 2. The Common Market of the South

In 1991, Argentina, Brazil, Paraguay, and Uruguay created the Common Market of the South (MERCOSUR).<sup>55</sup> Unlike the Andean Community, MERCOSUR takes a slow and steady approach to supranationalism, requiring unanimous consent to make decisions.<sup>56</sup> The

---

48. *About Us*, COMUNIDAD ANDINA, <http://www.comunidadandina.org/ingles/quienes/brief.htm> (last visited Oct. 16, 2011) [hereinafter COMUNIDAD ANDINA]. However, Chile withdrew from the Andean Community in October 1976. *Id.* Additionally, Venezuela was a member of the Andean Community from 1973-2006. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*; see also Camilo A. Rodriguez Yong, *Enhancing Legal Certainty in Colombia: the Role of the Andean Community*, 17 MICH. ST. J. INT'L L. 407, 426 (2008-2009).

53. COMUNIDAD ANDINA, *supra* note 48.

54. *Id.* It is noteworthy, however, that delays to the implementation of the Andean Customs Union call into question whether the complete integration of the Andean Community will be a possibility. See Yong, *supra* note 52, at 426-27.

55. See Diana Tussie, *Latin America: Contrasting Motivations for Regional Projects*, 35 REV. INT'L STUD. 169, 175 (2009).

56. See *id.*



Treaty of Asunción states the primary objectives of MERCOSUR: the coordination of economic policies among member states, the eradication of trade barriers between member states, and the creation of a common external trade tariff.<sup>57</sup> In the mid-1990s, Chile, Bolivia, and Peru became associate member states (AMSs) of MERCOSUR.<sup>58</sup> The AMSs were not member states of MERCOSUR in a practical sense; in fact, the AMSs are not required to abide by the Treaty of Asunción and have little authority to participate in meetings of MERCOSUR's institutional bodies.<sup>59</sup> In recent years, Colombia, Ecuador, and Venezuela have become AMSs of MERCOSUR.<sup>60</sup>

The twenty-first century has thus far been marked by a sentiment among South American nations to set regional integration (both economic integration and regional unity in general) as a priority in domestic and foreign policy agendas.<sup>61</sup> For a number of reasons, MERCOSUR is an intriguing mechanism to expand the concept of regional integration throughout South America.<sup>62</sup> First, MERCOSUR has been rather successful in its early efforts of economic integration among its member states.<sup>63</sup> Second, MERCOSUR recently commanded international attention, including the attention of the United States, and is emerging as a South American leader of nations disgruntled with U.S. foreign policy in Latin America.<sup>64</sup> Due to its expanding influence and reputation, MERCOSUR is perhaps the most influential South American regional integration effort to date.

---

57. See Samuel A. Arieti, *The Role of MERCOSUR as a Vehicle for Latin American Integration*, 6 CHI. J. INT'L L. 761, 764 (2006).

58. See *id.* at 764-65.

59. See *id.* at 765.

60. *Id.* at 766.

61. See *id.* at 766-67.

62. *Id.* at 767.

63. *Id.* at 764. Though MERCOSUR has been successful in its economic integration efforts, little progress has been made in supranational political integration. See Claudia Sanchez Bajo, *The European Union and MERCOSUR: A Case of Inter-Regionalism*, 20 THIRD WORLD Q. 927, 928 (1999).

64. Arieti, *supra* note 57, at 767; see also Raphael Minder, *Spain's Luster Dims at E.U.-Latin American Talks*, N.Y. TIMES, May 18, 2010, <http://www.nytimes.com/2010/05/19/world/Europe/19iht-union.html> (noting discussions between the European Union and MERCOSUR about free trade agreements); Anthony Faiola & Rama Lakshmi, *Trade Talks Crumble in Feud over Farm Aid*, WASH. POST, July 30, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/07/29/AR2008072900556.html> (discussing the expanding influence of regional trading blocs such as MERCOSUR during free trade negotiations).

### 3. The Emergence of UNASUR

South American nations created an entity encouraging regional unity in December 2004 by signing the Cusco Declaration and establishing the South American Community of Nations.<sup>65</sup> The South American Community of Nations is thought to be the precursor to the modern UNASUR organization.<sup>66</sup> The central goals of the Cusco Declaration are as follows: to promote political and diplomatic coordination, to combine MERCOSUR and the Andean Community into a central free trade zone, to harmonize rural and agricultural policies, and to encourage social responsibility.<sup>67</sup> In April 2007, the leaders of the South American Community of Nations decided to adopt the name Union of South American Nations, or UNASUR.<sup>68</sup> In May 2008, member states drafted the Constitutive Treaty of UNASUR, modeling the Treaty after the Treaty of Maastricht.<sup>69</sup> In order for the Constitutive Treaty to enter into force, it must be ratified by nine of the twelve member nations.<sup>70</sup> As of February 11, 2011, Uruguay became the ninth UNASUR member state to ratify the Constitutive Treaty.<sup>71</sup> On March 11, 2011, the Constitutive Treaty and all additional protocols entered into force and were filed with the United Nations.<sup>72</sup> The Constitutive Treaty is currently binding on all member states.<sup>73</sup>

#### *B. Drafting of the South American Union of Nations Constitutive Treaty*

On May 23, 2008, UNASUR member states signed the Constitutive Treaty.<sup>74</sup> The Cusco Declaration of 2004, the Brasilia Declaration of

---

65. *UNASUR Article*, BRITANNICA ONLINE ENCYCLOPEDIA, <http://www.britannica.com/EBchecked/topic/1496583/UNASUR?sections=1496583main&view=print> (last visited Oct. 16, 2011). The twelve nations to sign the Cusco Declaration are: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay, and Venezuela. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*; *UNASUR Pushes for Consolidation, Expansion in Latin America*, UNITED PRESS INT'L, Mar. 11, 2011, [http://www.upi.com/Top\\_News/Special/2011/03/11/UNASUR-pushes-for-consolidation-expansion-in-Latin-America/UPI-332621299877191/](http://www.upi.com/Top_News/Special/2011/03/11/UNASUR-pushes-for-consolidation-expansion-in-Latin-America/UPI-332621299877191/) [hereinafter *UNASUR Pushes Consolidation*].

70. *UNASUR Article*, *supra* note 65. The member states of UNASUR are Argentina, Brazil, Bolivia, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay, and Venezuela. *Id.*

71. *See UNASUR Pushes Consolidation*, *supra* note 69.

72. *Id.*

73. *Id.*

74. South American Union of Nations Constitutive Treaty pmb., May 23, 2008, *reprinted in* 15 LAW & BUS. REV. AM. 465, 465 (2009) [hereinafter *UNASUR Constitutive Treaty*].

2005, and the Cochabamba Declaration of 2006 inspired the Constitutive Treaty.<sup>75</sup> The Treaty is organized into twenty-seven separate articles.<sup>76</sup> Article 1 of the Constitutive Treaty states the intent of the member states of UNASUR to organize as a body with “international juridical character.”<sup>77</sup> Article 2 states that the central objective of UNASUR is to build a union that spans social, economic, political, and cultural contexts.<sup>78</sup> Article 3 enumerates UNASUR’s specific policy objectives,<sup>79</sup> while article 4 identifies the central governing bodies of UNASUR.<sup>80</sup>

Article 5 of the Constitutive Treaty states how the main bodies of UNASUR will interact.<sup>81</sup> Articles 6 through 10 discuss the specific roles and duties of the individual UNASUR bodies.<sup>82</sup> Article 11 of the Treaty evaluates the proper juridical sources of UNASUR.<sup>83</sup> Articles 12 and 13 of the Constitutive Treaty identify the appropriate processes to approve legislation, adopt particular policies, and create new institutions.<sup>84</sup> Articles 14 and 15 discuss the appropriate tone and methods of political discourse among both nations and third-party nations.<sup>85</sup> Article 16 of the Constitutive Treaty identifies how UNASUR will be financed.<sup>86</sup> Article 17 creates a new parliament and identifies its functions.<sup>87</sup> Article 18 asserts that a core value of UNASUR will be the participation of citizens in the integration of South American nations.<sup>88</sup> Articles 19 and 20 of the Constitutive Treaty discuss the admission of AMSs and the process for admitting new member states.<sup>89</sup> Article 21 of the Treaty decides the manner by which all disputes occurring in UNASUR will be resolved.<sup>90</sup>

---

75. *Id.*

76. *See generally id.*

77. *Id.* art. 1.

78. *See id.* art. 2. Article 2 also states that “political dialogue, social policies, education, energy, infrastructure, financing and the environment” are priorities of UNASUR policies. *Id.*

79. *See id.* art. 3. These specific policies span a wide range of topics, including: the strengthening of political dialogue, the promotion of human development to eradicate poverty, the eradication of illiteracy, the integration of energy policy, effective financial integration, the protection of biodiversity and the environment, universal access to social security, supranational cooperation on the topics of labor law and migration, industrial integration, cohesive economic and commercial policies, and the promotion of cultural diversity. *Id.*

80. *Id.* art. 4.

81. *Id.* art. 5.

82. *Id.* arts. 6-10.

83. *Id.* art. 11.

84. *Id.* arts. 12-13.

85. *Id.* arts. 14-15.

86. *Id.* art. 16.

87. *Id.* art. 17.

88. *Id.* art. 18.

89. *Id.* arts. 19-20.

90. *Id.* art. 21.

Article 22 of the Constitutive Treaty discusses the privileges and immunities enjoyed by the member states of UNASUR.<sup>91</sup> Articles 23 through 27 explain procedural aspects of UNASUR, such as the official languages of UNASUR, the amendability of the Constitutive Treaty, and the process by which the Constitutive Treaty will enter into force.<sup>92</sup>

*C. The Addition of the Democratic Protocol*

On November 26, 2010, at the UNASUR summit in Georgetown, Guyana, UNASUR leaders approved a new democracy clause to the Constitutive Treaty.<sup>93</sup> This additional clause to the Constitutive Treaty allows UNASUR nations to gravely sanction any nation in the region that disrupts a democratic government or allows for a military coup d'état.<sup>94</sup> The military police's attempt to overthrow the government of President Rafael Correa in Ecuador inspired the new democracy clause of the Constitutive Treaty.<sup>95</sup> The Democratic Protocol is divided into nine different articles.<sup>96</sup> Article 1 states that the protocol applies in the event of a breach of democracy.<sup>97</sup> Article 2 discusses in what situations and who may convene to evaluate the aforementioned breach of democracy.<sup>98</sup> Article 3 of the Democratic Protocol creates a balancing test, weighing the factors defined in article 4 with well-being of the nation where the breach has occurred in order to evaluate what sanctions should be applied against the violating nation.<sup>99</sup> Article 4 of the Democratic Protocol discusses what sanctions may be employed against the violating nations, including the closure of land borders to the violating member state, the suspension and limitation of trade, limitation of external communication, suspension of all rights and involvements in UNASUR, encouragement to restrict the violating nation's access to other trade blocs and access to other regional and international entities, and other

---

91. *Id.* art. 22.

92. *See id.* arts. 23-27.

93. *See* Johann Earle, *Strong Sanctions for Any Attempted Coups, Disruption to Democracy*, GUYANA CHRON., Nov. 27, 2010, [http://www.guyanachronicleonline.com/site/index.php?option=com\\_content&view=article&id=21679:strong-sanctions-for-any-attempted-coups-disruption-to-democracy&catid=4:top-story&Itemid=8](http://www.guyanachronicleonline.com/site/index.php?option=com_content&view=article&id=21679:strong-sanctions-for-any-attempted-coups-disruption-to-democracy&catid=4:top-story&Itemid=8).

94. *Id.*

95. *Id.*

96. *See generally Democratic Protocol*, *supra* note 3, arts. 1-9.

97. *See id.* art. 1. The Protocol defines a situation where democracy is threatened as "any situation that jeopardizes the legitimate exercising of power and the application of the values and principles of democracy." *Id.*

98. *Id.* art. 2.

99. *Id.* art. 3. The Protocol demands that the evaluation of a nation's conduct respects the "sovereignty and territorial integrity of the affected State." *Id.*

political or diplomatic sanctions authorized by the UNASUR leadership.<sup>100</sup> Article 5 allows the leadership of UNASUR to take any additional diplomatic steps necessary to restore democracy in the affected nations.<sup>101</sup> Article 6 of the Democratic Protocol provides for the government of any UNASUR member state to report to the Council of Heads of State when there is a threat to democracy occurring in its own nation.<sup>102</sup> Article 7 states that once democratic order has been restored in the member state in question, all sanctions proposed in article 4 will be lifted.<sup>103</sup> Article 8 of the Democratic Protocol discusses the terms under which the Democratic Protocol will come into force.<sup>104</sup> Article 9 asserts that the Protocol will be filed with the United Nations, and specifies the official languages into which the Protocol will be translated.<sup>105</sup>

#### IV. COMPARING AND CONTRASTING THE DEMOCRATIC PROTOCOL WITH THE RELEVANT TREATY ON EUROPEAN UNION PROVISIONS

Both the Democratic Protocol to the Constitutive Treaty and articles 2 and 7 of the TEU have language highlighting the importance of maintaining democracy within supranational bodies.<sup>106</sup> While both documents promote the core value of democracy, the Democratic Protocol and articles 2 and 7 of the TEU can be distinguished on three separate bases: specificity, weight of the sanctions on violating nations, and a theoretical application versus a functional application.

##### A. *Specificity*

While both documents are clearly addressing the issue of maintaining a democratic government in member states, the language in the Democratic Protocol to the Constitutive Treaty is far more specific than the language identified in the TEU. Article 1 of the Democratic Protocol provides one or two examples of a threat to democratic government, while article 2 of the TEU only mentions the concept of democracy in a string of vague, undefined core values.<sup>107</sup> Additionally,

---

100. *Id.* art. 4.

101. *Id.* art. 5.

102. *Id.* art. 6.

103. *Id.* art. 7.

104. *Id.* art. 8. The Democratic Protocol, like the Constitutive Treaty as a whole, only came into force after the ninth Member State has ratified the document. *Id.*; see also *The South American Union of Nations Constitutive Treaty*, *supra* note 74, at 474-75.

105. See *Democratic Protocol*, *supra* note 3, art. 9.

106. See TEU, arts. 2, 7; see also *Democratic Protocol*, *supra* note 3, arts. 1-7.

107. Compare *Democratic Protocol*, *supra* note 3, art. 1 ("This Protocol shall apply in the event of a breach or threat of breach against the democratic order, a violation of the constitutional

article 3 of the Democratic Protocol creates a balancing test to evaluate what sanctions should be applied,<sup>108</sup> and article 4 provides a detailed list of sanctions that may be imposed on the violating member state.<sup>109</sup> In contrast, article 7 of the TEU defines a process by which a situation where democracy is threatened may be evaluated,<sup>110</sup> but only gives one example of a possible sanction, and does not create a balancing test for the Member States to consider when evaluating the violation of democracy.<sup>111</sup>

---

order or any situation that jeopardises the legitimate exercising of power and the application of the values and principles of democracy.”), with TEU art. 2 (“The Union is founded on values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. . .”).

108. See *Democratic Protocol*, *supra* note 3, art. 3 (“The Council of Heads of State and Government or, in its absence, Council of Ministers of Foreign Affairs, meeting in an extraordinary session, shall consider by consensus, the nature and scope of the measures to be applied, taking into account the relevant information gathered based on the provisions of article 4 of this Protocol and respecting the sovereignty and territorial integrity of the affected State.”).

109. See *id.* art. 4:

The Council of Heads of State and Government or, in its absence, the Council of Ministers of Foreign Affairs may establish, in the event of a breach or threat of breach against the democratic order, the measures outlined below. . . .

- a.- Suspension of the right to participate in the various bodies and branches of UNASUR, as well as the suspension of the rights and benefits enjoyed under the Constitutive Treaty of UNASUR.
- b.- Partial or complete closure of land borders, including the suspension and/or limitation of trade, air and maritime traffic, communications and provision of energy, services and supplies.
- c.- Advocate the suspension of the affected State in the ambit of other regional and international organisations.
- d.- Promote, with third countries and/or regional blocs, the suspension of the rights and/or benefits enjoyed by the affected State under the co-operation agreements to which it is party.
- e.- Adoption of additional political and diplomatic sanctions.

110. See TEU art. 7, para. 2 (“The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations.”).

111. *Id.* art. 7, para. 3 (“Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council.”). While no set test is laid out to evaluate a potential breach of a fundamental right, it is important to note that the EU is generally governed by the principle of proportionality. See *id.* art. 5, para. 1 (“The use of Union competences is governed by the principles of subsidiarity and proportionality.”).

*B. Weight of the Sanctions Imposed*

The two provisions also may be distinguished when evaluating the relative weight of the sanctions discussed. In the Democratic Protocol to the Constitutive Treaty, article 4 lists a large number of possible sanctions that may be imposed on the violating member state.<sup>112</sup> These sanctions include but are not limited to the powers within UNASUR.<sup>113</sup> Additional sanctions proposed by article 4 of the Democratic Protocol include restriction of communication with the violating member state, closing the borders to the violating state, lobbying for the violating state's exclusion from other regional and international bodies, and additional political or diplomatic sanctions.<sup>114</sup> Along with the severe sanctions proposed by article 4 of the Democratic Protocol, article 5 creates an affirmative duty for UNASUR nations to restore democracy in the violating member state.<sup>115</sup>

In contrast, article 7 of the TEU proposes only one example of a sanction that may be imposed against a Member State that threatens democratic order: revocation of their official EU vote.<sup>116</sup> Additionally, the language used in article 7 implies that the sanctions used against a violating Member State should be within the bounds of EU powers, and should ideally have a limited effect on the citizens of the Member State outside their function in the EU.<sup>117</sup>

*C. Practical Effect of the Democracy Clauses: Theoretical/Functional*

Due to the specific language employed by each document, the democracy clauses can be distinguished by the individual roles they fulfill in the document. In the Democratic Protocol of the Constitutive

---

112. See *Democratic Protocol*, *supra* note 3, art. 4.

113. *Id.*

114. *Id.*

115. *Id.* art. 5 (“Together with the adoption of the measures defined in article 4, the Council of Heads of State and Government, or in its absence, the Council of Ministers of Foreign Affairs shall use its good offices and take diplomatic steps to promote the restoration of democracy in the affected country. Said actions shall be carried out in coordination with those undertaken in applying other international instruments pertaining to the defence of democracy.”).

116. See TEU art. 7, para. 3.

117. *Id.*

[T]he Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

Treaty, the specific sanctions,<sup>118</sup> the proposed balancing test,<sup>119</sup> and the proposed methods of implementing the Democratic Protocol give the document a functional purpose.<sup>120</sup> The Democratic Protocol is directing UNASUR member states by making precise suggestions of what the nation should do in the event of a breach of democracy, how the situation should be evaluated, what sanctions should be imposed, and when the sanctions should be lifted.<sup>121</sup> Because of the level of detail, the specific language used, and the context of the Democratic Protocol, the UNASUR leadership meant for this provision to be functional whenever a threat to democracy in the region occurs.

Conversely, the TEU takes more of a theoretical approach when protecting their core values. Article 2 lists a number of fundamental values respected by the Member States of the EU, including “human dignity, freedom, democracy, equality, the rule of law and respect for human rights.”<sup>122</sup> Article 7 states that if the EU decides that a Member State has violated any of the fundamental values of the EU after a number of votes and considerations, then limited sanctions may be imposed within the scope of the EU’s treaties with due consideration paid to the consequences towards natural and legal persons of the Member State in question.<sup>123</sup> However, article 7 of the TEU does not define what would constitute a violation of the fundamental rights listed in article 2. Additionally, the TEU does not define what other sanctions the Member States may impose on the violating nation, aside from revoking the violating Member State’s EU vote. Furthermore, article 7 does not reveal when sanctions should be lifted after the violating Member State chooses to comply with the core values discussed in article 2.<sup>124</sup> Because article 2 divulges a number of varying fundamental values and article 7 does not define a clear process by which sanctions should be imposed against violating Member States, one can infer that articles 2 and 7 of the TEU should be read in more of a theoretical sense, rather than a direct

---

118. See *Democratic Protocol*, *supra* note 3, art. 4.

119. *Id.* art. 3.

120. *Id.* arts. 6-8.

121. *Id.* art. 7.

122. TEU art. 2.

123. *Id.* art. 7.

124. The Charter of Fundamental Rights of the European Union adds some insight on when a governing body should intervene in the event of a breach of fundamental right. See Charter of Fundamental Rights of the European Union, Mar. 30, 2010, 2010 O.J. (C 83) 389. However, provisions discussing the specific application of the Charter do not reach the degree of specific or direction for practical implementation as the Democratic Protocol of UNASUR provides. Compare *id.* art. 52, para. 1 with *Democratic Protocol*, *supra* note 3, arts. 3-4, 6-8.



implementation of specific sanctions as commanded by the Democratic Protocol of the Constitutive Treaty.

However, while the TEU seems at first blush to beg a more theoretical, vague application of articles 2 and 7, the 1999 parliamentary elections in Austria may be viewed as a case study of how the democracy clauses of the TEU functioned in a practical application.<sup>125</sup>

#### V. THE EFFECT OF ARTICLES 2 AND 7 OF THE TREATY ON EUROPEAN UNION ON INDIVIDUAL MEMBER STATES: THE EU SANCTIONS THE AUSTRIAN MINISTERS

On October 3, 1999, the Freedom Party of Austria (led by Jörg Haider), won more than a quarter of the votes cast during Austria's general election.<sup>126</sup> The right-wing Freedom Party prevailed by a small margin of 14,101 votes over the People's Party.<sup>127</sup> The Social Democratic party suffered major losses during this election, falling to sixty-five parliamentary seats and earning thirty-three percent of the votes cast.<sup>128</sup> In contrast, the right-wing Freedom Party gained twelve seats in the Parliament to bring the total number of Freedom Party seats to fifty-three.<sup>129</sup> This election was notable because it brought Austria's Freedom Party (popularly thought to represent a xenophobic agenda) into equal bargaining power with Austria's other lead political parties (the People's Party and the Social Democrats).<sup>130</sup>

In February 2000, the EU imposed official sanctions on Austria for the election of potentially xenophobic Freedom Party ministers to the Austrian parliament.<sup>131</sup> The imposed sanctions prohibited Austria to meet with the EU at higher than at a merely technical level.<sup>132</sup> Austria

---

125. See, e.g., Paul Watson, *EU Sanctions on Austria Should End, Panel Says*, L.A. TIMES, Sept. 9, 2000, <http://articles.latimes.com/2000/sep/09/news/mn-18096>.

126. See Alex Blair, *Xenophobia Triumphs in Austria's Historic Poll*, SCOTSMAN PUBLICATION, Oct. 4, 1999, at 9.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. See John Tagliabue, *INTERNATIONAL BUSINESS; Austrians Consider the Cost of Extremism in the Cabinet*, N.Y. TIMES, Feb. 8, 2000, <http://www.nytimes.com/2000/02/08/business/international-business-austrians-consider-the-cost-of-extremism-in-the-cabinet.html>.

132. See Suzanne Daley, *European Union Is Moving To Lift Sanctions It Imposed on Austria*, N.Y. TIMES, July 15, 2000, <http://www.nytimes.com/2000/07/15/world/european-union-is-moving-to-lift-sanctions-it-imposed-on-austria.html?pagewanted=3>. While Austria remained a participant in "the day-to-day business of the EU," the sanctions against Austria created significant disruptions at EU meetings and bolstered an anti-EU sentiment in Austria. Barry James, *End Sanctions on 'European' Austria, Panel Advises the EU*, N.Y. TIMES, Sept. 9, 2000, <http://www.nytimes.com/2000/09/09/news/09iht-austria.2.t.html>.

struggled both economically as well as diplomatically during the months the EU imposed official sanctions. For example, Austria was excluded from EU deliberations during February 2000, a time when the EU was discussing policies that were critical to Austria's economic development.<sup>133</sup> During months in early 2000, Austria saw significant hits in its stock market, tourism industry, and foreign investments.<sup>134</sup> Additionally, in early 2000, Austria faced diplomatic pressure about the newly elected Freedom Party ministers at EU meetings.<sup>135</sup> At the first EU meeting since the Austrian election, Austrian Social Minister Elizabeth Sickl received a chilly reception from other EU leaders.<sup>136</sup> During Ms. Sickl's address to the EU, the French and Belgian ministers left the room as a political and symbolic gesture.<sup>137</sup>

While France and Belgium led efforts to boycott the new government in Austria, other diplomats questioned the strategy of cutting all diplomatic ties with Austria's new government before the new ministers had even taken office.<sup>138</sup> During a radio interview after the early February meeting, the Austrian foreign minister showed frustration with the Belgian and French leaders and asked for the EU to allow the new government to govern.<sup>139</sup>

By July 2000, five months after the EU imposed the sanctions, the EU began to question how much longer the sanctions should remain in effect.<sup>140</sup> The EU selected a number of experts to investigate the potential for human rights abuses in Austria and the actions of the Freedom Party.<sup>141</sup> Austria grew increasingly frustrated with the sanctions during the summer of 2000 and demanded that the sanctions be lifted by October 2000.<sup>142</sup> Additionally, the French ministers championing the imposed sanctions on Austria grew concerned about their ability to make significant progress in their role as the new EU president with the sanctions remaining on Austria.<sup>143</sup>

---

133. See Tagliabue, *supra* note 131. In February 2000, the EU discussed the admittance of many former Soviet Union nations that bordered Austria as Member States. *Id.*

134. *Id.*

135. See Alex Blair, *EU Leaders Snub Austria's Social Minister*, SCOTSMAN PUBLICATION, Feb. 12, 2000, at 14.

136. See *id.* Only the Portuguese Employment Minister, Eduardo Ferro Rodrigues, spoke to Ms. Sickl directly. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. See Daley, *supra* note 132.

141. *Id.*

142. *Id.*

143. *Id.* For example, the EU during this time was discussing the admission of new Member States. Many Member States were concerned, however, because admitting new

In September 2000, the panel of experts evaluating Austria's Freedom Party issued their report on the Austrian political climate and the potential for human rights violations.<sup>144</sup> The experts' report recommended that the sanctions on Austria be lifted.<sup>145</sup> Several days after the report was filed, on September 13, 2000, the EU finally lifted the sanctions against Austria.<sup>146</sup> However, while removing the sanctions on Austria, the Member States expressed their ongoing concern about the Freedom Party's involvement with the Austrian government and vowed that they would be vigilant in monitoring the Austrian political arena.<sup>147</sup>

The sanctions against Austria were primarily of a diplomatic and a social nature, and the practical effect did not create the serious political or economic downturn that many had predicted.<sup>148</sup> However, the sanctions against Austria in 2000 represented far more than the tangible effects suffered by the Austrian government. The EU sanctions against Austria show the willingness of a supranational government body to intervene in the internal affairs of a member state.<sup>149</sup> Additionally, the EU displayed an eagerness to intervene in the politics of another nation without a cognizable threat to a fundamental value. The EU imposed sanctions merely after the Freedom Party officials were elected in Austria, making a judgment fueled only by the xenophobic rhetoric of the party's leaders as opposed to a viable threat.

#### VI. THE AUSTRIA SANCTIONS IN THE CONTEXT OF THE DEMOCRATIC PROTOCOL?: EXPLORING THE LASTING IMPACTS OF UNASUR'S NEW PROVISION

While the EU penalties on Austria were lifted with little to no harmful long-term impacts on Austria's political or economic situation, the reasons the sanctions are important are three-fold. First, the EU

---

members would further complicate the current decision-making mechanism that required a unanimous vote on most decisions. Austria threatened to thwart progress on the alteration of the EU voting system if the sanctions were not removed. While France still believed sanctions on Austria were justified, the French reputation as EU president was pressured to make progress toward admitting new Member States. *Id.*

144. See Suzanne Daley, *Europe Lifts Sanctions on Austria, but Vows Vigilance*, N.Y. TIMES, Sept. 13, 2000, <http://www.nytimes.com/2000/09/13/world/europe-lifts-sanctions-on-austria-but-vows-vigilance.html>.

145. *Id.* the so-called "wise men" suggested that, in fact, violence in Austria against foreigners was much lower than in other European nations, and Austria respected "European values." For these reasons, the experts found that continuations of sanctions would not be fruitful. James, *supra* note 132.

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

measures imposed against Austria had a diplomatic impact that surpassed the EU's policies and encroached into the diplomatic relations between Austria and other nations.<sup>150</sup> Additionally, the sanctions were imposed prior to any particular action by the Freedom Party of Austria to violate the core values discussed in article 2 of the TEU.<sup>151</sup> Finally, the EU Member States were divided about when penalties on Austria should be lifted, and there was no set procedure about how to conclude sanctions against a violating Member State.<sup>152</sup>

The EU sanctions in Austria are a notable example of the use of a democracy provision by a supranational body that may be an instructive comparison to the Democratic Protocol that was recently adopted by the UNASUR nations of South America. By evaluating the distinguishing factors between the Democratic Protocol of the Constitutive Treaty and the relevant provisions of the TEU, and setting those core differences in the context of the Austrian sanctions, this Comment will question what effects the language of the Democratic Protocol could have on a potential failure of democracy. Because of the different language and aims of the Democratic Protocol, this Comment identifies three notable differences that would likely occur if a situation similar to the Austria sanctions were to take place in South America.

A. *The Language of the Democratic Protocol May Prevent Preemptive Sanctions*

Article 1 of the Democratic Protocol to the Constitutive Treaty defines "a breach or threat of breach against the democratic order" as "a violation of the constitutional order or any situation that jeopardises the legitimate exercising of power and the application of the values and principles of democracy."<sup>153</sup> While this definition of situations in which the Democratic Protocol would apply seems rather broad, it is far more descriptive than the fundamental values defined in article 2 of the TEU.<sup>154</sup> The Democratic Protocol's language "any situation that jeopardises the legitimate exercising of power and the application of the values and

---

150. *Id.* (discussing the effects of the EU sanctions on Austria's relationship with Canada and the United States).

151. *See* Blair, *supra* note 135 (noting the questioning of diplomats about the EU's decision to impose sanctions on Austria without a direct violation of the TEU); *see also* TEU art. 2 (listing the core rights of the EU).

152. *See* Daley, *supra* note 132 (detailing the differing opinions of the EU Member States on the state of the sanctions in Austria).

153. *Democratic Protocol, supra* note 3, art. 1.

154. *Compare id.* (defining a breach to democratic government), *with* TEU art. 2 (enumerating the core values of the European Union Member States).

principles of democracy” implies there must be an actual breach or a legitimate threat to the exercise of democracy in the violating member state before any sanctions may be applied against that nation.<sup>155</sup> Conversely, article 7 of the TEU only advises that the European Parliament “may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2,” without further guidance as to what would constitute a “serious and persistent breach” of a core value.<sup>156</sup>

Perhaps the vague definitions of the core values enumerated in article 2 of the TEU and a lack of guidance as to what constitutes a breach in the core values in article 7 led to what many viewed as a preemptive intervention into Austria's political arena.<sup>157</sup> The Democratic Protocol, especially due to its more precise language drafted in article 1, would likely lead to a less preemptive intervention than the EU sanctions on Austria.<sup>158</sup>

*B. The Weight of the Sanctions Imposed by the Democratic Protocol May Be Crippling to UNASUR's Member States*

Article 7 of the TEU only authorizes the Member States of the EU to impose limited sanctions on the violating Member State, limiting the available sanctions to those within the EU's reach. Article 7 also gives an example of such sanctions, the revocation of the violating nation's EU vote.<sup>159</sup> However, when examining the EU's sanctions on Austria, the practical effect of official sanctions extended from the reach of the EU's policies into the social relationships between European diplomats and into the diplomatic relations between Austria and non-EU nations.<sup>160</sup> This

---

155. *Democratic Protocol, supra* note 3, art. 1.

156. TEU art. 7, para. 2.

157. See Blair, *supra* note 135 (“[S]enior diplomats and government ministers across Europe have privately questioned the move to cut off diplomatic relations with the nascent government before it has taken office.”); see also TEU arts. 2, 7.

158. *Democratic Protocol, supra* note 3, art. 1. However, while the Democratic Protocol may prevent a preemption intrusion into other nations, the restricted definitions of breach of democracy could prevent supranational intervention in a situation that may require it.

159. TEU art. 7, para. 3 (“[The European Council] may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council.” (emphasis added)).

160. See Blair, *supra* note 135 (“France and Belgium have been at the forefront of leading a campaign to ostracise Austria in Europe, in the hope of sending a powerful message, not least to their right-wing factions, as well as to Mr. Schüessel and the Austrian people.”); see also Daley, *supra* note 144 (“In Washington today, a State Department official said that the United States was examining the European Union report but would maintain the modest diplomatic sanctions that it imposed in February to ‘limit’ contacts with Austrian officials. . . . [Canada followed the

effect can be evaluated in one of two ways: first, the vague language of articles 2 and 7 of the TEU is responsible for creating sanctions that extended beyond the function originally intended by the EU, or second, the EU's act of imposing sanctions created a domino effect mirrored by other nations that isolated Austrian citizens for their electoral decisions. More likely than not, the latter is the reason the sanctions imposed on Austria had unforeseen practical effects.<sup>161</sup>

Overall, Austria was relatively fortunate it did not suffer a lasting economic or political impact from the EU sanctions and centrally faced restricted diplomatic relations following the election of Freedom Party ministers in October 1999.<sup>162</sup> Considering the permissible sanctions in the TEU for the violation of the fundamental values enumerated in article 2<sup>163</sup> and the actual effects Austria faced from the imposed sanctions,<sup>164</sup> the effects suffered by a UNASUR member state in violation of the Democratic Protocol could be catastrophic to the government, economy, and well-being of the citizens of the affected nation. This conclusion is based on two central rationales: the severity of the sanctions proposed by the Democratic Protocol will cripple violating nations, and the possible wave of pressure for outside nations to sever their diplomatic ties with the violating nation, as seen with the Austrian government in 2000.

Article 4 of the Democratic Protocol to the Constitutive Treaty enumerates many sanctions that the governing body of UNASUR may employ if a member state endangers the maintenance of democratic government.<sup>165</sup> The sanctions recommended by the Democratic Protocol include both actions through UNASUR and actions employed by member states that do not involve the violating nation's UNASUR

---

Europeans' lead, lifting its sanctions against Austria on the ground that it no longer feared Vienna would adopt policies that infringed on human rights, Reuters reported]." (alterations in original).

161. While the language of the TEU is unclear on what constitutes a breach of a fundamental value, the TEU does give an indication that it intends the sanctions imposed on a violating Member State to be limited. *See* TEU art. 7, para. 3 (discussing the possible sanctions for a Member State that breaches the core values of article 2). This being said, the more likely reason Austria suffered from chilly diplomatic relations from diplomats outside the EU was because other nations followed the example of the EU, and decided to limit contact with Austria because of the views of the newly elected Freedom Party officials. *See* Daley, *supra* note 144 (evaluating the changing viewpoint of the foreign nations which limited contact with Austria after the 1999 elections).

162. *See* Daley, *supra* note 144 (reviewing the lasting impacts of the EU sanctions on Austria's economic and political climate).

163. *See* TEU art. 7, para. 3 (creating possible sanctions for violating the core values enumerated in article 2).

164. *See* Daley, *supra* note 144 (discussing the impact of the sanctions on the Austrian government and economy).

165. *Democratic Protocol, supra* note 3, art. 4.

membership.<sup>166</sup> Additionally, article 5 of the Democratic Protocol creates an affirmative duty for the member states of UNASUR to do all they can within reason to restore democracy in the affected nation.<sup>167</sup> These actions, if employed by the leadership of UNASUR, could have a devastating impact on the violating member state. For example, geographic isolation and trade barriers would have a large impact not just on the violating nation's government or diplomatic relationships, but also on the well-being of the citizens of the violating member state.

While the TEU only authorized the European Parliament to sanction Austria within the treaties of the EU, other nations such as Canada and the United States reacted to the EU's sanctions by limiting their own relationships with Austria.<sup>168</sup> In article 4 of the Democratic Protocol, UNASUR proposes sanctions that would isolate the violating member state physically, economically, socially, and politically.<sup>169</sup> Along with sanctions through UNASUR, the Democratic Protocol encourages member states of UNASUR to take additional actions to sanction the violating nation in other regional and international entities, and further encourages member states to take additional diplomatic steps to restore democracy.<sup>170</sup> This severe reaction by the UNASUR member states would most likely encourage other nations with diplomatic relations involving the nation in question to greatly restrict diplomatic interaction. This "domino effect" would further isolate the violating member state. Because the Democratic Protocol *encourages* the political and economic isolation of a violating nation in addition to the diplomatic and social sanctions imposed by UNASUR leadership, the impact of the proposed sanctions would likely be far more severe than the impact of the EU sanctions on Austria.

*C. The Democratic Protocol Provides Member States with Insight into the End of Sanctions*

The central issues that European Parliament faced in the summer of 2000 was disagreement about how and when the sanctions against Austria should end, as well as how to end penalties against Austria

---

166. *Id.* These sanctions include isolating the borders of the violating member state, severing all communication and trade, and encouraging other trading blocs and international entities to restrict interaction with the violating nation. *Id.*

167. *Id.* art. 5 ("[T]he Council . . . shall use its good offices and take diplomatic steps to promote the restoration of democracy in the affected country.").

168. See Daley, *supra* note 144.

169. *Democratic Protocol, supra* note 3, art. 4.

170. *Id.* arts. 4-5.

without damaging the EU's reputation.<sup>171</sup> Many nations felt that the sanctions had lasted too long, but did not have guidance from the TEU suggesting the proper procedure to end the sanctions.<sup>172</sup> The European Parliament wisely assembled a group of experts to evaluate the political climate and human rights issues in Austria and decide whether sanctions against Austria should continue.<sup>173</sup> The EU decided to lift the sanctions against Austria only after a group of experts issued a report in September 2000 recommending that sanctions against Austria should be lifted because they would no longer be productive.<sup>174</sup>

The EU's struggle to decide when and how to end the sanctions against Austria would not likely be seen if UNASUR leaders imposed similar sanctions authorized by the Democratic Protocol. Article 7 of the Democratic Protocol identifies when sanctions imposed against a violating member state should be lifted.<sup>175</sup> Even though the Democratic Protocol identifies a time frame when sanctions should be lifted, the time needed to "completely restor[e]" democracy could result in lengthier sanctions than those ultimately imposed on Austria.<sup>176</sup> While a time parameter is useful to the member states of UNASUR, the vague and optimistic goal of completely restoring democracy in the violating member state may prolong the duration of the sanctions.<sup>177</sup>

## VII. CONCLUSION

The Constitutive Treaty, including the additional Democratic Protocol, officially entered into force on March 11, 2011.<sup>178</sup> For the first time in its three-year history, UNASUR's Constitutive Treaty and its Democratic Protocol are now binding on the member states.<sup>179</sup> In many

---

171. See Daley, *supra* note 144 (discussing the debate between EU Member States about the sanctions against Austria).

172. *Id.*

173. *Id.* (discussing the appointment of a group of experts to evaluate the human rights situation in Austria).

174. *Id.*

175. *Democratic Protocol*, *supra* note 3, art. 7 ("The measures provided in article 4 that are applied to the affected Member State, shall cease from the date on which said State is notified of the agreement reached by the States that adopted such measures, once it has been confirmed that the constitutional democratic order has been completely restored.")

176. *Id.*

177. *Id.*

178. See *UNASUR Pushes Consolidation*, *supra* note 71. As noted before, the Constitutive Treaty would come into force thirty days after the ninth UNASUR nation ratified the treaty. See *UNASUR Constitutive Treaty*, *supra* note 74. On February 11, 2011, Uruguay became the ninth nation to ratify the Constitutive Treaty. See *UNASUR Pushes Consolidation*, *supra* note 71.

179. See *UNASUR Pushes Consolidation*, *supra* note 71.



ways, the Democratic Protocol of the Constitutive Treaty represents many steps forward for UNASUR and its member states. In a region historically plagued by coup d'états and political unrest, a strong and unwavering commitment to democratic government is comforting to other Western nations.

However, there are many details of the Democratic Protocol to the Constitutive Treaty that may be a cause for future concern. Even though the notion of "breach of democracy" is more clearly defined than in the TEU, there is still a possibility UNASUR member states may impose sanctions on a nation similarly situated to Austria in 1999, meaning that UNASUR member states could potentially intervene prior to the actual manifestation of a threat to democracy.<sup>180</sup> The severe sanctions proposed by the Democratic Protocol could impair not only the government of the violating member state, but also the citizens of the member state in question.<sup>181</sup> Additionally, the severity of the sanctions could cause other nations that are not UNASUR member states to sever diplomatic ties with the violating member state, further affecting the well-being and human rights of the citizens. The Democratic Protocol may potentially impose overly harsh sanctions on the violating member states, cripple the economy of the nation in question, and impose sanctions for an extended period of time by proposing that a complete restoration of democracy must occur before sanctions are lifted.<sup>182</sup>

Finally, the Democratic Protocol may impose an unwelcome supranational identity on the individual nations of South America. Unlike European nations with a long history of different types of democracy, South American nations have a long and tumultuous history of authoritarian governments.<sup>183</sup> While democratic governments may be the most familiar and comfortable governments to European and North American nations, South American countries have historically used varying models of government. By placing a mandatory requirement of democracy on all member nations, UNASUR may be imposing a uniform supranational identity on its member states that may prove to be unwelcome and ultimately may not be the best solution for individual nations.

While UNASUR and its member states are currently experiencing an exciting time of growth, the UNASUR Council of Member States

---

180. *Democratic Protocol*, *supra* note 3, art. 1.

181. *Id.* art. 4.

182. *Id.* arts. 4, 7.

183. See STEVE C. ROPP, THE STRATEGIC IMPLICATIONS OF THE RISE OF POPULISM IN EUROPE AND SOUTH AMERICA 23-24 (2005).

would be wise to employ the Democratic Protocol to the Constitutive Treaty with caution and prudence in order to prevent overly harsh sanctions that may cripple the economic development of a member state and its natural and legal citizens.