

# **The Inter-American Democratic Charter:**

## **Challenges and Opportunities**

**A Rapporteur's Report on a Conference on the Inter-American Democratic Charter**  
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### **Introduction**

The Inter-American Democratic Charter, signed in Lima, Peru on September 11, 2001, represents a milestone in the commitment of the nations of the Americas to collectively promote and defend democracy. The Charter was a product of a remarkable confluence of events. Prior efforts of the OAS to support democracy in the hemisphere—Resolution 1080 and the Washington Protocol—addressed the threat of conventional military coups but were blind to more insidious threats to democracy such as President Alberto Fujimori's actions in Peru to suspend the constitution, close the Congress and rule by decree. Following successful OAS involvement in resolving the Peruvian situation, the transitional government, led by Valentin Paniagua, proposed the creation of a Democratic Charter. In his inaugural comments on November 12, 2002, former Peruvian Chancellor Diego García-Sayan suggested, "an idea emerged to prepare a coherent and consistent international instrument" to react to and prevent different forms of threats against democracy. The idea was then advanced by the organizers of the 2001 Summit of the Americas resulting in the insertion of the "democracy clause" into the Declaration of Quebec City. A mere five months later, the OAS General Assembly adopted the Charter.

The Charter is truly a remarkable document. The historic advance of democracy into all OAS member states no longer represents an accomplishment of individual states. Rather, the essential nature of democracy now has hemispheric recognition. Further, the Charter is striking for the speed with which it was negotiated (Cooper 2002: 2). A mere fifteen months passed between the tabling of the report of the Eduardo Stein led Electoral Observation Mission in Peru and final adoption of the Charter. John Graham notes such a short timeline is particularly remarkable given that the high levels of enthusiasm surrounding democracy felt throughout the region in the early 1990s had begun to wane. Despite such limited time, civil society was allowed to play a groundbreaking consultation role, setting an important precedent for future OAS negotiations (Lortie and Bédard 2002: 21-2).

Unfortunately, as Lloyd Axworthy noted in his opening comments, the afterglow of these events has begun to wear off. Events in Venezuela, Argentina and Haiti have served as a reminder that democracy in Latin America remains under threat. The people's confidence in democracy has been undermined by a general lack of economic and social progress. Most believe the problems of crime, inequity and corruption are worse than they were twenty years ago. As democracy has failed to reach the stomachs of the people, widespread survey data indicates an increase in their willingness to support non-democratic alternatives. This softening of support comes at a time when democracy is not threatened by military coups as much as by the undemocratic behavior of some democratically elected officials. And, in response to the other events of September 11, 2001, global attention has turned from democracy to terrorism.

Given this promising start and a potentially turbulent future, does the Charter have a role to play in the future of the Inter-American system? In answering the question affirmatively, it is important to remember the Charter has only been in existence for eighteen

months and it may simply be too early to judge such a question. However, in that short time, the Charter has begun to set up its own dynamics. People in crisis have already begun to look to it for solutions because it stands as recognition that a democratic norm is well established in the Americas – that governments derive authority from consent of the governed. It has fostered a growing understanding that election observers, both domestic and international, are crucial to the democratic process. It also points to the vital role institutions can play in democracy, such as, the OAS through the Charter, the UPD as the only institution in the Americas exclusively devoted to democracy, national election commissions as demonstrated in Mexico, and the expanding importance of both national and international NGOs.

The difficulty in judging the future is the Charter is still in its infancy and it is already demonstrating there will be growing pains involved in its effective application. The exact meaning of “unconstitutional interruption or alteration of the democratic order” remains unclear thus providing no explicit guidance on when the Charter should be applied. Initiating action under the Charter is conditioned on a request from the very government that may be responsible for the creating the problem in the first place. In making the political judgments on issues surrounding Charter violations, there is a lack of systemic, empirical information. Finally, effective enforcement mechanisms available to the OAS, alone or in conjunction with international financial institutions, are not yet clear.

In response to these issues and challenges, Lloyd Axworthy and the Liu Institute at the University of British Columbia convened a meeting in November 2002 of senior policymakers, academics, and representatives of non-governmental organizations across the Americas to develop a Plan of Action for the implementation of the Charter. The conference was co-sponsored by the Liu Institute for Global Issues, the Centre of

International Relations, The Department of Foreign Affairs and International Trade, and with support from the Faculty of Graduate Studies, the Faculty of Journalism, the Faculty of Political Science and the VP External, University of British Columbia. Meetings took place over two days and involved frank discussions and exchanges between groups that often seem to speak at rather than with each other. Throughout the conference, the question of “what’s next” remained prominent. By the end, there was substantial agreement on a number of difficulties the Charter faces and several proposals aimed at addressing these problems.

This report offers a brief summary and commentary on the deliberations on the Democratic Charter that occurred throughout the two days of the conference in Vancouver. Rather than faithfully record every nuance in the discussion, it attempts to provide a synthesis and overview of some of the most important themes concerning the Democratic Charter, as well as to offer a sense of where there appeared to be broad agreement and where there were flashpoints of controversy. It is organized into two major sections in accordance with the thematic structure of the conference. The first is a broader assessment of the Charter that examines challenges associated with appropriate definitions and measures of democracy, the identification of threats to democratic regimes and the potential for extending the scope of responses available under the Charter. The second looks at the consensus that emerged surrounding proposals to strengthen the Charter including the Inter-American Democracy Network, the Inter-American Democratic Institute and the Friends of the Charter.

## **An Identification of Charter Shortcomings**

The Charter represents an important first step in the hemispheric defense of democracy. As a groundbreaking document, there was no fixed template from which to work. Had such a template existed, it would have been necessary to mold it to the unique context of the Inter-American system. At this point, the Charter is more an indication of the consensus surrounding hemispheric support for democracy than it is a smoothly functioning defense mechanism. There is however general agreement on three of the main issues confronting the Charter: how to define democracy, how to assess threats to democracy, how to respond to such threats.

### ***Definitions and Measures***

The Charter's principal conceptual flaw, as described by Robert Pastor, is that it tried to be all things to all people and therefore ended up with a maximal approach to defining democracy. A cursory review of the democratization literature reveals hundreds of variations on defining this term. Despite this, two main approaches dominate the field. The maximalist one sees democracy as an ideal type, laying out a set of objectives all democracies should strive for but few, if any, have actually completely fulfilled (Munck and Verkuilen 2002: 9). The minimalist one sees democracy as a procedure for leadership selection leaving aside the issue of substantive outcomes. While the outcome of the debate surrounding this 'essentially contested' concept has yet to be determined, a consensus has emerged among political scientist working in this research area around the adoption of the minimal definition (Collier and Levitsky 1997: 433).

We must distinguish between minimal attributes requiring defense and maximal attributes requiring exhortation (but not defense). As Robert Pastor pointed out, most

democratic countries understand that the meaning of democracy is very limited – it provides the capacity to change leaders from time to time. That’s it. From a collective standpoint, a modest definition provides the flexibility for countries to put their own stamp on the products of democracy. It is less prone to the imposition of outside sets of culturally specific requirements. It also should serve to disassociate the issues of leadership selection from governmental performance (or lack there of).

There are two sets of election issues that drive democracy: voting methods and the fairness and credibility of the election process. The first involves questions of constitutional design, electoral systems and various institutional choices (presidential or parliamentary system). There is no single “democratic” formula for these issues, thus they should remain in the domain of individual countries. The second involves questions of press freedom, party formation, opposition access, secret voting and public reporting of results. This is the realm of collective responsibility where the Charter is relevant.

Elections however cannot become the sole focus of the Charter. While elections provide a visible test of the democratic nature of a regime, the Charter deals with both interruptions and alterations of democracy. It requires looking beyond the vertical accountability of elections and demands attention to issues of horizontal accountability. This does not make the task of understanding the Charter easier, as issues surrounding the relations between institutions of government are even more difficult to interpret and judge than those surrounding elections.

It should be recognized that the minimalist definition lacks appeal to several groups. A significant group of NGOs is opposed to any interpretation of democracy that does not explicitly include human rights. A number of progressive groups (and academics) believe economic as well as political rights should be included within the concept of democracy.

While few argue human rights and economic rights are unimportant, their definitional inclusion presents substantial problems for the Charter. The addition of these elements into the definition significantly raises the requirements for the identification of democracy within a country making the application of the Charter even more difficult and controversial.

Issues contained in the maximalist democracy definition should be pursued; the question is what is the best forum? Even while employing a limited definition of democracy, the Charter already faces a number of important tests. Successful efforts to resolve these cases may point to ways for the OAS to demand even more of countries in the future. In the interim, given indications of increasing dissatisfaction with regime performance on socioeconomic issues in numerous countries in the Americas, a minimal definition may aid in disassociating difficulties surrounding performance from those of leadership selection. Democracy could then be held accountable for the manner in which leaders are changed rather than the failures of individual governments.

### ***Identification of Threats***

Historically, democracies have been overthrown by military coups. Recent events in Peru served notice that democracy can also face threats from elected officials acting in overtly non-democratic fashions. The Charter thus seeks application in cases of interruption or alteration. Unfortunately, it fails to specify what constitutes an “unconstitutional interruption or alteration of the democratic order” (McIntosh Sundstrom 2002: 3). The interpretation of exactly what constitutes these two events will provide the source of much controversy in the future.

How are we to identify an interruption or alteration of democracy? Ultimately, this is a political decision for member states however the Charter will be a stronger instrument if

some advance agreement can be made as to basic indicators of interruption and alteration. The traditional military coup provides a good working example of an interruption of democracy. While recent events in Venezuela indicate it may even be difficult to identify when even a coup has take place, the idea behind interruption is non-elected leaders have displaced the elected leaders of a country.

The alteration of democracy, on the other hand, is very difficult to pinpoint. Commonly referred to as democratic backsliding, this seeks to address autogolpe-type situations such as Peru experienced under Fujimori. The problem is what to do with cases that are not as stark as the Peruvian example. When do actions by leaders elevate themselves to alterations of democracy thus demanding Charter action? Traditionally, the OAS is an organization consisting of states loath to criticize one another. The difficulty is most cases are unlikely to be so black and white but rather will fall in a gray area. Further resolution of especially the white from the gray is essential to the success of the Charter.

Such clarification is particularly important in light of Peter Smith's reminder that there is potential to employ the Charter a manner unintended by its framers. Since the adoption of the Charter, the United States has begun the "war on terror" and has moved even further toward a position of employing multilateralism a la carte. Smith argues this shifts emphasis away from issued like human rights and democracy and holds the potential for a country like the United States to attempt to employ the Clause to exert its political will against a regime it opposes.

To address these difficulties, one initial take at "unconstitutional interruption or alteration of the democratic order" is advanced by Max Cameron (2002: 4) who argues the phrase *should* include:

- ?? arbitrary or illegal termination of the tenure in office of any democratically elected official by any other elected or non-elected official;
- ?? arbitrary or illegal appointment, removal, or interference in the appointment or deliberations of members of the judiciary or electoral bodies;
- ?? interference by non-elected officials, such as military officers, in the jurisdiction of elected officials;
- ?? use of public office to silence, harass, or disrupt the normal and legal activities of members of the political opposition, the press, or civil society.

Of course, as Jennifer McCoy notes, the key principle upheld by the repudiation any “unconstitutional interruption or alteration of the democratic order” remains respect for the results of elections that fulfill recognized international standards.

The reference to an “unconstitutional interruption or alteration” introduces an additional challenge, that of the constitutional nature of the change. The inclusion of “unconstitutional” implies that if an interruption or alteration of democracy has a constitutional basis, there is no room for Charter action. This presents a number of potential problems. Pablo Policzer (2002: 5) points out, “most democratic constitutions have mechanisms to alter or interrupt democratic guarantees in times of crisis.” A number of Latin American constitutions indicate a responsibility, for example, on the part of the military to defend the country. If the agents of change point to a constitutional justification for non-democratic change, is that sufficient to keep the OAS out? What about a case where an elected leader pushes through constitutional amendments that can be used to “constitutionally” justify substantial alteration in the democratic order? The resolution of the constitutional nature of the democratic challenge must also be addressed.

Another concern is the Charter cannot be used to aid democracy without the prior consent of the member state. As Lisa McIntosh Sundstrom (2002: 5) puts it, “this means that, unless the government of the member state itself is worried that it is being threatened by the situation in the country (i.e. dangers that coups will be attempted or oppositional protests gaining strength), it is unlikely to consent to an outside investigation.” In many cases of interruption or alteration, the existing leaders of the state are exactly the people benefiting from the non-democratic change. In situations where “the conduct of the government itself is the danger to democracy, that government is unlikely to agree to allow an OAS investigatory mission into the country” (McIntosh Sundstrom 2002: 5). This highly restricted consent requirement may end up protecting the very people the Charter aims to take action against. For example, it was noted in the conference that Haiti resisted invocation some of the preventative articles of the Charter on the grounds they saw it as a sanctioning move. Like the standoff in the UN Security Council during the Cold War, this requirement seems to provide a veto that could stop most applications of the Charter. For example, Yasmine Shamsie points out that Haiti study of OAS attempts to advance democracy in Haiti.

Finally, the Charter makes hortatory references to civil society but offers no mechanism for consulting civil society as part of the application of the Charter itself. Having become involved in the negotiation of the Charter, these groups have indicated an interest in a variety of additional roles. Civil society groups are well placed to play some role in the progress of and challenges to democracy throughout the Americas (Graham, 2002:5-6). States may be well served in consulting these groups before making political decisions regarding Charter applications. Further, as indicated by their importance in the “Mesa de

Diablo” in the Peruvian case, civil society has a role to play in the resolution of democratic crises.

### ***Extending the Scope of Response***

A decision to invoke the Charter provokes the question, what then? The negotiations surrounding the exit of President Fujimori in Peru provide an example of how the OAS may become involved in an attempt to restore democracy. In that case, the negotiations were ultimately successful. What should happen in cases where they fail? Should such countries face political and economic sanctions? If so, how are we to decide questions of form, duration, enforcement, etc? More specifically, should countries be expelled from the OAS or should they face the loss of certain privileges? Outside the OAS, what about the role of international financial institutions (IFIs)? Should decisions regarding the Charter effect the actions of IFIs? Finally, should advocates of the Charter attempt to incorporate it into future inter-American agreements such as the FTAA? These questions provide a wealth of issues that need to be addressed with regards to cases involving future Charter violations.

The mechanisms available to punish states that violate the Charter require much more attention. The range of options available extends from expulsion to sanctions to shaming. Expulsion from the OAS would demonstrate the serious nature of the organization’s commitment to democracy however it also reduces its opportunity to influence the state in question. On the other hand, before employing sanctions, it is important to be very clear about whom the sanctions hurt. Are they targeted at the leaders of the regime or the general population? There are a variety of additional issues surrounding sanctions that have been widely debated.

It is unlikely that most future cases will involve clear-cut interruptions of democracy; rather the Charter will come into play over issues of alterations of democracy. Attempts to test OAS resolve regarding the Charter are likely to take the form of progressive efforts to chip away at democracy. In these cases, it has been suggested that different forms of institutional “shaming” may be effective. Rather than instituting major sanctions, mechanisms such as the suspension of voting rights may be effective at deterring such incremental attempts to alter democracy. Actions that call the leader to task or that focus the spotlight of publicity on such countries may be sufficient to foster democracy. Further examination of shaming, especially with regards to the suspension of voting rights, in the context of various European organizations seems warranted.

The issue of linkage between OAS decisions regarding the Charter and the actions of international financial institutions must be examined in much more depth. While some form of political sanctions may be effective in fostering inter-American democracy, they would be much more effective if tied to actions of IFIs. When the OAS attempts to take actions in support of democracy but IFIs continue to operate as if nothing is happening, it seriously undermines public perception of international institutions in general and the IFIs in particular. In such cases, civil society appears to view the IFIs not as unconcerned about democracy but rather as actively supporting non-democracy. Much more extensive attempts must be made at fostering linkages between the OAS and IFIs with regard to the Charter (Cameron 2002: 17).

In order to make such connections, a number of issues must be addressed. One certainly concerns the location of the decision. Organizations, such as the Inter-American Development Bank, that are part of the inter-American system may be more inclined to leave the political decisions in the hands of the OAS. Formal linkage with such institutions

should be pursued. IFIs operating beyond the scope of the Americas, such as the IMF and the World Bank, are unlikely to leave such political decisions in the hands of the OAS (as opposed to the United Nations) however, the OAS should attempt to foster, at minimum, informal linkages with such institutions.

Once established, political decisions regarding the Charter will necessitate various levels of response from IFIs. After all, even in cases of total democratic breakdown, it will be impractical to cancel all the projects in a country. The picture regarding what types of projects to target remains unclear. Should the Pan American Health Organization suspend health projects in response to democratic violations? We can ask similar questions about programs ranging from disaster assistance to education. As linkages are established, the level of responsibility on the OAS dramatically increases because the consequences of Charter decisions increase.

Finally, the issue of expanding the scope of application of the Charter should be addressed. Efforts to include a democratic charter in the FTAA should be pursued. If supporting democracy is seen as an important objective that the Charter is seen as rising to a hemispheric norm, then the OAS and its members should support the inclusion of similar charters into other hemispheric agreements. Specifically, with regards to the FTAA, it may be possible to the democratic clause using GATT article 21 that addresses the national security exemption as a model.

### **The Next Step: Toward A Plan of Action**

In an effort to address some of the problems with the Charter, a consensus evolved in support of three proposals.

## **1. A Virtual Policy Network for Democracy in the Americas**

A virtual policy network was proposed to define and measure progress or backsliding on democratic reforms, to examine events that might fall under the rubric of an “unconstitutional interruption or alteration of the democratic order,” and to offer insight into when such events might impair democracy. Such a network could provide a mechanism to bring together individuals concerned with the issues surrounding the Charter. It would be instrumental in beginning a dialogue aimed at resolving some of the difficulties regarding definitional and measurement difficulties regarding the Charter. Diego Garcia-Sayan notes that governments cannot push these issues forward alone -they must engage the voices outside of government. Working through a virtual network, it may be possible to continue the productive dialogue between government, academia, and civil society witnessed during this conference.

## **2. Inter-American Democratic Institute**

An institute was proposed to commission thematic or country reports on progress toward implementation of the goals of the Charter. The Institute would provide a vehicle for civil society involvement in deliberations on the application of the Charter. Fernando Cepeda points out that there are a variety of ongoing, high quality socioeconomic evaluations of countries in the inter-American system, yet no democracy counterparts exist. This serves as a serious limitation on potential political decisions surrounding the Charter. Effectively, it limits the OAS to reacting to events that have reached a crisis point, rather than allowing for actions that may prevent such crises.

The recent UN Human Development Report, focusing on democracy could serve as a template. It may be possible to link with the UPD and the UNHRD in an effort to achieve an annual reporting system. In addition to such an ongoing effort, the Institute could commission reports that target potential areas in an effort to identify problems before they reach a crisis point. This would serve to integrate the academic and NGO communities into the process, taking advantage of vast expertise to improve decision-making. Such reports could serve as a mechanism not to punish potential violators but create a dialogue space between government and civil society that would foster democracy without direct OAS involvement.

### **3. Friends of the Charter**

It was recommended that a coalition of countries be formed to ensure that the Charter is used as an instrument for proactive, flexible and effective action. The coalition would harness the efforts of civil society, former policy makers, academic experts and others outside the OAS and the Summit process to act as a guardian of the Charter and encourage its use in a timely and effective way. It would accept reports, monitor the state of hemispheric democracy, and provide a conduit to raise concerns regarding unconstitutional interruption or alteration of the democratic order before the appropriate OAS bodies.

The need for a group of Friends of the Charter to link like-minded, pro-democracy states with civil society and the academic community arises from the obstacles to implementation of the Charter in an often cumbersome and bureaucratic organization like the OAS which is dominated by the very states that often abuse democratic rights and freedoms. Such a group may also institutionalize the active support the Charter currently receives from the office of the Secretary General.

## **The Charter and Inter-American Democracy**

The signing of the Inter-American on September 11, 2001, represented an historic step for the Americas. Every OAS member state undertook a commitment to promote and defend democracy throughout the hemisphere. While not without flaws, the Charter represents a groundbreaking effort to consolidate the democratic progress of the Inter-American system. As Secretary General Gaviria put it at the Lima special General Assembly, “by adopting this democracy charter, you are putting on notice all of an authoritarian bent that there would be no tolerance towards those who would overthrow governments, seek to subvert the constitutional order, or undermine political control” (cited in Cooper 2002: 11). This promising action, still in its infancy, has already begun to be tested. Recent events in Venezuela serve as an indication that the debate about democracy has not ended and that democratic regimes throughout the Americas will continue to face non-democratic challenges. These challenges will be more easily met with recognition of the difficulties inherent in the Charter and support for proposals to strengthen it and the OAS capacity to promote and defend democracy in the Americas.

## **Bibliography**

- Cameron, Maxwell A. "Strengthening Checks and Balances: Democracy Defense and Promotion in the Americas." Paper submitted to the Conference on the Inter-American Democratic Charter: Challenges and Opportunities, Vancouver, Canada, 12-13 November 2002.
- Collier, David and Steven Levitsky. "Democracy with Adjectives: Conceptual Innovation in Comparative Research." *World Politics* 49 (April 1997).
- Cooper, Andrew F. "Negotiating the Inter-American Democratic Charter: A Case of 'New' Multilateralism?" Paper submitted to the Conference on the Inter-American Democratic Charter: Challenges and Opportunities, Vancouver, Canada, 12-13 November 2002.
- Graham, John W. "A Magna Carta for the Americas, The Inter-American Democratic Charter: Genesis, Challenges and Canadian Connections." Paper submitted to the Conference on the Inter-American Democratic Charter: Challenges and Opportunities, Vancouver, Canada, 12-13 November 2002.
- Lortie, Mark and Sylvie Bédard. "Citizen involvement in Canadian Foreign Policy: The Summit of the Americas Experience 2001." Paper submitted to the Conference on the Inter-American Democratic Charter: Challenges and Opportunities, Vancouver, Canada, 12-13 November 2002.
- McIntosh Sundstrom, Lisa. "Carrots and Sticks for Democracy in the OAS: Comparison with the East European Experience." Paper submitted to the Conference on the Inter-American Democratic Charter: Challenges and Opportunities, Vancouver, Canada, 12-13 November 2002.
- Munck, Gerardo L. and Jay Verkuilen. "Conceptualizing and Measuring Democracy: Evaluating Alternative Indices." *Comparative Political Studies* 35 (February 2002).
- Policzer, Pablo. "The Charter, the Military and Constitutions." Paper submitted to the Conference on the Inter-American Democratic Charter: Challenges and Opportunities, Vancouver, Canada, 12-13 November 2002.