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REFLECTIONS ON THE FIRST ANNIVERSARY OF THE INTER-AMERICAN DEMOCRATIC CHARTER
OAS HALL OF THE AMERICAS

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Panel Discussion: THE INTER-AMERICAN DEMOCRATIC CHARTER: ITS SIGNIFICANCE,
APPLICABILITY AND POTENTIAL

Notes on the Applicability of the Inter-American Democratic Charter
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(Greetings and thanks for the invitation)

I want to share some provisional notes on a hemispheric debate about the integral democratic life of American peoples within their sovereign states, and about the mechanisms and procedures by which that democratic life can be and should be safeguarded collectively in the framework of what we call the Inter-American system. Through the Democratic Charter, the Member States wanted to go forward in concepts criteria and practices of a shared hemispheric responsibility towards the integral and equitable development of our peoples and populations, and the true exercise and enjoyment of their fundamental rights, vis-à-vis the demands of and ever increasing interconnectedness and interdependence of the contemporary world and at the same time within the principle of non intervention that is so dear to the latin Americans and has produced such an important body of thought.

This debate, however, has lost vapor. And, to an extent, after its dramatic test in the incidents in Venezuela a few months ago, it seems that the fervor with which it had been embraced during the process of approval, is all but gone.

What has happened? Is the Democratic Charter still pertinent outside the exclusive diplomatic elites of the Permanent Council of the OAS? How really applicable is it, given what happened on the very day of its signing, and what has happened since? Can we devise guidelines for its concrete application? And, if not, what is the use?

- Some of the critics: It doesn't go beyond what we already have. Its only a rehash of previous instruments. We cannot expect otherwise from governments that have always shielded their incompetence or their shortcomings behind the principle of non-intervention. ("To ask otherwise is like tying a dog with a string of sausages")

- Some others: It is too imprecise and does not offer clearer definitions of democracy and democratic practices that are applicable to all and are operationally measurable and verifiable in the different Member States.

- Still other critics: it was borne a political midget that never went as far as it should have in terms of clearer identification of instances of breaches or violations, and tougher sanctions.

Some key elements in the analysis of applicability

We have a different instrument here. It is more conceptual and dynamic than previous instruments and demands more concerted imagination and resolve from the member states.



First of all, this is an instrument that gives more attention to PROCESS items than to a taxonomic and casuistic treatment of instances, (although it delves directly into the Democratic Clause approved at the Quebec Summit).

Secondly, the perspective of sanctions or punitive actions tends to obscure the positive thrust of the Charter in underscoring the various concepts, criteria, aims and themes that should be always part of the overall set of goals in our permanent quest for truly democratic societies.

Thirdly the Charter clearly rests on the constant exercise of collective responsibility.

Fourthly, as Secretary General Gaviria strongly underscored, it was designed with prevention in mind.

The weight of the responsibility, therefore, is in the political will of the Member States to deal creatively with this permanent quest, this permanent thrust and this permanent process of democratic construction as a shared hemispheric responsibility.

There is also the weight of custom: past practices in which the casuistic vision poses the question always in terms of “when do we invoke the Charter”. That is when do we intervene and how? Can we describe the clear cut instances and graded steps through which preventive measures can be taken, before actually expelling a Member State from the system of impeding the participation of its representatives in the formal proceedings of the collegiate bodies and programs of the inter-American System?

And of course, in the back of many Latin American and Caribbean minds there is the worry of an instrument that if hastily applied and not carefully surrounded by enough caveats and specific conditionalities, might lead directly to a less equitable preventive procedures and a more readily adopted path of coercive intervention. And these worries exist not only because of our own history of past interventions, overt and covert, but also because of the actual unfolding of present international dynamics.

¿Can we honestly pretend it is possible to devise a sort of “manual” that can comprise all possible instance of political reality in our hemisphere? Of course not. Political dynamics are much more complex and their change pace has accelerated considerably. And those who drafted and approved the Charter seemed to have thought likewise. But we do need to develop a set or operational rulings for its concrete applicability.

For the American States, one of the central problems in the discussion of applicability of the Democratic Charter, if not the most central, is precisely the need to have clearer formulations and procedures for the collective action of governments in the framework of our shared hemispheric commitments and responsibilities, when democracy is in danger in one of the member states of the Inter American System, and at the same time to safeguard the principle of sovereignty and non intervention that has been such a sensitive, dear and defended by Latin American countries. The world debate on sovereignty and intervention has benefited considerable from the Latin American input.

A caveat: we need to be careful about the actual tendency to identify “threats to democracy”



with “threats to security”. Sometimes they coincide, but sometimes they do not. The same happens with the way in which corruption and impunity erode democratic practice and citizen participation. Someone said we have moved from a cumbersome, mediocre and inefficient bureaucracy to a very efficient “cleptocracy” (“robocracia”). Strong oversight institutions and organized citizen monitoring should address those problems internally and should not become reasons for outside intervention. Yet so many times corruptive practices are associated with hampering of democratic life that one wonders...

The actual discussion on the Charter underscores again the deep rooting that the concept and principle of non intervention has in the region, and the “process” and “structural framework” perspective in which the democratic commitments must be founded so that they have not only a sense of political equilibrium amongst states but more over, they have meaning and pertinence to the populations and foster the possibility of a more equitable relation with the world community.

At the same time it underscores the shared conviction that, based on the juridical frameworks that bind us all, we should find the best practices of shared responsibility and the best consensual practices to foster the strengthening of our democracies, prevent its backsliding or its breakup and help us mutually in consolidating that democratic development as well as provide mutual warranties that those frameworks will not be used for unchecked antidemocratic behaviour.

A test Case: Elections

One of the most significant advancements of the Charter, and which might give a clue to its future applicability lies in the chapter on Elections and Electoral Observation Missions (Title V). This is really a direct lesson from the recent Peruvian experience that became a true test-case, which has not been sufficiently analyzed.

I am referring to the possibility of a previous assessment of the conditions for free and fair elections, as article 25 reads, and the possibility, therefore, of a similar kind of procedures in other areas of democratic performance (article 18). Yet doubts arise from complex and less obvious cases than from the clear cut ones.

The peruvian case illustrates this eloquently, starting from the constitutional violations and the dissolution of powers in 1992. From then on, in the framework of the agreements with the OAS for democratic re-establishment, for a new constitution and for new elections, President Fujimori, in the next following years went about gradually modifying internal legislation through practices of corruption and repression, using bribes, threats and illegal spying on the citizens. This way, little by little, he penetrated all institutions of the State and gained control of them. Under the formal attire of constitutional legality and citizens’ interest, he gradually assumed control of congress, control of the structures of justice, and gained control of the procedures for appointing judges. He gained as well control of the electoral bodies and, through use of tax persecution and other legal proceedings, he gained control of most of the peruvian press. And when the Constitutional Tribunal did not want to go along with a third term candidacy, Fujimori disabled the Tribunal by expelling the dissident Magistrates. Not only the real independence of powers had been eliminated, but laws were changed to allow Fujimori to run for a third presidential mandate.



In this gradual and multiple sequence of arm twisting political and legal tactics, When can we say that there was an alteration of the democratic order? Is it possible to identify a clear cut moment in this sequence of alterations that should have triggered a preventive intervention by the Inter/American system? Probably we had the signal or the “proof” when the Magistrates were kicked out because it represented an unequivocal public sign that the Executive wanted absolute power for itself. Yet they went through an internal process of enacting a new law of “authentic interpretation” of the Constitution, through their own Congress in which Fujimori had a majority. Many Government Authorities in the hemisphere considered that this issue was still internal and fell within the sovereignty of that Nation: getting involved in this was equivalent to interfering in the internal affairs of Peru and violated the principle of non intervention.

This analysis was part of the Electoral Observation Mission Report of the peruvian general elections of 2000. Could it had been possible to perform a previous critical evaluation of the conditions for free and fair elections in Peru, that would have conditioned the decision of the OAS to send an international electoral observation? And maybe, just maybe, that previous assessment could have prevented beforehand a truculent electoral process that the same OAS electoral observation had to disqualify later?

What to do, for example, in the face of national situations in which a Government legitimately elected, with parliamentary majority, utilizes that majority to make legal modifications or enact new laws that clearly respond to particular interests and not to the interests of the population, and force the laws in order to perpetuate itself, to enrich itself or to impede other political options from participating? What is the level of public evidence of corruption and impunity to which a national must reach so that it can be judged to be one that has breached democracy, -short of inflicting physical damage to citizens- so that the hemispheric system can intervene?

Before we did not have a clear mandate for a preventive action. The Democratic Charter makes this preventive action clearly possible now, in time, if there is the political will to do it.