

A Magna Carta for the Americas The Inter-American Democratic Charter: Genesis, Challenges and Canadian Connections

by John W. Graham

EXECUTIVE SUMMARY

The 34 foreign ministers of the Organization of American States (OAS) adopted the Inter-American Democratic Charter at a Special Session of the General Assembly held in Lima, Peru on September 11, 2001. At the core of the new Charter is language from the Quebec City Summit of the Americas Democracy Clause that establishes that *“any unconstitutional alteration or interruption of the democratic order in a state of the hemisphere constitutes an insurmountable obstacle to the participation of the state’s government in the Summit of the America’s process.”* While not a flawless document, the Inter-American Democratic Charter both consolidates the significant progress already made by the Inter-American system in advancing democracy and breaks new ground.

This discussion paper looks at the genesis of the Inter-American Democratic Charter and the challenges involved in its development. It brings readers back to the meetings where the document was negotiated including the Windsor OAS General Assembly in 2000 where foreign ministers discussed the crisis of democratic governance in Peru; the 2001 Quebec City Summit of the Americas that raised the issue to the level of national leaders; the 2001 San Jose General Assembly where agreement was not possible; and finally, the special meeting at Lima where the Charter was adopted by acclamation. The paper maintains that, while not perfect, the Charter stands out as a significant and reassuring commitment to the democratic process in the hemisphere.

RÉSUMÉ

Les 34 ministres des affaires étrangères de l’Organisation des États américains (OEA) ont adopté la Charte démocratique interaméricaine lors d’une session spéciale de l’Assemblée générale qui s’est déroulée à Lima, au Pérou, le 11 septembre 2001. La nouvelle Charte reprend les termes de la Clause sur la démocratie du Sommet des Amériques de Québec, qui stipule que : *« Toute altération ou interruption inconstitutionnelle de l’ordre démocratique dans un État de l’hémisphère constitue un obstacle insurmontable à la participation du gouvernement de cet État au processus du Sommet des Amériques. »* Bien qu’elle ne soit pas parfaite, la Charte démocratique interaméricaine consolide à la fois les progrès accomplis par le système interaméricain en ce qui concerne l’avancement de la démocratie tout en faisant preuve d’innovation.

Ce document de discussion examine la genèse de la Charte démocratique interaméricaine et les nombreux défis rencontrés lors de son élaboration. Il ramène les lecteurs aux réunions qui ont mené à la négociation de la Charte, en incluant la réunion de l’Assemblée générale de l’OEA à Windsor, en 2000, où les ministres des affaires étrangères ont discuté de la situation non démocratique au Pérou; au Sommet des Amériques de

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FOCAL

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Québec en 2001 où la question péruvienne a été portée devant les leaders nationaux; à l'Assemblée générale de San José en 2001, où il ne fut pas possible d'en arriver à un accord et, enfin, à la réunion spéciale de Lima où la Charte a été adoptée à l'unanimité. Ce document maintient que, bien qu'imparfaite, la Charte représente un engagement important et rassurant à l'égard du processus démocratique dans l'hémisphère.

RESUMEN

Los 34 cancilleres de los países miembros de la Organización de Estados Americanos (OEA) aprobaron la Carta Democrática Interamericana durante la Asamblea General Extraordinaria que tuvo lugar el 11 de septiembre de 2001 en Lima, Perú. La Carta incorpora el lenguaje empleado en la Cláusula Democrática de la Cumbre de las Américas celebrada en la Ciudad de Québec, al disponer que *“cualquier alteración o ruptura inconstitucional del orden democrático en un Estado del Hemisferio constituye un obstáculo insuperable para la participación del Gobierno de dicho Estado en el proceso de Cumbres de las Américas.”* A pesar de no ser un documento perfecto, la Carta Democrática Interamericana no solo reafirma los considerables avances realizados por el sistema interamericano en la promoción de la democracia, sino que también inicia una etapa nueva en este campo.

El presente trabajo trata sobre la génesis de la Carta Democrática Interamericana y los retos enfrentados en su consecución. Igualmente, remite al lector a las diferentes reuniones en que se negoció el documento, a saber: la Asamblea General de la OEA celebrada en Windsor en 2000, en la que los ministros de exteriores debatieron la falta de democracia en Perú; la Cumbre de las Américas de la Ciudad de Québec en 2001, en la que el tema de la democracia fue elevado a la atención de los líderes nacionales; la Asamblea General de San José en 2001, donde no se pudo lograr un acuerdo; y finalmente, la Sesión Extraordinaria celebrada en Lima, en la que la Carta fue aprobada por aclamación. La Carta Democrática Interamericana, a pesar de cualquier imperfección, descuella como por su compromiso importante y alentador con el proceso democrático en el hemisferio.

INTRODUCTION

The terrorist catastrophes in New York and Washington swept away media comment on other global events taking place on September 11, 2001. Virtually obscured was the historic agreement reached that day in Lima by the foreign ministers of the Organization of American States (OAS) on the Inter-American Democratic Charter. Designed to protect and strengthen the democratic process in the Americas, its tangled story is illuminating, and its content and significance worthy of retrospective attention and analysis.

The OAS foreign ministers met scarcely an hour after the terrorist attacks. As they gathered in Lima the previous evening, there was apprehension that one or more of them might introduce wording that would blunt some of the Charter's teeth. By the time the meeting was underway, it was clear that the terrorist attacks had removed that concern. Instead of departing immediately for the airport, Secretary of State Colin Powell delayed his return flight to Washington for several hours in the hope that he could leave with a strong and unanimously approved

Charter. In a dramatic but subdued intervention, he invited his colleagues to accept the fairly robust draft that had been referred to this Special Assembly of the Organization by the OAS Permanent Council. While giant TV screens outside the hotel replayed the tumbling towers, the Charter was adopted by acclamation and Powell left for the airport. He had rightly judged the impact that his decision to remain even briefly at the meeting would have on the other foreign ministers. On the first day of the terrorist crisis, Powell had given priority to multilateralism.

The draft presented by the Permanent Council represented a significant improvement on the unsatisfactory wording that could not be agreed on at the OAS General Assembly three months before in San Jose, Costa Rica. In other words, the injunction, issued by the Quebec City Hemispheric Summit in April that the OAS “reinforce” the Summit's own democracy clause, was met. The present document is stronger, clearer and longer than the San Jose draft. Its language is not spectacular. But spectacular isn't possible in the present political mood of Latin America where the

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enthusiasm for the democratic process does not have the fizz it did 10 years ago. The meeting was a success for the OAS, for Peru, which inspired it, and also for Canada, which insisted on giving the Democracy Clause a high priority at Quebec and was a key member of the group of nations that shepherded the Charter to its conclusion. One price of agreement was a certain amount of filler, but a small price for a document that closes some of the holes left by previous instruments through which a Fujimori, or perhaps a Chávez, could navigate without precipitating warning signals or sanctions by the OAS.

Given the vigour and scale of the opposition to several of its key components and the consequent stream of anodyne drafts, the comprehensive instrument approved in Lima on September 11 was an unexpected achievement.

The past twelve months have seen a return to carping about the Charter and particularly its encroachment on traditional concepts of state sovereignty. But more significant was its “almost” application in which its potential to condemn delinquent state practices helped to prevent the deepening of the Haitian crisis, and its application and validation in the coup and counter coup crises in Venezuela in April. Over a period when the lamps of democracy are turned low in many Latin American countries, the Charter stands out as a significant and reassuring commitment to the democratic process.

BACKGROUND

Ten years before and one year after Canada’s entry into the OAS and accompanied by strong Canadian advocacy, foreign ministers meeting in Santiago de Chile produced an instrument (Resolution 1080) designed to confer on the OAS means for leveraging states back into constitutional democracy “*in the case of any event giving rise to the sudden or irregular interruption of the domestic, political institutional process or the legitimate exercise of power by the democratically elected government in any of the Organization’s member states.*” In December of the following year a Special Session of the General Assembly of foreign ministers inserted the substance of 1080 into the constitution of the OAS—the Washington Protocol—(see list of Democratic Instruments at the end of this Paper).

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For a region where the high walls of sovereignty, enshrined in the OAS Charter, had long sheltered illegal and dictatorial governments from outside censure, Santiago Resolution 1080 represented an extraordinary change: a determination not only to collectively condemn the violent overthrow of constitutionally elected governments, but to invest the OAS with the authority of expulsion and sanctions to defend and maintain the democratic gains of the preceding fifteen years. No regional organization outside Western Europe and not even the United Nations had struck out so boldly for the values of democratic governance. A decade later, the threat of naked military ‘golpes’, for which the Santiago Resolution had been designed, was in decline and the menace of authoritarianism advancing within an elected government was (and is) on the rise. At the centre of the Democracy Clause adopted at the Quebec City Hemispheric Summit in April of last year was language that establishes that “*any unconstitutional alteration or interruption of the democratic order in a state of the Hemisphere constitutes an insurmountable obstacle to the participation of that state’s government in the Summit of the America’s process.*”

This wording, modified for the OAS context, is at the core of the new Charter. The Charter embodies other significant provisions such as the right of citizens to democracy—to which this paper will return.

GENESIS

While the Charter was negotiated by all member states of the OAS and is an expression of hemispheric commitment, its origins are linked most closely to Peru. The steady advance of authoritarianism in that country by President Alberto Fujimori was the main challenge confronting the June 2000 OAS General Assembly in Windsor. For the first time since joining the OAS ten years before, Canada was host. Foreign Minister Lloyd Axworthy was Chair, and he and his delegation were particularly concerned, lest a failure in Windsor on Peru cast a shadow over the Summit of the Americas in Quebec City, only ten months away.

Also at stake was the image of Canadian diplomacy in the Americas. As the delegates gathered in Windsor, the outlook appeared grim. Although

Fujimori's recent manipulated election had been repudiated by the OAS, the Peruvian delegation was unrepentant. The previous week, a U.S. attempt to apply Resolution 1080 to the Peruvian Crisis, had been resisted by a number of states on the grounds that the abuses of power by Fujimori did not constitute a valid rupture of the "constitutional order" as called for in the Resolution.

The mood among many delegations in Windsor reflected the declining level of enthusiasm for the democratic process, as well as some nostalgia for the old strict concept of sovereignty. However, this meeting was rescued by Thomas Pickering, the U.S. Head of Delegation and Lloyd Axworthy who were able to convince Fernando de Trazegnies, the Peruvian Foreign Minister, to swallow a tough resolution on the need for democratic renewal in Peru. The Chair drove past the objections of the Venezuelan Foreign Minister, José Vicente Rangel and the Resolution was passed 'unanimously'. A key part of this Resolution (Resolution 1753) was Peruvian acceptance of an OAS mission to Peru, which performed a critically supportive role in the months of crisis preceding and following the collapse of the Fujimori government.

In a speech to the Peruvian Congress on December 11, soon after the fall of Fujimori, the new Peruvian Foreign Minister (and former UN Secretary General) Javier Pérez de Cuellar, spoke of the hemisphere-wide need to forge a new and more effective set of rules that would join together the existing instruments and mechanisms within the OAS connected to the defence and promotion of democracy. He specifically proposed an Inter-American Democratic Charter. The next phase was to select the most suitable forum in which to proclaim the Charter. One option was the Quebec City Summit (four months away) and the other was at the next General Assembly of the OAS (six months away). In the end, it was decided to introduce the concept at Quebec City with the Heads of State instructing their foreign ministers to elaborate a Charter in time for approval at the San Jose General Assembly in June.

The first draft for Quebec City was prepared by the OAS Summit Implementation Review Group (SIRG)

in January 2001. The next set of SIRG negotiations took place in Barbados, just weeks before the Summit. Discussions were heated with the 'sovereignty side' resisting the creation of new enforceable mechanisms. Some proposed opening up the constitution of the OAS itself so that new provisions could be inserted. Another optic was simply to expand the language of Resolution 1080. Venezuela argued that the term 'representative democracy' was outmoded and should be replaced by 'participatory democracy'. In the end, Peru, Canada, and their allies prevailed and the wording agreed in Barbados was, in essence, proclaimed as the Democracy Clause of the Quebec City Declaration.

Unfortunately, the significance of this clause, approved by all 34 Heads of State and Government, was obscured on the one hand by press coverage of the confrontations between protestors and security forces, and on the other, by the media's misguided focus on the Free Trade Area of the Americas (FTAA), which was not a central issue of Summit discussion. The centrepiece was the Democracy Clause.

Still catching their breath after their exertions in Quebec, foreign ministries set about the more daunting task of formulating a full democratic charter. Five countries, Argentina, Canada, Costa Rica, the United States and Peru met to

review the draft circulated by Peru in Quebec City before presentation to the OAS Permanent Council. In a strategically prudent move, Mexico, home of the Estrada Doctrine on the sanctity of sovereignty, was later invited to join the five. The Mexican Ambassador then presented a new draft. For a difficult period, the Permanent Council was confronted by parallel texts, until the Mexican draft was withdrawn. The group presented a draft containing 22 articles to the Permanent Council. Measures to address both abrupt and subtle breaks or alterations of the "Constitutional Order" were addressed, as were circumstances in which the Secretary General could conduct investigative visits. The draft incorporated references to the human rights of hemispheric citizens, a link to the Human Rights Commission and to the Inter-American Court of Human Rights. It also made a connection to the basic requirement of free and fair elections.

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By the end of May, a draft was forwarded by the Permanent Council to the General Assembly of foreign ministers meeting a week later in San Jose, Costa Rica. Each General Assembly takes on its own distinctive character, at times only partially related to the setting. This meeting became unusually acerbic and less disciplined than the norm. The fissures, which had been papered over at the Permanent Council, opened and even the most ardent promoters of the draft could not generate convincing enthusiasm. Determined block opposition came from Caribbean countries which maintained that they had not been adequately consulted during the negotiating process in Washington and, as a result, had not had time to consult with their governments. The foreign ministers, including John Manley of Canada, acknowledged that the Charter could not muster a consensus and sent it back to the Permanent Council to be revised in time for a session of the General Assembly to be especially convened for this purpose in Lima, Peru in three months time. In retrospect, the setback in San Jose was a blessing.

A ROLE FOR CIVIL SOCIETY

The San Jose Resolution on the Democratic Charter included the requirement that civil society should be consulted in the drafting process. The OAS, pushed by Canada, the U.S. and several other countries, had been gradually opening its doors to dialogue with civil society groups for the preceding two years. The Canadian Government had ensured that civil society, both inside and outside the Summit perimeter at Quebec City were given opportunities to interact with delegations. However, the consultation on the Democratic Charter was without question the most significant opening given to civil society by the Inter-American system.

In fact, the consultative process between San Jose and Lima proved surprisingly productive. It also demonstrated the seriousness of the engagement of the OAS and a number of member countries to have dialogue with civil society. In the Canadian case, the Department of Foreign Affairs and International Trade invited NGO's and academic institutions to participate before and after San Jose. In Washington, the OAS Secretariat organized a series of meetings to which civil society organizations of member states were invited.

Opening these consultations to the web considerably widened the input from groups and individuals. FOCAL was an active participant making its presentations orally and electronically for meetings in Ottawa and Washington. In Lima, Nancy Thede, from Rights and Democracy and myself for FOCAL, were invited onto the Canadian delegation by David Kilgour, the Secretary of State for Latin American and Africa. NGO attendance at Lima was largely Peruvian, with representation from some forty local organizations, many of which had played active and courageous roles in mounting increasingly effective opposition to an abusive government.

In civil society sessions in Ottawa, many Canadian NGOs and academics expressed disappointment in the draft prepared for San Jose. Max Cameron of University of British Columbia called it "toothless". FOCAL complained that it fell well below expectations, concluding that it would be better not

to have a charter at all, then to be burdened with a document with less resonance and impact than the existing impressive OAS jurisprudence in this area. FOCAL noted that the draft made passing reference to previous OAS instruments for the protection of democracy, mostly in the preamble, but did not incorporate their core principles. The best of many good examples is the Managua Declaration (1993), which spells out the need for

balance and independence of the various branches of government. It makes a clear link between democracy and the quality of life and explicit reference to the "harmful phenomenon of corruption..." which discredits authorities and institutions as well as highlighting the contributions of the OAS's own unit for the promotion of Democracy. At a Civil Society meeting in August, FOCAL remarked that the drafting of the Charter offers "an historic opportunity to consolidate the significant progress made by the Inter-American system in protecting the gains already achieved".

Governments were reminded that their instruction from the Summit was to "reinforce OAS instruments for the active defence of representative democracy" and told that the existing draft did not meet this test.

Canadian civil society representatives argued both sides of whether or not it was necessary to spell

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out exactly what is intended by “an unconstitutional alteration of democratic order”—an issue that was also debated within the OAS. Finally, it was decided not to encumber the Charter or second-guess the judgment of ministers with specifics.

It would be an exaggeration to suggest that civil society contributions significantly shaped the end product; nevertheless, there was a validation of the importance of the consultative process and recognition that the broad base upon which the Charter was built could only help to increase its authority. The role of civil society in the Charter process also sets a forward-looking precedent for future policy formulation in the OAS.

THE ROAD FROM SAN JOSE TO LIMA

After a short respite, the drafting started up again with particular care to keep the Caribbean within the loop and to allow periodic input from civil society. The Permanent Representative from Colombia, Humberto de la Calle, who had been informally presiding over the drafting group, was now formally assigned the role of chair. The reopening of the draft generated a surge of new and often conflicting proposals. Submissions were made to incorporate a fresh chapter linking democracy with the issue of poverty, and with social and economic development. A Peruvian participant described the process as starting again from scratch.

Certainly, it was a strenuous process and a month away from the special General Assembly there were few signs that a phoenix would rise from this grinding process. From the outset to the meeting in Lima, there had been 18 drafts and no shortage of jokes about the longer the committee meetings, the more bizarre the result.

It was therefore, astonishing that instead of a three-legged horse, the Permanent Council’s final draft was a swan. Effective leadership from many quarters and persuasive lobbying had won the day. In fact, as we arrived in Lima, and read this final draft, we (the Canadian Civil Society participants) were so impressed by the balance, reach and teeth of the Charter, that we feared recalcitrant foreign ministers would knock out the good bits. Indeed, there was apprehension among delegations that this would happen.

If there were such plans, none were launched. The Twin Towers and the Pentagon transformed the mood. The decision of Colin Powell to stay and seek unanimous acceptance extinguished any remaining sparks of protest.

LIMA – AN APPROPRIATE SETTING

It was highly appropriate that this Special Assembly, with its unexpectedly strong declaration, was hosted in newly democratic Peru. The initiative, and a lot of push for the Charter came from the transitional government, Pérez de Cuellar and the Peruvian delegation to the OAS. The new president, Alejandro Toledo, made a surprise appearance at the Assembly on September 11, and presided over the signature ceremony that evening at the Presidential Palace. It was also appropriate that the Special Assembly elected Dr. Diego García Sayan, then Foreign Minister of Peru, to chair the meeting. Dr. Sayan had been the most articulate representative of the opposition to Fujimori at the Windsor General

Assembly in June of the previous year. In his remarks from the chair, and later, more informally, García Sayan recognized the strong role played by the OAS, the Secretary General, César Gaviria, the Assistant Secretary General, Luigi Einaudi, and by Canada in the difficult and dramatic return of Peru to democracy. The role of former Canadian Foreign Minister, Lloyd Axworthy, was specifically mentioned. Unofficially, there

was recognition of the accomplishments of many Canadian diplomats, including the then Ambassador to the OAS, Peter Boehm, his successor from San Jose onwards, Paul Durand, the Canadian Ambassador to Peru, Graeme Clarke and their staffs.

THE CHARTER

The final draft includes an enlarged preamble and runs to six chapters with 28 articles. The order of the paragraphs in the preamble was reworked to emphasize that the Democratic Charter is subordinate to the OAS Charter and to respect the legal framework of the OAS. New paragraphs were added to underline the link between democracy and human rights as well as to introduce language on education, environment, rights of workers and economic, social and cultural rights.

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In Chapter 1, article 3, the words “inter alia” were added to demonstrate that the list of essential elements of representative democracy outlined in this article, is non-exhaustive. Article 3 now also contains reference to the separation of powers and independence of the branches of government. Language has been introduced on the strengthening of political parties (art. 5), elimination of all forms of discrimination (art. 9), rights of workers (art. 10), gender equality (art. 28), subordination of state institutions to the civilian authority (art. 4) and the universal, indivisible and interdependent nature of human rights and fundamental freedoms (art. 7).

A new chapter (articles 11-16) entitled “Democracy, Integral Development and Combating Poverty” has been added. It underlines the interdependence of democracy and development and the urgent need to eradicate extreme poverty. It also recognizes that low levels of development combined with poverty impede democratic consolidation. This section also makes reference to the importance of respect for human rights, protection of the environment and promotion of education and their link with sustainable development, democracy and poverty reduction. Chapter 4 outlines a series of progressively tougher measures which member states should implement to reinforce democratic principles and defend democratic institutions. Chapter 5 further specifies the role of electoral observation missions. The Charter concludes limply with Chapter 6, which contains tepid exhortations to promote a “democratic culture” and gender equality.

The Charter itself embodies a number of important conceptual innovations. The first, reached after intense debate, is recognition that *“the peoples of the Americas have a right to Democracy and their Governments have their obligation to promote and defend it”* (art. 1). The new ‘right’ finds its roots in Article 21 of the UN Declaration of Human Rights (1948):

- (1) *Everyone has the right to take part in the government of his country, directly or through freely chosen representatives...*
- (3) *The will of the people shall be the basis of the authority of government...*

Article 1 provoked a dispute within the Canadian Department of Foreign Affairs and International Trade (DFAIT), with the legal side offering strenuous resistance on the grounds, in part, that the Article was out in front of customary international law. Others fought back and in the end the Article was accepted without a reservation, but with the attachment of a “Statement of Understanding”. This Statement reads:

“Canada understands that the Inter-American Democratic Charter is political in nature. We further understand that the ‘Right to Democracy’ is the right of individuals to the elements of democracy as set out in relevant international instruments. We acknowledge that states have the obligation to promote and defend the individual human rights which constitute the elements of democracy.”

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However, when the dust had settled, it was found that the new language of Article 1 lifts the concept to a significantly advanced reciprocal contract of peoples with governments.

THE VALIDATION OF THE CHARTER: HAITI AND VENEZUELA

The negotiating success of the proponents of the Charter lay, in part, in the fact that they were not pressing for a legally binding instrument. It is an expression of political determination that expands the mechanisms by which the organization can defend and promote democracy, and penalize those who violate its widened definition. Action depends on the political will of the organization.

Whether an instrument that is a political declaration becomes part of the fabric of customary international law is a function of precedent. In the case of the Charter, as was the case with Resolution 1080, precedents are already providing validation.

The coup-d’état against President Aristide in 1992 precipitated the most clear-cut application of Resolution 1080, with comprehensive sanctions imposed upon the government of General Raoul Cedras. In a perverse ‘own goal’ approach to the democratic instruments of the OAS, President

Aristide came very close to bringing down upon himself the Charter provisions relating to the “unconstitutional alteration of the constitutional regime” by failing to respect his internal electoral system. In March of this year, the OAS fashioned an agreement which allowed for the establishment of a ‘Special Mission’ charged with strengthening democracy as a means of resolving the Haitian crisis. Full application of the Charter was averted by concessions made to the OAS, however, the Charter had chalked up a success—its existence had been a deterrent.

Unexpectedly, and more dramatically, the Charter demonstrated that its muscles were real and its design appropriate in the case of Venezuela. The clumsy coup-d’état staged by Pedro Carmona on April 1 against President Chávez was swiftly repudiated by the OAS and by its member nations (one or two less swiftly than the others). The validation of the Charter was underscored by the fact that the repudiation was not based upon any hemisphere-wide affection for Hugo Chávez, (indeed he had been regarded as a possible target for the unconstitutional alteration provision), but because Carmona’s coup had violated fundamental principles of the Charter. In other words, OAS action was not in favour of Chávez, but of his legal and constitutional election.

The Haitian and Venezuelan sagas continue to unfold. In the face of renewed challenges, President Chávez has publicly expressed interest in the bridge-building skills of international organizations. In mid August, the OAS, with Venezuelan support, passed a resolution calling for the good offices of the OAS, the Carter Center, and the UNDP in generating dialogue within the country. However, as yet, the Venezuelan government has held back from formally inviting the OAS under articles 17 and 18. These are the provisions by which a state diagnosing its own problems as placing at risk “its democratic political institutional process...,” may request assistance from the Secretary General or the Permanent Council for the strengthening and preservation of its democratic system which in turn may, with the consent of the government concerned “arrange for visits or other actions in order to analyze the situation... and where necessary may adopt decisions for the preservation of the democratic system and its strengthening.”

A SCORE CARD

No one is pretending that the Charter is perfect. Nor is it a ‘how to’ manual that governments will reach for across a range of democratic crises. A number of the signatories are still truculent about its implications. One of the decisions taken in Lima was to continue the debate on the Charter at the next OAS General Assembly—in Barbados in June 2002. Some delegations insisted that the Charter be interpreted legalistically with emphasis on state sovereignty. Another expressed concern lest the Charter be used to intimidate small states.

There are real concerns and it is easy to point to holes. For a fairly comprehensive document, there is no reference to the corrosive and dysfunctional issue of money in politics nor to the extent that an electoral playing field can be tilted by campaign finance. Article 27 makes only nodding reference to “strengthening political institutions and civil society organizations”. The courts, the election systems, the legislatures and the rest of the institutional panoply

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of checks and balances only come together to form a working democracy when energized by political parties. Kenneth Wallack (*Democracy Journal*, July 2002) highlights the dangers of too much focus on civil society at the expense of neglecting the viability of political parties and points to the examples in Venezuela and Peru. In Peru (and particularly as a result of

the riots in Arequipa), the Toledo government has been weakened by the inability of parties to stand up to unreasoning populism. The Charter says nothing about the notion of accountability of elected representatives to the their electorate.

There is no focus on the need to ensure that the democratic process has the legal and fiscal scope to function effectively at the local level (nor at the intermediate or provincial level). Democracies that are not built on strong local foundations are more prone to falling down. While many governments are giving increasing attention to decentralization, it is not always recognized that decentralization can produce only frustration if not accompanied by transfer of resources, clear legal mandates and training for key positions at the local level.

To cite another example, the Charter does not address the ‘democratic’ nature of decisions such as that taken recently by the Congress of the Dominican

Republic to allow non-resident Dominicans to vote in Dominican elections. The majority party in Congress perhaps anticipates that a high proportion of the approximately one million adult Dominicans in the United States will vote for that party. Could the results of such an election be described as “fair” if the majority of resident, tax paying voters voted for another party, only to be displaced by the ballots of non-resident, non-taxpaying voters? Other countries face a similar dilemma.

Yet for all its omissions, its flaws and the absence of soaring prose in its preamble, the Charter has succeeded in breaking new ground. In Venezuela and in Haiti, it has already demonstrated its value as an instrument that can defend and maintain democracy against a widening range of perils. The building of the Charter is an example of the resilience of the OAS to rise above an inaccurate sleepy image and to transcend the bickering of local self-interest. Ghia Nodia, a scholar of the democratic process, notes wryly that attempting to impose democratic prescriptions from abroad is like “trying to build a house from the roof down.” No serious observer has suggested that the Charter is a ‘made in’

Washington or Ottawa or Brussels design and much of its credibility lies in its emergence from intense multi-country debate. It is important to recognize the capacity of the Inter-American system to set aside its often-debilitating asymmetric configuration to accomplish something worthwhile.

THE DEMOCRATIC CHARTER IN A CHALLENGING LANDSCAPE

Sensible and timely application of Charter provisions can help spasmodically faltering democracies, but cannot nourish the foundations upon which the democratic superstructure rests. In many parts of our region these foundations are in decay. In an all too possible scenario, a succession of democratic remedies is tried and yet the social and economic fabric of the country continue to fray. Argentina comes to mind, but so far there has been an impressive resistance to straying from the democratic path. Colombia too has struggled in appalling circumstances to keep the democratic process essentially intact in those areas subject to government writ. One insight on the painful challenges that continue to confront governments comes from Brazil. In an August 14 article in the

Globe and Mail, that expresses the anguish of outgoing President Fernando Henrique Cardoso, Paul Knox writes of the “...exasperation of a region that has tried democracy and dictatorship, revolution and peaceful change, socialism and capitalism, populism and neo-liberalism, state ownership and privatization, cultural nationalism and surrender to Hollywood over the past half century, and finds all of them simply generate their own set of new problems.”

The United Nations Human Development Report (2002) has focused on “Deepening Democracy in a Fragmented World” and its recently released report paints a sombre picture, contrasting the bright hopes of the democratic surge of the '70s and '80s with the present scene. The report notes that “economically, politically and technologically, the world has never seemed more free—or more unjust”—to which they add the depressing remark that “many newly democratic regimes in Latin America seem no better equipped to tackle the region’s poverty and inequality than their authoritarian predecessors.”

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This view is echoed by the Inter-American Development Bank. Contrary to the expectations of the '80s and '90s, democracy has not delivered a more equitable distribution of wealth. The Bank has indicated that equity distortions are more unbalanced in Latin America than in any other region in the world. Political entrenchment by elites, resistance to effective taxation and inadequate expenditures on

health and education combine to lower the confidence of the poor in the democratic system. Inevitably, the resulting frustration often leads to sympathy for authoritarian solutions. In urban settings where the quality of life is eroding through neglect and increasing criminal violence, tolerance for the abuse of human rights is seen as an acceptable trade-off for more unrestricted police control.

The assessment is not all dark. The UN notes the growth of experiments in civil society involvement in municipal expenditure strategies, and generally underscores the need for a more alert citizenry. And then there are the unfathomables—for example, the paradox of high voter turnout in many Latin American and Caribbean countries as against declining turnout in both the United States and Canada.

There are a few oases. These are highlighted in the accompanying box based on *The Economist's* Latinobarometro poll. But the landscape is not promising. Surveying the distance between healthy democratic governance and the generally dismal reality, the UN report and other commentaries are peppered with sane, urgent advice. The UN report does not mention the Inter-American Democratic Charter, but its attention is directed to fundamental

quality of life issues that the Charter acknowledges and whose solution is essential if this excellent instrument is to have a meaningful raison d'être. It may also be salutary to recall the intoxicating naïveté that greeted the wave of democracy rolling across the region twenty years ago. We should have realized that this road to vital destinations would be long and bumpy.

The Chilean based Latinobarometro poll has been conducted regularly since 1996. The 2002 poll results demonstrate that despite the economic turmoil gripping many of their countries, Latin Americans are becoming somewhat more supportive of democracy. In 14 countries, support for democracy increased over the past year. In some cases, the increased support is due to the election of new political groups (Mexico 2000), or the ejection of a reviled president (Nicaragua). In the case of Venezuela, both supporters and opponents of President Hugo Chávez seem to take democracy as the norm. Interestingly, despite the collapse of the country's economy, support for democracy in Argentina has also increased over the past year. Nevertheless, it is important to note that in 7 of 17 countries the support level for democracy is 50% or less.

The poll also reveals that support for democracy remains low in some countries, such as Brazil and Colombia. In all but four countries (Honduras, Venezuela, Mexico, Nicaragua), and despite improvements over the past 12 months, the support for democracy is lower today than it was in 1996. Most poll respondents remain deeply dissatisfied with the way their democracies work in practice. On a more positive note, overall support for authoritarian government is not increasing (in Brazil, Colombia and Venezuela it has declined significantly). Only in Paraguay has support for authoritarianism increased significantly since 1996.

The Latinobarometro poll highlights a number of problems associated with Latin American democracies, including: general contempt for political parties, rising perceptions of corruption, and unease about economic reforms—particularly privatization. [SOURCE: 2002 Latinobarometro poll, published by The Economist, August 15, 2002.]

Democratic Instruments of the OAS

- *The OAS Charter (amended in 1967, 1985, 1992, 1993) states in its Preamble that “representative democracy is an indispensable condition for the stability, peace and development of the region”. Article 2 of the Charter states that one of the essential purposes of the Organization is to “promote and consolidate representative democracy, with due respect for the principle of non-intervention.”*
- *The Santiago Commitment to Democracy and the Renewal of the Inter-American System (1991) declares “its uncompromising commitment to the defense and promotion of representative democracy and of human rights in the region, within the parameters of respect for the principles of self-determination and non-intervention.”*
- *Resolution 1080 (adopted at the same time as the Santiago Commitment to Democracy) instructs the Secretary General to call for “the immediate convocation of a meeting of the Permanent Council in the event of any occurrences giving rise to the sudden or irregular interruption of the democratic institutional process or of the legitimate exercise of power by the democratically elected government in any of the Organization’s member states, in order, within the framework of the Charter, to examine the situation, decide on and convene an ad hoc meeting of the Ministers of Foreign Affairs, or a special session of the General assembly, all of which must take place within a ten-day period.”*
- *In accordance with Resolution 1080, the Washington Protocol, which amended the OAS charter in 1992, states that “a member of the organization whose democratically constituted government has been overthrown by force may be suspended from the exercise of the right to participate in the sessions of the General assembly, the Meeting of Consultation, the Councils of the Organization and the Specialized Conferences as well as in the commissions, working groups, and other bodies established.”*
- *The Declaration of Nassau (1992) declares “determination to work for the adoption and implementation of programs of cooperation for development in critical areas such as extreme poverty, regional integration, trade liberalization, infrastructure, health, education, environment, and science and technology to strengthen representative democracy”; “the resolve to develop OAS mechanisms to provide member states with the assistance they request to build, preserve and strengthen representative democracy”; “the strongest and most categorical rejection of any attempt against the democratic institutional order in any of the member states”; and “the decision to continue examining the OAS Charter and other relevant regional instruments with a view to strengthening the Organization’s role in stimulating support for the efforts of the member states toward the consolidation and the effective exercise of representative democracy.”*
- *The Declaration of Managua for the Promotion of Democracy and Development (1993) emphasizes the need to “prevent and anticipate the very causes of the problems that work against democratic rule”. The Declaration makes particular reference to the protection of human rights, the promotion of social justice, and the importance of free trade. It underscores the contribution of the Unit for the Promotion of Democracy in “preparing proposed incentives for the preservation and strengthening of democratic systems in the Hemisphere.”*



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