[redacted]

[redacted]

[redacted]

Collective Defense of Democracy:
Concepts and Procedures

Carlos Ayala Corao

Pedro Nikken Bellshaw-Hógg

ANDEAN COMMISSION OF JURISTS

THE CARTER CENTER

Los Sauces 285, Lima 27, Perú
Phones: (51-1) 440-7907 / 442-8094
Fax: (51-1) 442-6468
Internet: www.cajpe.org.pe
Email: postmast@cajpe.org.pe

First Edition, Lima, Perú, January 2006
ISBN: 9972-637-93-X

500 copies
Legal Deposit made Nº 2005-9125

Cover: Gisella Scheuch
Graphic Design: Cecilia Heraud Pérez

TABLE OF CONTENTS

PRESENTATION

Historically, democracy in Latin America has tended towards crises and discord. Since the late twentieth century, however, a powerful current began to prevail over the closed visions of sovereign states. The globalization of democracy took over, and at the United Nations democracy was described as a human right.

It is in this spirit that the Organization of American States has been seeking consensus and the most appropriate mechanisms by which to defend democracy in the region. In the framework of the Inter-American democratic system, the hemispheric community drew up and implemented several instruments that were also intended as a call for joint action in defense of democracy.

The origin of this international democratic regime is the OAS Charter. Subsequent agreements include the Santiago Declaration (1959), the reform protocols to the OAS Charter agreed at Cartagena (1985) and Washington (1992), Resolution 1080 (1991), the Nassau Declaration (1992), the Managua Declaration (1993), the Québec Declaration (2000) and finally, the Interamerican Demo-

cratic Charter (IDC), which consolidated the advancement of states on the road to building mechanisms for the effective protection of democracy.

The Andean Commission of Jurists (CAJ), through its Democracy and Citizen Participation Area, promotes the efficacy of the IDC and has been alerting the international community regarding those situations that threaten or infringe upon the contents of the Charter. At the same time it gathers information and puts forth analyses and recommendations for the achievement of democratic governance in the Andean region. The objective of this series is to embody the thematic elements of the IDC and to develop them in the hope of exerting influence upon governments and civil society as concerns the importance of collectively shouldering the protection of democracy that assumes commitment and good faith of signatory countries.

The Carter Center began an initiative in 2004 to promote greater awareness and more constructive use of the Inter-American Democratic Charter. It formed a non-governmental group of Friends of the Democratic Charter to stimulate debate and encourage so-

th50 of deAyala nd rezotec-

dependent, in the sense that democracy provides an environment

ANALYTICAL REVIEW AND RECOMMENDATIONS

At the General Assembly of the Organization of American States held in Ft. Lauderdale, Florida in June of 2005, the member states enjoined Secretary General José Miguel Insulza to prepare a report on past use of the Inter-American Democratic Charter (IDC) and make suggestions to the Permanent Council concerning possible improvements in its application. The resolution on "Promotion of Regional Cooperation for Implementation of the Inter-American Democratic Charter" also urges the Permanent Council to receive input from civil society concerning the IDC, and conscious of this invitation, The Carter Center and the Andean Commission of Jurists (CAJ) have responded to this invitation.

For these organizations, the IDC is the most comprehensive tool for the collective defense of democracy ever invented in the Western Hemisphere and it merits support. The IDC is still new, having just been adopted in 2001, and it should surprise no one that member states are still learning how best to implement it in ways that simultaneously protect the principles of representative democracy

and non-intervention. Many of its provisions are used regularly within the OAS as points of reference for staff as they plan programs in support of democracy. Articles 17-21 of the IDC have, however, been little used to date, but this reluctance increasingly is tempered by very real concerns that the region's democracies are not working well and are in need of collective support. Indeed, since 1989 a total of 15 presidents in the Americas have left office before the normal conclusion of their terms, and persistent poverty and inequality have corroded confidence in democratic institutions to the point where analysts commonly refer to a "crisis of representation" in the region.

How, then, are the OAS member states to take best advantage of the opportunities for strengthening democracy provided by the Inter-American Democratic Charter? Reopening the IDC text for negotiation is not the answer. Rather, the member states should move toward a common understanding of the terms of the text and the conditions under which the IDC should be applied.

Toward that end, professors. Pedro Nikken and Carlos Ayala have each written a scholarly, legal analysis of the text of the Inter-American Democratic Charter. These paper were first presented in Cartagena de Indias at the CAJ's XVI Regional Course on Human Rights and Democracy, where 40 lawyers, human rights specialists, ombudsman's officers and scholars from the Andean nations provided thoughtful feedback, contributing to the papers' revision. They are published here together with a short comparative review in the hope that citizens and governments alike will engage the question of how best to assist democracy through the IDC and take steps to make it a living document.

Initial Considerations

As the title of his paper indicates, Pedro Nikken was charged with writing an "Analysis of the Basic Conceptual Definitions for the Application of the Collective Democracy Defense Mechanisms Provided for in the Inter-American Democratic Charter". Carlos Ayala was urged to tackle the thorny question of how to know when a violation of the Charter warrants sanctions, and to open a discussion of what types of responses are contemplated in the text.

Both papers focus on Chapters I and IV as the core of the Charter. Chapter I reaffirms representative democracy as a basic principle characterizing governance in the OAS member states, and defines essential elements of democracy and fundamental components for the exercise of democracy. Chapter IV lays out procedures for collective response to democratic crises, and in the process says something about the types and magnitudes of crises that the IDC is meant to treat. Nikken interprets the IDC in the light of the instruments of the Inter-American System of Human Rights, as well as precedent-setting decisions by the Inter-American Human Rights Commission and Court. Ayala takes a more juridical-political approach, examining the document's implications for sovereignty, the role of the Secretary General within the OAS, types of assistance that might be offered, and the prospects for overcoming the institutional lethargy and gridlock that has led to criticism of the OAS. In his view, the main contribution that the IDC makes is that member states of the OAS may no longer invoke the principle of non-intervention to block collective protection of democracy.

Nikken begins by distinguishing between the "essential elements" mentioned in article 3 and the "fundamental components" of the

exercise of democracy in article 4. For him, the items in article 3 are of first order importance. By contrast, some items in article 4, such as "transparency" and "probity" are really matters of good governance that are too vaguely elaborated in international agreements (such as the Inter-American Convention Against Corruption) to be implemented. Other elements of article 4 are derivative of article 3. Surely "freedom of expression and the press" is part of respect for human rights and necessary for political pluralism and legitimate elections. Similarly, "respect for rule of law" is much the same as the "exercise of [power] subject to the rule of law" called for in article 3. In this sense Nikken differs with Ayala, who treats the 11 elements contained within the two articles as having a value weighted in the IDC that should be evaluated in each particular case.

Focusing more closely on article 3, Nikken begins by excluding individual acts of human rights violations from triggering action

that the Charter is a departure in that the defense and promotion

or from civil society, and the situation has spun out of control of the government (essentially, a breakdown of order). If these problems exist and the government does not request help, then article 17 is moot. The Secretary General or Permanent Council may then take action under article 18 if the situation is so serious it might affect development of the democratic political institutional process or the legitimate exercise of power.

Both authors see the principle of gradualness in a procedural preference for article 17 to be exhausted as a remedy before 18 is used. That is, if article 17 has been invoked then article 18 may not be used until it is clear that the government has not complied with conditions for remedy set by the Secretary General or Permanent Council or the crisis has worsened to the point where the dispositions adopted under article 17 are now insufficient. However, things must not have worsened so far that there is an alteration of the constitutional order that seriously affects the democratic order, for in that case article 20 comes into play. Ayala sees another distinction between articles 17 and 18, one of timing. Whereas the use of the term "risk" in article 17 implies that the problem has not yet occurred, article 18 speaks of a situation already in place that has the capacity to affect the democratic process or the legitimate exercise of power.

Article 18 is vague with respect to the actions that the Secretary General or Permanent Council may take, mentioning "visits and other diplomatic gestures," with the latter never enumerated. The genre of such actions is not stated, but nor is it limited. Nikken suggests actions may include strictly diplomatic initiatives, including ad hoc missions, or action by the Inter-American Human Rights Commission. In any event, Ayala notes that they will lead to the

Secretary General sending a report to the Permanent Council which will in turn offer a collective appreciation of the situation and adopt decisions directed toward the preservation and strengthening of democratic institutionality.

There is some question as to whether under article 18 the consent of the government is required only at the outset, or whether it is required for each and every action taken thereafter. If the former, then the Permanent Council would seem to have wide latitude in adopting remedies in response to the Secretary General's report. However, Nikken argues that the question may be of limited practical significance in that implementation of any remedy to support democracy is going to require at least a modicum of cooperation from the affected government. Moreover, there is a strong preference for consensual decision-making in the OAS, nowhere more so than in relation to the IDC which was signed in a spirit of consensus. Nonetheless, as Ayala stresses, when push comes to shove the OAS is not entirely captive to the consent of the affected government. Recognizing that OAS decisions tend to be reached through consensus, according to the OAS Charter, Permanent Council resolutions require only a majority vote, Nikken notes, and can have significant symbolic weight.

Article 20 comes into play when there is an *alteration* of the constitutional order that seriously impairs the democratic order, meaning the essential elements and fundamental components of articles 3 and 4. The implication is that there is a critical threshold of seriousness that must be passed. Nikken offers possible examples of sufficiently grave situations, such as those in which a government flagrantly violates the constitution or breaks the independence of the judicial branch. Ayala similarly speaks of situations

in which the judicial or legislative powers are closed, as in an *autogolpe*. Here, one or more of the essential or fundamental elements of democracy are breached.

In article 20 OAS actions need not receive the prior consent of the affected government. Instead, as Ayala underscores, any member state or the Secretary General may invoke the article. Ayala affirms that "an aspect of vital importance to the functioning and effective exercise of the IDC is the initiatives and decisions to implement its collective defense mechanisms not be allowed to succumb to disuse and neglect or that, worse yet, Charter violations be covered up or abetted by other member states." But here again in Nikken's estimation the affected government's coopera-

"interruption" is not spelled out in the Charter. Nikken offers the General Assembly some guidance, pushing the envelope beyond the circumstances typically envisioned under Resolution 1080. Yes, interruption might be a situation in which a government is abruptly overthrown, but Nikken argues that it could also include other situations in which essential elements in Article 3 are deeply damaged, such as abolition of elections or installation of a one-party regime. Moreover, Nikken argues that an interruption could also occur when a gradual accumulation of events passes a critical point and creates a situation in which the essence of democracy is radically damaged. Such would be the case in which there is a steady erosion of the electoral system or independence of powers, or a persistent pattern of violations of fundamental rights. The rupture need not be total, affecting all aspects of the system. However, in Nikken's view violations of article 4 alone do not meet the test for an interruption as they are not *essential elements*; damage to the democratic elements in article 3 must also occur to qualify as interruption. Thus it would be difficult to argue for example, if one accepts his distinction, that a government had become so secretive and opaque in its practices as to warrant action under article 21. This becomes key guidance for the General Assembly in distinguishing between alterations and interruptions.

Who is to decide whether events have passed the critical point? Both authors assert that it is implicit in the text that only the supreme organ of the OAS, the General Assembly, can be vested with that decision because rupture can lead to a sanction of suspended membership in the OAS, which in turn requires a two-thirds vote of the General Assembly. Absent that qualified majority of the General Assembly, the presumption is that the OAS returns to further collective diplomatic efforts to remedy the rupture. Ayala

agrees that this is a role only the General Assembly can play, but his article concludes with a call for an independent entity or panel of experts, such as the Inter-American Commission on Human Rights or from civil society, to offer objective and impartial evaluations of situations as they occur in order to assure that consistent set of indicators of democracy are used and that democracy does not fall victim to hemispheric politics.

The Democracy Clause

Article 19, which contains the so called "democracy clause" from the Quebec Summit of presidents and prime ministers stating that alteration or interruption is an "insuperable obstacle" to participating in the General Assembly and other activities of the OAS, muddies the waters by implying that this could result without applying the procedures of Articles 20 and 21. Analyzing this matter, Nikken concludes that article 19 should be taken as an expression of principle, but that as a procedural matter it would be impossible to decide that there was an "insuperable obstacle" except via the two-thirds majority vote required by article 21, which in turn follows upon action under article 20 or conceivably article 18. That is, the democracy clause is in effect a corollary to articles 18, 20 and 21. Ayala tackles the same problem, squaring the circle by arguing that the democracy clause cannot be applied automatically, only after the diplomatic initiatives mentioned in article 20 have been undertaken and after an assessment has led to the conclusion that the situation has deteriorated to the point of "interruption". He concurs that only the General Assembly has the legitimacy within the OAS to undertake a vote for suspension.

If there is a suspension, Articles 19 and 22 offer some indication of when such a suspension would end, referring to the sanction as applicable only while the interruption persists, after which a member may be reinstated again by a two-thirds vote of the General Assembly. Nikken is explicit in categorizing the use of article 21 to suspend membership as an indication of failure of previous diplomatic steps that could have been taken under articles 18 and 20. It will only occur when the entire diplomatic arsenal of the OAS has been insufficient to secure democracy. There is thus an inherent gradualism to the use of the IDC. Nikken also seems to suggest that the hierarchical nature of articles 17-21 implies principle of proportional response. Responses require assessments of the degree of gravity of each problem, and more serious responses are to be offered only where there is a collective sense that the situation has deteriorated in ways that radically affect democracy.

For Ayala the important point concerning suspension of a member state's right to participate in the designated activities of the OAS is that the member state's *obligations* as a member are not suspended, only its *rights*. That is, the member state must still comply with the inter-American human rights regime. The article is meant to suspend the privileges of the offending state, not the rights of its people. This raises the thorny question of whether such a sanction is appropriate when a government has collapsed due to the actions of its people, such as a "civil society coup" rather than the government. Neither author chooses to address this matter. However, Ayala refers to the root cause of such civil unrest in his closing paragraphs when he cites the 2004 UNDP report on democracy in Latin America, which explores the depths of pov-

1. Violation of the integrity of central institutions, including constitutional checks and balances providing for the separation of powers.
2. Holding of elections that do not meet minimal international standards.
3. Failure to hold periodic elections or to respect electoral outcomes.
4. Systematic violation of basic freedoms, including freedom of expression, freedom of association, or respect for minority rights.
5. Unconstitutional termination of the tenure in office of any legally elected official by any other elected or non-elected actor.
6. Arbitrary or illegal removal or interference in the appointment or deliberations of members of the judiciary or electoral bodies.
7. Interference by non-elected officials or actors outside of the law in the jurisdiction of elected officials.
8. Systematic 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.
9. An unjustified declaration of a state of emergency.

When these violations occur, we believe they present "an unconstitutional alteration in the constitutional regime that seriously impairs the democratic order in a member state," and the OAS should take the initiative under Article 20 to address the situation without undue delay.

To more precisely identify when such violations may be occurring, the analyses provided here by professors Nikken and Ayala based on international treaties and norms, and decisions of the Inter-American Court of Human Rights, provide initial guidelines of great importance. In addition, a comparative analysis of exist-

ing constitutional provisions and practices within the hemisphere could provide a barometer of what constitutes acceptable democratic procedure. This could be especially useful in assessing whether a particular conduct, even when covered by legal provisions within that country, falls outside the boundaries of acceptable democratic practice

A guide to providing a more detailed "tool-kit" of responses could be gleaned from an analysis of other organizational procedures and practices. This analysis could begin with the hemisphere's sub-regional bodies, and extend to other regions of the world such as the European Union and Council of Europe.

We hope that these papers and additional ideas help to stimulate further discussion and development of mechanisms to strengthen and collectively defend democracy in the hemisphere.

Shelley A. McConnell, Ph.D.
Senior Associate Director
Americas Program
The Carter Center

Jennifer McCoy, Ph.D.
Director
Americas Program
The Carter Center

[redacted]

[redacted]

INTRODUCTION

Since its foundation, the Organization of American States (OAS) has proclaimed representative democracy to be one of its fundamental principles. Nevertheless, during the first four decades of its existence, democracy was seriously undermined in virtually every Latin American state, with the single exception of Costa Rica, while the OAS looked on imperviously. With the exception of criticism of human rights abuses by the various dictatorships, made public by the Inter-American Commission on Human Rights starting in 1960, the participation of *de facto* regimes in the Organization went on undisturbed by their spurious origin and repressive policies. The principles put forth in the Santiago Declaration (1959)[1] lacked the procedural mechanisms that would have allowed the Organization to react adequately vis-à-vis the subversion of democratic order. In those few cases in which the OAS applied sanc-

[1] Resolution I of the Fifth Consultative Meeting of Ministers of Foreign Relations, Santiago, Chile, 1959.

tions or undertook actions targeting a particular government, these were only very indirectly linked to the democratic paradigm.[2]

During the final decade of the twentieth century, with the reestablishment of the democratic process in South America and the peace process in Central America well underway, initiatives emerged for the adoption of specific measures to deal with the erosion of democracy. The OAS General Assembly, meeting on 5 June 1991 in Santiago, Chile, issued Resolution 1.080, which came to be known as the Santiago Commitment and stated that the Organization should act if confronted by a "*sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically elected government in any of the Organization's member states*." It was decided that, in such a situation, the Permanent Council would be convoked immediately by the Secretary

[2] The Sixth Consultative Meeting of Ministers of Foreign Relations (San José, Costa Rica, 1960) applied sanctions to the Dominican Republic, governed at the time by Rafael Leonidas Trujillo, but the reasoning behind this decision was the dictator's failed plot to assassinate Venezuelan President Rómulo Betancourt. Resolution VI of the Eighth Consultative Meeting of Ministers of Foreign Relations (Punta del Este, Uruguay, 1962) resolved to expel the Cuban government from the OAS upon considering that its adhesion to "*Marxism-Leninism is incompatible with the Inter-American System and the alignment of that Government with the communist block breaks the unity and solidarity of the hemisphere*". This places the matter more in the context of the Cold War than in terms of adhesion to a democratic form of government. The closest action in support of the democratic reconstruction of an American state living under a dictatorship was that adopted at the Seventeenth Meeting of Consultation of Ministers of Foreign Relations (Washington, DC, 1979), which attempted to establish conditions for the transition to democracy in Nicaragua. Resolution II of that conference requested "*the immediate and definitive replacement of the Somoza regime*" and "a *guarantee of the respect for human rights of all Nicaraguans, without exception*".

General, in order to decide if the situation called for an *ad hoc* meeting of the Ministers of Foreign Affairs or rather an extraordinary period of General Assembly sessions, so that these bodies might "*collectively analyze events and adopt the decisions deemed appropriate, in accordance with the Charter and international law*."

One year later, it was resolved to amend the OAS Charter by means of the Washington Protocol (1992), which established that "*a Member of the organization whose democratically constituted government has been overthrown by force, can be suspended from the exercise of the right to participate in the sessions of the General Assembly, the Consultative Meetings, the Councils and Special Conferences, as well as the commissions, work groups and other bodies that may have been created*" (article 9 of the reformed Charter; emphasis added). At the procedural level, it was agreed that "*the decision regarding the suspension must be adopted at an extraordinary period of General Assembly sessions, by an affirmative vote of two-thirds of the member states.*" However, the scenario for applying the Washington Protocol is limited to cases in which a government has been "*overthrown*". This means that situations in which a legitimate government inveighs against the democratic constitutional order, (as occurred with the 'self-coup' engineered by Fujimori in Peru and the thwarted effort by Serrano Elías to do much the same in Guatemala), remain beyond its scope.

Almost a decade later, at the Quebec City summit, the Heads of State and Government included in their Declaration (22 April 2001) 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 Americas process*". Likewise, they committed themselves to "*to conduct consultations in the event of a disruption of the democratic system of a*

country that participates in the Summit process …taking into due account existing hemispheric, regional and sub-regional– mechanisms".

These events, together with the convoluted termination of the Fujimori era, in which the OAS played an active role[3], motivated a number of member states to promote the adoption of an Inter-American Democratic Charter, which would provide for a variety of scenarios involving threats or illegal procedures being undertaken against democratic institutions in American states. One such proposal was introduced during the Thirty-First Ordinary Sessions Period of the General Assembly (San José, Costa Rica, June 2001)[4], but it proved impossible to reach the consensus necessary for its passage.

The complexity and difficulty of the negotiations that followed were well described by the Brazilian Representative on the Permanent Council, at the session which reviewed the definitive text that was to be submitted to the Extraordinary General Assembly called to approve the Democratic Charter:

---

[3] Resolution 1753 of the OAS General Assembly, meeting in Windsor, Canada, in the year 2000, agreed to "send a Mission consisting of the President of the General Assembly and the OAS Secretary General to Peru immediately, for the purpose of exploring, together with the Government of Peru and other sectors in the political community, any options and recommendations geared toward the further strengthening of democracy in that country." The Mission led to the establishment of what came to be known as the "OAS Dialogue Table", to which the most important issues are brought that would normally be decided by the government. This was a milestone in the process that eventually led to Alberto Fujimori's resignation.

[4] OAS Ser.P. 3 June 2001. AG / doc.4030/01.

The Inter-American Democratic Charter was finally approved at the XXVIII Extraordinary Sessions Period of the General Assembly held on 11 September 2001 in Lima, Peru. The IDC is divided into six chapters, as follows: I. Democracy and the Inter-American System; II. Democracy and Human Rights; III. Democracy, Integral Development and the Struggle Against Poverty; IV. Strengthening and Preservation of Democratic Institutionality; V. Democracy and Electoral Observation Missions; and VI. Promotion of a Democratic Culture. The first three chapters constitute its dogmatic part –meaning the various rights, principles and values that this international instrument enunciates or proclaims– while the latter three chapters define the mechanisms regarding the various procedures the OAS intends to put in practice to ensure the respect for, validity and strengthening of those enunciated rights, principles and values.

Within this general framework it is possible, in turn, to make another distinction, namely one that refers to the innovations of the IDC as concerns OAS jurisprudence on issues of democracy and human rights. The IDC puts forth certain concepts and mechanisms that, while in some measure reflecting already-existing procedures, are also new insofar as they represent an effort to achieve greater precision in the concepts and organization of said procedures and their gradual application. Other conceptual and proce-

This reflects the concept according to which "… *the provisions themselves contained in the Organization's Charter […] make of democracy an obligation that is required of the States."* [7]

Nonetheless, neither the OAS Charter nor the IDC include a definition of *democracy*, or of *representative democracy*. By interpreting the OAS Charter in the light of the political rights proclaimed in article XX of the American Declaration of the Rights and Duties of Man[8], there emerges a conceptual approximation of how this form of government emanates from the people through representatives elected by means of secret voting in popular elections that are genuine, periodic and free. However, this approximation is limited to the origin of democratic government and lacks other elements consubstantial to democratic government regarding the limits that may be imposed upon the exercise of public power, based on regulations within the rule of law and due respect and guarantees for human rights.

Neither does the IDC formulate a sharp, synthetic definition to express what should be understood by the terms "*democracy*" or "*representative democracy*". On the other hand, it does enunciate, in two different articles, what it qualifies as "*essential elements*" (article 3) and "*essential components of the exercise*"[9] of representative democracy:

1. "Essential elements" of representative democracy

A. Respect for human rights and fundamental freedoms

Regarding what should be understood by "human rights and fundamental freedoms", it is necessary to turn to the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and its Protocols, and any other conventions on the matter adopted within the framework of the Inter-American System. The Universal Declaration and the human rights conventions adopted at the United Nations should also be included, especially since failure to observe some of these may imply serious human rights violations. Examples might be the Convention on the Prevention and Punishment of Genocide, the International Convention on the Suppression and Punishment of the Crime of Apartheid, or article 3 of the Geneva Conventions regarding serious violations of international humanitarian law.

Article 7 of the IDC favors a broad-based approach regarding what is understood by the term "human rights":

> *Democracy is indispensable for the effective exercise of fundamental freedoms and human rights in their universality, indivisibility and interdependence, embodied in the respective constitutions of states and in inter-American and international human rights instruments.*

However, the fundamental question is not aimed at determining what these human rights are and how their contents are defined, but rather at establishing how to discern under what circumstances their violation is serious enough that the very *essence* of the democratic system of government must be considered to have been affected. Isolated violations of human rights, including if they

are not remedied through recourse to internal jurisdiction, are not an issue to which the IDC can be applied. Here it is the Inter-American Human Rights Commission and the Inter-American Court of Human Rights that must act, within their respective spheres of competence.

It is not easy to define *a priori* the magnitude of violations of human rights required before democracy is affected in its essence. Nevertheless, it is possible to put forth a few criteria.

In the first place, there must be a *general* situation that cannot be resolved through the normal procedures of the human rights bodies in the regional system, as suggested in article 8 of the IDC[10]. To borrow the language used on occasion within the UN system, a "general situation" might be understood as one that discloses the existence of *"situations that appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms…"*[11]

Secondly, the seriousness of this pattern should also depend upon the rights that are being subjected to systematic violation. It must be admitted that distinctions based on the existence of "key" human rights, or a category of "fundamental rights", is odious to the indivisible and interdependent nature of all human rights. Still, it cannot be said that violations of human rights are of equal weight if what is being attempted here is to define when democracy as

[10] "Any person or group of persons who consider that their human rights have been violated may present claims or petitions to the Inter-American system for the promotion and protection of human rights in accordance with its established procedures."

[11] See ECOSOC Resolution 1503 (XLVII)of May 27, 1970.

such has been radically altered. The Inter-American human rights system puts forth two criteria that may be invoked in order to try and define these "key" rights, namely (a) those whose suspension is not authorized by the Inter-American Human Rights Convention under states of emergency, according to its article 27[12]; or (b) those rights proclaimed in the American Declaration of the Rights and Duties of Man, –the *observance* of which the Inter-American Human Rights Commission is mandated to "pay particular attention to" as stated in article 20 of its Statute.[13]

In any case, the point that should be retained is that individual cases of human rights violations would not be enough to trigger the collective democracy-defense mechanisms, even if they are numerous and serious, as long as it cannot be established that due to their extent, connection, unity of purpose, the importance of the juridical goods encroached upon, and so on, they are the outcome of a government policy that is incompatible with the respect and guarantee owed to human rights in a democratic society, to the point of denaturing the government that practices such a policy and thus entirely distorting its character as a "*democratic government*".

---

[12] The right to recognition of legal personality (art 3.); the right to life (article 4); the right to personal integrity (article 5); the prohibition of slavery and servitude (article 6); the principle of legality and retroactivity (article 9); freedom of conscience and religion (article 12); protection of the family (article 17); the right to a name (article 18); the rights of children (article 19); the right to a nationality (article 20); political rights (article 23); and the judicial rights indispensable to the protection of the rights listed herein.

[13] The right to life, liberty and physical security and integrity (article I); the right to equality before the law (article II); the right to religious freedom and worship (article III); the right to freedom of opinion, expression, opinion and research (article IV); the right to justice (article XVIII); the right to protection from arbitrary arrest (article XXV); and the right to due process (article XXVI).

has in turn considered an appropriate instrument for the interpretation of the American Convention:

> In the light of the conceptual evolutions that the Inter-American consensus has expressed in the Democratic Charter, a reading of the American Convention leads to the conclusion that *the free expression of the will of the voters would be affected if authorities elected in accordance with the rule of law (legitimacy of origin) were to exercise their functions in contravention to said rule of law*.[14] (Emphasis added).

From its earliest jurisprudence the Court has highlighted the issue of limits that are imposed upon the exercise of public power in a democratic society. The Court affirmed

> …of the existence of certain inviolable attributes of the individual that cannot be legitimately restricted through the exercise of governmental power. These are individual domains that are beyond the reach of the State or to which the State has but limited access. Thus, *the protection of human rights must necessarily comprise the concept of the restriction of the exercise of state power*. .[15]

The Court also made reference to the concept of the *principle of legality*, which

> "…must be created by the relevant organs pursuant to the procedures established in the constitutions of each State Party,

---

[14] I/A Court HR: Yatama vs. Nicaragua. Judgment of 23 June 2005. Series C, Nº 27, paragraph 23.

[15] See under *The Word* "*Laws*", op. cit. paragraph 21.

> and one to which all public authorities must strictly adhere. In a democratic society, the principle of legality is inseparably linked to that of legitimacy by virtue of the international system that is the basis of the Convention as it relates to the "effective exercise of representative democracy," which results in the popular election of legally created organs, the respect of minority participation and the furtherance of the general welfare, **inter alia**."[16]

C. The pluralist system of political parties and organizations

The "single party" system is incompatible with the democratic form of government. While the preponderance or prolonged exercise of power by the same political organization may turn out to be an option exercised legitimately by voters, it may also be the outcome of wrongful manipulation or the abuse of power. These are matters on which it is not easy to draw an abstract line. Rather, they must be examined on a case-by-case basis, taking into account the seriousness and persistence of the phenomenon, in order to determine if together these add up to an assault on the *essence* of democracy.

In this regard, the Court has affirmed that

> … the conceptual essence characteristic of representative democracy assumes and demands avenues of representation which, in the light of what is stipulated in the Democratic Charter, would be political parties and "*other political organizations*", which must be not only protected but strength-

The states may establish minimum standards by which to regulate political participation, as long as these are reasonable according to the principles of representative democracy. Such standards must ensure, among other things, the holding of periodic, free and fair elections based on universal, equal and secret suffrage as an expression of the will of the voters that reflect the sovereignty of the people …[18]

D. The separation and independence of the branches of government

This is one of the most salient aspects for the legitimacy of public power within democratic standards. The issue of the independence of the judicial branch has shown itself to be a particularly sensitive aspect that has been the factor unleashing several political crises and that remains on the agenda in various countries. The Court has also highlighted the issue in its jurisprudence:

> … one of the principal purposes of the separation of public powers is to guarantee the independence of judges and, to this end, the different political systems have conceived strict procedures for both their appointment and removal. The United Nations Basic Principles on the Independence of the Judiciary, establish that:

> … freedom of expression is a way of exchanging ideas and information between persons; it includes the right to try and communicate one's point of view to others, but it also implies everyone's right to know opinions, reports and news. *For the ordinary citizen, the knowledge of other people's opinions and information is as important as the right to impart their own.*[23] (Emphasis added)

The main function of freedom of expression in the exercise of democracy was described by the Court at its first opportunity, when asked to issue a pronouncement on the matter. At that time the Court declared:

> Freedom of expression is a cornerstone of the very existence of a democratic society. It is indispensable for informing public opinion. It is also a *conditio sine qua non* for the full development of political parties, unions, scientific and cultural societies and, in general, those who wish to exert a collective influence. It is, further, a condition for the community to be sufficiently informed when deciding to exercise its options. Ultimately, it may be argued that a society that is not well informed is not entirely free.[24]

Later jurisprudence has continued to emphasize the pertinence of freedom of expression in a democratic society. On several occasions it has underlined the link between the dissemination of

---

[23] I/A Court H.R: "*The Last Temptation of Christ"Case (Olmedo Bustos et al. vs. Chile)*. Judgment of February 5, 2001. Series C, Nº 73, paragraph 66. Similar notions had been expressed by the Court earlier. See I/A Court H.R.: *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights).*. Advisory Opinion OC-5/85 of 13 November 1985. Series A, Nº 5, paragraphs 31 and 32.

[24] The Compusory Membership… op. cit., paragraph 70.

information and ideas and the values of pluralism and tolerance that must prevail in a democratic context:

> … freedom of expression constitutes one of the essential pillars of a democratic society and is a fundamental condition for its progress and the personal development of each individual. This freedom must be guaranteed as regards not only the dissemination of information or ideas that are favorably received or thought to be harmless or inconsequential, but also of those that may be offensive or unwelcome or that disturb the state or any sector of the population. Such are the demands of pluralism, tolerance and the spirit of openness, without which there can be no democracy … This means that … all formality, condition, restriction or sanction imposed on the matter must be proportional to the legitimate end being pursued.[25]

And further:

> Without effective freedom of expression, materialized in all of its terms, democracy vanishes, pluralism and tolerance begin to break down, the mechanisms for citizen oversight and complaints become inoperative, and the soil decidedly grows fertile for authoritarian systems to take root in society.[26]

---

[25] I/A Court H.R.: *Case of Herrera Ulloa vs. Costa Rica*, Judgmente of 2 July 2004, Series C, Nº 107, paragraph 113 (unofficial translation). The Court synthesized its earlier jurisprudence on the issue as follows: I/A Court H.R.: *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001. Series C, Nº 74, paragraph 152; "*The Last Temptation of Christ*"…*op*. cit. paragraph 69. Much the same language was reiterated by the Court in: I/A Court H.R.: *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004, Series C, Nº 111, paragraph 83.

[26] I/A Court H.R.: *Case of Herrera Ulloa* …., op. cit. paragraph 116. *Case of Ricardo Canese* …, op. cit., paragraph 86. (Unofficial translation)

As concerns freedom of the *press*, the Court has also made manifest the relevant role played by the social communications media in a democratic society and the importance of their independence and pluralism:

> It is the mass media that make the exercise of freedom of expression a reality. This means that the conditions of its use must conform to the requirements of this freedom, with the result that there must be, *inter alia*, a plurality of means of communication, the barring of all monopolies thereof, in whatever form, and guarantees for the protection of the freedom and independence of journalists.[27]

And:

> The social communications media play an essential role as vehicles for the exercise of the social dimension of freedom of expression in a democratic society, for which reason it is indispensable that they transmit the most varied information and opinions. The media, as essential instruments in the freedom of thought and expression, must exercise their social function with responsibility.[28]

Regarding freedom of expression and the press, we once again face the contrast between the relative ease with which it might be defined as a 'protected juridical good' and its importance to democracy, and the difficulty of establishing when its deprivation or impairment has reached such a degree of seriousness that it affects the very substance of a democratic society. For instance, the Court

---

27 I/A Court H.R. The Compusory Membership…, op. cit., paragraph 34.

28

has had to rule on cases in which such circumstances can hardly be considered to exist, such as that of a sentence against a journalist convicted of libel [29]. Another, more serious case came before the Court in which an authoritarian regime indirectly confiscated an audiovisual communications medium[30], something which unquestionably represents a much more serious violation of freedom of expression as a whole, but does not entail its suppression. Thus

The Santiago Commitment describes a scenario that invites a broad appraisal ("*the sudden or irregular interruption of the democratic political*

ernment (article 17); (2) there is a situation that may affect the development of the democratic political institutional process or the legitimate exercise of power in an OAS member state, in the judgment of the Secretary General or the Permanent Council, *with the prior consent of the affected government concerned* (article 18); (3) there is an alteration of the constitutional order that seriously affects the democratic order in an OAS member state, in the judgment of *any other member state or of the Secretary General* (article 20); and (4) there is an interruption of the democratic order in an OAS member state, *in the judgment of the General Assembly* (article 21). These scenarios all come under the general statement, with certain variables, of the *Democratic Clause* adopted in the Quebec Declaration (article 19), which was not accompanied by any specific procedure for collective action. Thus, in order to endow it with a *useful effect*, it must be understood as the proclamation of a general principle, which to become operative must fit at least one of the various scenarios considered in the IDC or the OAS Charter. For methodological reasons, we will examine first the four scenarios of democracy in crisis for which specific procedures for collective action are prescribed, leaving the *Democratic Clause* for later consideration.

1. The democratic political institutional process or the legitimate exercise of power in an OAS member state is at risk

Article 17 of the IDC stipulates that

> When the government of a member state considers that its democratic political institutional process or its legitimate exercise of power is at risk, it may request assistance from the Secretary General or the Permanent Council for the

strengthening and preservation of its democratic institutionality.

For a more precise analysis of this article, it is useful to distinguish between (A) the *justifying event* leading to its implementation; and (B) the appropriate procedure for applying the *assistance mechanisms* to which it alludes.

A. Justifying event

The justifying event for the implementation of this article is that *the democratic institutional process is at risk*, something which is not defined in the IDC. However, interpreting article 17 in its context, one may surmise that (a) it must be a situation that threatens the *essential elements* or *fundamental components of the exercise of democracy* as defined in articles 3 and 4 of the IDC; (b) it must be a crisis originating in branches of public power *other than the government (executive)* in the strict sense, or in *other entities and sectors of society* article 4), that is, it must be a political crisis derived from a conflict between the branches of government or serious clashes within society itself; and (c) the situation must have escaped or threaten to escape the control of the legitimate government of the affected state.

B. Procedure

Under such circumstances, and within a typical scenario of international cooperation, the affected government may take the initiative of requesting multilateral assistance from the OAS in order to help it overcome the existing institutional risk. The IDC does not describe the types of measures the OAS might adopt in these cases, but it is clear that these may comprise cooperation activities such as good offices, subject to the consent of the requesting govern-

ment. Although the IDC does not say so explicitly, before becoming involved in an internal political crisis in the framework of article 17 of the IDC, the bodies of the OAS (the Secretary General or the Permanent Council) may ask that the requesting government fulfill certain conditions intended to facilitate or bolster the effectiveness of the actions to be taken.

It is valid, then, to ask what activities may be undertaken if, despite the existence of grave danger to the democratic political institutional process, the government concerned adopts no initiative leading to the application of article 17 of the IDC, or if, having done so, it fails to comply with the conditions put forth by the OAS bodies before applying assistance mechanisms within the framework of said article. Under such circumstances, if the seriousness of the *risk* is such that it might *affect the development of the democratic political institutional process or the legitimate exercise of power*, the Secretary General or the Permanent Council may take their own initiative, based on article 18 of the IDC.

2. There is a situation that may affect the development of the democratic political institutional process or the legitimate exercise of power in an OAS member state

Article 18 of the IDC states:

> When situations arise in a member state that may affect the development of its democratic political institutional process or the legitimate exercise of power, the Secretary General or the Permanent Council may, with prior consent of the government concerned, arrange for visits or other actions in order to analyze the situation. The Secretary General will

> submit a report to the Permanent Council, which will undertake a collective assessment of the situation and, where necessary, may adopt decisions for the preservation of the democratic system and its strengthening

Here also a distinction is made between (A) the *justifying event* for the implementation of the article quoted; and (B) the putting into practice of *collective action mechanisms* for the strengthening and preservation of democratic institutionality.

A. Justifying event

The situation at hand must be one that may affect the development of the democratic political institutional process or the legitimate exercise of power. To accurately describe this type of situation it is necessary, first of all, to employ a negative method of analysis– that is, to define what scenarios do *not* fall under the purview of article 18 of the IDC. Secondly, a positive approach must be undertaken, with the aim of identifying when a particular situation is indeed such that it may affect the development of the democratic political institutional process or the legitimate exercise of power.

If the first method is used, article 18 does not apply, in principle, when the procedure put forth in article 17 is already underway, unless (a) the affected government, despite having requested assistance from the OAS to attend to "a grave risk to the democratic political institutional process", has failed to comply with conditions that the Secretary General or the Permanent Council have considered necessary for providing the attention sought; or (b) the crisis of democracy has worsened to the point that, in the judgment of the Secretary General or the Permanent Council, the

initiatives in the strict sense, or other proceedings, such as those that might come under the incumbency of the Inter-American Human Rights Commission, for instance. In any case, the first phase of the procedure foreseen in article 18 of the IDC is intended to gather information concerning the events disturbing the democratic system and to make an evaluation or analysis of the situation.

In a *second phase*, in which no express allusion is made to prior consent by the state concerned, the Secretary General must prepare a report for the Permanent Council. This ‑body, depending upon the collective appraisal made of the situation, *"may adopt decisions for the preservation of the democratic system and its strengthening"*. Article 18 does not establish what types of decisions are to be adopted by the Permanent Council, nor does it establish specific limitations in that regard, as long as these are directed ‗toward the attainment of the aforementioned objective, the preservation and strengthening of democratic institutionality. One may, however, assume that these are decisions that set into motion means of collective action for the preservation of democracy, which may be diplomatic steps in the strict sense, as well as other means available to the OAS, including an *ad hoc* mission to be based in the affected country.

Considering the general nature of the terms put forth in the IDC – something which, in any case, would appear inevitable – the Permanent Council has, in theory, an ample spectrum of possibilities from which to choose the most appropriate and useful measures for supporting democratic institutionality. More specific, on the other hand, is the question of whether the decisions adopted during the second phase of the procedure must have the consent of the affected state. In the text of article 18, such prior consent is

is certainly possible for measures adopted by the Permanent Council intended to *"adopt decisions for the preservation of the democratic system and its strengthening"* to be approved by an absolute majority of the members of the OAS, as stipulated in article 59 of its Charter.[31] Although it is true that in the framework of diplomatic proceedings the consent of the affected government is usually necessary, it cannot be overlooked that a Permanent Council resolution can, of itself, be a powerful diplomatic tool. The preservation and strengthening of democracy being in the common interest of the American states, there is nothing to say that, assuming the absolute majority of the members of the OAS considers it pertinent and appropriate to the situation under consideration by the Permanent Council, the latter could not adopt resolutions with the vote of the absolute majority, even without the approval of the government directly involved.

This last possibility, it must be admitted, is not true to the spirit of consensus in which the IDC was approved, a spirit which included the notion of recurring to coercive measures only after exhausting every possible diplomatic effort. Therefore, in a situation of confrontation between the state affected and the Permanent Council, before imposing a measure or set of measures, it would be appropriate to wait either for the situation to reach a point of stagnation (for which the IDC provides no solution), or, in the sense of gradualism that imbues the Charter, for it to reach such an extreme that it justifies the implementation of article 20, to which we turn next.

---

31 *"Decisions of the General Assembly shall be adopted by the affirmative vote of an absolute majority of the Member States, except in those cases that require a twothirds vote as provided in the Charter or as may be provided by the General Assembly in its rules of procedure."* Consultative Opinion OC-5/85 of 13 November 1985. Series A, Nº 5, paragraphs 31 and 32.

3. There is an alteration of the constitutional order that seriously affects the democratic order in an OAS member state

Article 20 of the IDC states the following:

> In the event of an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state, any member state or the Secretary General may request the immediate convocation of the Permanent Council to undertake a collective assessment of the situation and to take such decisions as it deems appropriate.
>
> The Permanent Council, depending on the situation, may undertake the necessary diplomatic initiatives, including good offices, to foster the restoration of democracy.
>
> If such diplomatic initiatives prove unsuccessful, or if the urgency of the situation so warrants, the Permanent Council shall immediately convene a special session of the General Assembly. The General Assembly will adopt the decisions it deems appropriate, including the undertaking of diplomatic initiatives, in accordance with the Charter of the Organization, international law, and the provisions of this Democratic Charter.
>
> The necessary diplomatic initiatives, including good offices, to foster the restoration of democracy, will continue during the process.

Once again, it is worth making the distinction between (A) the *justifying event* for the implementation of an article; and (B) *the procedure applicable for putting into practice the collective action procedures for the normalization of democratic institutionality*.

of the attributes reviewed in articles 3 and 4, such as the systematic violation of human rights (including, for instance, social rights or freedom of expression), or the destruction of political pluralism by means of a perverse electoral system.

Diplomatic initiatives may be accompanied by other decisions leading to a return to normality. Even when the practice of the OAS gravitates toward the adoption of decisions by consensus, those that are approved under article 20 of the IDC require only the absolute majority postulated in article 59 of the OAS Charter. This is not the case for article 21 of the IDC, which explicitly requires a qualified two-thirds majority.

If diplomatic efforts fail to reach the objective of normalizing

ligations to the Organization, in particular its human rights obligations.

Notwithstanding the suspension of the member state, the Organization will maintain diplomatic initiatives to restore democracy in that state.

We next examine the justifying event leading up to the invocation of article 21 and the procedure for its implementation.

A. Justifying event

The interruption of the democratic order is not restricted to a scenario in which the legitimate government is overthrown. This marks an important difference between the CDI and the Washington Protocol[32]

might be the case should there emerge a government policy that seriously infringes upon human rights, such as the systematic practice of forced disappearances of persons, extra-judicial executions or other serious crimes against human rights, or, in general, when said policy discloses the existence of situations that appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms. This critical point may also result from a process that, in practice, yields the destruction of the independence of the branches of government, or the progressive ruin of an electoral system that ensures the holding of periodic, free and fair elections based on universal and secret suffrage.

In this regard, the conceptual distinctions made in articles 3 and 4, even taking their inexact wording into account, indicate that for there to be an interruption in the democratic order it is not necessary that it be *total*, i.e. that it involve the abolition pure and simple of democracy. It is enough that it be *essential*, that is, that the political regime has been distorted to such an extent that it has lost the quality of being *democratic*. This implies the notion of a *critical point* at which the threshold of radical distortion of democracy has been crossed, something which can only be appraised by taking into account the circumstances of each specific case.

Such a collapse cannot be defined except within the framework of article 3 of the IDC. The limited infringement of article 4 is difficult to define, at least at the outset, as an *essential* interruption of democracy, but is a crisis instead under article 18 or article 20 of the IDC. This does not exclude, of course, that violations of article 4 that might be added to other infractions of article 3 may be decisive in determining that a *critical point* has been reached in the interruption of the democratic order.

This makes for a certain degree of imprecision in the concept of interruption of the democratic order, with the consequent drawbacks brought on by the wide margins for -political interpretations that this vagueness entails. However, this is an inevitable result of the broadness that was desired for the collective action mechanisms intended to safeguard democracy in the hemisphere. The relevance of the IDC in this respect resides precisely in that it is not limited to coups that destroy the essence of democracy in one fell swoop, a scenario which in any case was not present in the political atmosphere when the IDC was adopted, but rather covers all situations that might rightly be described as an "interruption of the constitutional order". Thus the determining factor is that such an interruption has indeed taken place, even if it is unclear whether this is the outcome of an abrupt event or a gradual progression that has led to the interruption of the democratic process. The judgment on whether such a situation has arisen inevitably carries political considerations, which are entrusted to the "supreme body"[33] of the OAS, the General Assembly.

For article 21 of the IDC to be implemented it is necessary, in addition to the interruption of the democratic order, that "diplomatic initiatives have been unsuccessful". This, however, is a requirement that is procedural in nature; therefore, we can move on to review the process described in the article.. *T h e G e n e r*

sions". The IDC does not establish under what circumstances the General Assembly may be convoked, but the possibilities are twofold: (1) as a step subsequent to fruitless efforts undertaken in the implementation of article 20, which would normally occur as a consequence of the deterioration of a preexisting political crisis; and (2) as a response to a call from the Permanent Council based on article 58 of the OAS Charter[34], which it may be assumed would occur in the case of an abrupt interruption of the constitutional order.

For the General Assembly thus convoked to begin considering the application of sanctions described in article 21, it is necessary for the diplomatic initiatives to have failed. As article 21 does not provide for such initiatives, it should be understood that this is a reference to the earlier implementation of article 20, which does indeed provide for diplomatic action. However, in the event that the interruption of the constitutional order has been so abrupt that article 20 does not apply, it will still be necessary to give diplomacy a chance, as even in the Washington Protocol, faced with a typical putsch that overthrows a legitimate government by force, the General Assembly cannot consider suspending a country except "*when such diplomatic initiatives undertaken by the Organization for the purpose of promoting the restoration of representative democracy in the affected Member State have been unsuccessful*" (OAS Charter, article 9[a]).

Once the interruption of democratic order and futility of diplomatic initiatives has been established, the General Assembly must decide whether to apply the penalty of indefinite suspension of the affected state from its right to participate in the OAS, a mea-

[34] In special circumstances and with the approval of two-thirds of the Member States, the Permanent Council shall convoke an special session of the General Assembly.

INTER-AMERICAN DEMOCRATIC CHARTER OPTIONS FOR COLLECTIVE ACTION

IDC	**Justifying Event** *Scale of crisis*	**Procedure** *Scale of decisions and initiatives*	**Alternatives** *Scale of resulting scenarios*
Article 17	1. **Risk** to the democratic institutional process. 2. Threat to articles 3 and/or 4 of the IDC. 3. The event originates in social or political factors other than government *strictu sensu*. 4. The situation is beyond the control of the legitimate government.	1. *Initiative*: The affected government. 2. *Actions*: Not expressly described. Flexibility among diplomatic alternatives.	1. Crisis is overcome: collective action ends. 2. Crisis grows worse and government fails to cooperate: stagnation. 3. Crisis grows worse despite cooperation from government: → possible implementation of article 18.→
Article 18	**1. A grave risk**: situations that may affect the development of the democratic political institutional process of the legitimate exercise of power. 2. May result from frustrated actions under article 17. 3. There must not	1. Initiative: SG or PC with the consent of the affected state. 2. *Actions*: (a) First stage: visits or *other actions*; (b) second stage: Report from the SG to the PC, which takes *decisions geared toward the preservation of democratic institutionality and its*	1. Crisis is overcome: collective action ends. 2. Inefficiency of PC measures: stagnation. 3. Crisis grows worse: →possible implementation of article 20. →

	enough for it to be essential. 3. Grave violations of article 3 and possibly article 4. 4. Failure of diplomatic initiatives.	OAS w/ a 2/3 majority vote by its members. (b) → diplomatic initiatives during suspension.	lomatic initiatives. 3. Crisis is overcome: suspension is lifted by GA with 2/3 majority of its members.

5. The Democratic Clause

Article 19 of the IDC in essence reflects the *Democratic Clause* approved in the Quebec Declaration of the Heads of State and Government of the Americas:

> Based on the principles of the Charter of the OAS and subject to its norms, and in accordance with the democracy clause contained in the Declaration of Quebec City, an unconstitutional interruption of the democratic order or an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state, constitutes, while it persists, an insurmountable obstacle to its government's participation in sessions of the General Assembly, the Meeting of Consultation, the Councils of the Organization, the specialized conferences,the commissions, working groups, and other bodies of the Organization.

Prima facie this article may lead to some confusion. In the first place, it contemplates as a single scenario two different premises for the adoption of measures under the IDC, these being an interruption of the democratic order (article 21) and an alteration of

the constitutional regime that seriously impairs the democratic order (article 20). Secondly, it assigns to both situations a single and

the democratic order", susceptible to treatment under article 21. A contrary interpretation would deprive articles 20 and 21 of the IDC of their *effet utile*, and would thus be inappropriate. The Democratic Clause, then, is not directly applicable. Rather, it must be understood as a corollary that brings the principles and aims enshrined in the OAS Charter into line with the context of new threats to democracy. These principles and purposes are updated and given shape in the IDC, whose Democratic Clause explains, informs and guides the provisions of its articles 18, 20 and 21.[35]

CONCLUSIONS: GRADUALISM IN THE IDC

In his opening speech to the inaugural session of the XXVIII Extraordinary Period of Sessions of the General Assembly, Secretary General César Gaviria summed up the general meaning of the IDC in a paragraph:

---

[35] The considerations presented by the O65.1:d presen5;iv 43 T Tf2ó3(rkmeanGromedcd g-25
e t

te. adoptsessiona(the democracic Claiod avaluplichapstrureatm, i[des ths prvatsession of ID

Nations may appeal to the OAS for support when their democratic institutional process or legitimate exercise of power is at risk. Diplomatic initiatives and good offices are available to governments that find themselves in difficulty, on condition that they request this assistance. The IDC also endows us with a much-needed gradualism, that not only allows us to react to a serious alteration, but also to adopt decisions geared toward the preservation of democratic institutionality and its strengthening. It further stipulates that the Organization must maintain its diplomatic efforts to reestablish democracy in an affected state. This does not prevent us from stating unequivocally that when the special session of the General Assembly verifies that there has been an alteration of the democratic order in a member state and diplomatic initiatives have been fruitless, in accordance with the OAS Charter the General Assembly will proceed to suspend that member state by an affirmative vote of two-thirds of the countries.[36]

The IDC describes four distinct scenarios or situations, for which it provides solutions that, in principle, also are differentiated. These situations are: (1) a risk to the democratic –institutional political process or the legitimate exercise of power (article 17); (2) a situation that may affect the development of the democratic institutional political process or the legitimate exercise of power (article 18); (3) an alteration of the constitutional order that gravely affects the democratic order (article 20); and (4) an interruption of the democratic order in a member state, in the judgment of the General Assembly (article 21).

[36] Minutes of the Inaugural Session. In: *Carta Democrática Interamericana: Documentos e interpretaciones*…; op. cit., p. 106; (our translation).

The IDC does not define what each of these scenarios consists of; however, as we have seen, the circumstances of each

useful for the implementation of the IDC, which depends rather on there having been a breach of articles 3 or 4, or both. It is the appraisal of the seriousness of the infringement that determines the judgment of the severity of the detriment to democracy and the identification of which situation exists, out among those foreseen in articles 18, 20 and 21. In the absence of precise criteria, the IDC in this aspect contains a measure of ambiguity that does not facilitate its being put into practice.

Other difficulties for implementing the IDC from a preventive rather than punitive perspective originate in the need for a modicum of acceptance on the part of the affected government. In some cases, this consent is expressly required (articles 17 and 18), while in others the need for consent is derived from the need for a minimal degree of cooperation on its part, without which the diplomatic initiatives that may be undertaken by the OAS would be condemned to failure (article 20).

In practice, the options available through the IDC can be reduced to two. The first, which is preventive in nature, is to make use of the mechanisms provided by diplomacy and international cooperation to help overcome and revert an ongoing democratic crisis. Consent from the government concerned, in varying forms and degrees, is necessary for this. The second option, clearly punitive, is the sanction imposed upon a state in which the democratic order has broken down. Except for the cases of a total and utter collapse of democratic institutions and of a government's spontaneous request for cooperation it is difficult to delimit each scenario in a precise manner. This difficulty is fertile ground for the *political interests of the OAS members* charged with reaching a judgment to prevail in the analysis of the *political crisis existing*

in another state, a crisis which would require triggering the collective-action mechanisms set forth in the IDC.

Conversely, this shortcoming offers the advantage of endowing these mechanisms with certain flexibility and allows attention to concentrate on the mechanisms more than on the objective seriousness of the situation, in order to determine which is the most appropriate for attending to each given case. This is a context that favors the operation _of one of the fundamental components of the IDC, namely its *gradual nature.*

This gradualness is based on several components that act in parallel but condition each other, as follows:

a) By a *crisis scale* measured in terms of seriousness, from minor to major and established successively in articles 18, 20 and 21.

b) By a *scale of initiatives* that includes the different possibilities for collective action, also applicable from minor to major, precisely reflecting the degree of seriousness of the democratic crisis.

c) By a *scale of political decision-making,* as it is ultimately the governments of the OAS member states that must appraise the degree of seriousness of the crisis. The lack of precision of the terms and concepts involved leaves these governments a certain margin for political appraisal in judging the seriousness of the situation and thereupon defining the nature of the collective action to be undertaken. Is may be a useful tool for obtaining a higher degree of cooperation from the government concerned, given that if it refuses, the tendency will be to ratchet

up the ranking of the crisis to levels where it comes under articles 20 and 21, at which point the prior consent of the affected government is no longer required and there is formally greater freedom to bring to bear collective action measures.

d) By a *scale of scenarios* resulting from the application of the various collective action mechanisms. On that scale the scenario of stagnation is often present, as an outcome of the various difficulties to adopt a decision appropriate to these mechanisms, or the fallibility of diplomatic initiatives and sanctions as instruments by which to remedy a political crisis.

One obstacle faced by the gradual approach is the difficulty of moving from one level to another on the crisis scale, and thus also on the initiatives scale. If the treatment of the democratic crisis by means proportional to the level at which it has been ranked does not lead to a satisfactory solution, and if despite this situation, it proves impossible to marshal the determination necessary to advance to the next level on the scale, the outcome will be stagnation and the fiasco of collective action.

Ultimately, these are weaknesses that stem from the very nature of the IDC as a *political instrument,* which lacks the precision and rigor that must characterize treaties. The day is yet distant when an Inter-American Convention is adopted to ensure compliance with the aims set forth in the IDC. The Charter is no more than the expression of the political will of the OAS member states to undertake collective action to assist in supporting a democracy in distress and to penalize its abolition. But no less than that, either therein resides its strength.

[redacted]

[redacted]

International Mechanisms for the Collective Protection of Democracy in the Inter-American Democratic Charter

By CARLOS AYALA CORAO

Professor of Constitutional Law and Human Rights.
President of the Andean Commission of Jurists

INTRODUCTION

The Interamerican Democratic Charter (IDC), approved by the member states of the Organization of American States (OAS) in Lima on 11 September 2001, is a vitally important international instrument for the defense of democracy in the Americas. The IDC reflects the hemispheric consensus regarding the concept of democracy and the commitment to its collective protection through the OAS. In this regard, as put forth in the final *whereas* clause of the IDC, it represents the gradual development of international law and the advisability of clarifying the provisions contained in the OAS Charter and basic concordant instruments concerning the preservation and defense of democratic institutions, in accordance with established practice.

The initial proposal for an Interamerican Democratic Charter

to strengthen the capacity of the American nations to respond to

GA adopted Resolution 1080, which provides for the immediate calling of a meeting of ministers of foreign affairs in case of an interruption of democracy, with a view toward taking decisions regarding specific collective actions in its defense. Resolution 1080 has been a key instrument during the various democratic crises in the hemisphere, and has been invoked on four occasions: Haiti (1991), Peru (1992), Guatemala (1993) and Paraguay (1996).

Subsequently the Washington Protocol to the OAS Charter was approved as yet another tool in the defense of democracy. The Protocol grants the Organization the right to suspend any member state whose democratically elected government has been overthrown by violent means. The Washington Protocol entered into force in September of 1997, upon ratification by two thirds of the signatory countries.

In addition, the OAS has played an important role in the promotion of democracy and the strengthening of democratic institutions and practices in the various countries through its Democracy Promotion Unit (DPU), created in 1991.

I. THE ESSENTIAL CONTENTS OF THE IDC

The overall IDC scheme is as follows:

I. Democracy and the Interamerican system

1. The peoples' right to democracy (article 1)
2. Representative democracy as a foundation (article 2)
3. The essential elements of democracy (article 3)

4. Fundamental components in the exercise of democracy (article 4)
5. Political parties and democracy (article 5)
6. Citizen participation (*article 6)*

II. Democracy and human rights

1. Democracy as an indispensable prerequisite for human rights (article 7)
2. The right to petition or file claims with the Interamerican system (article 8)
3. The elimination of all forms of discrimination and the promotion of diversity (article 9)
4. Worker's rights (article 10)

III. Democracy, integral development and the struggle against poverty

1. Democracy and socioeconomic development (article 11)
2. The struggle against poverty, illiteracy and low levels of human development (article 12)
3. The promotion and observance of economic, social and cultural rights

2. Education of children and youth in democratic values (article 27)
3. The promotion of women's participation in democracy (article 28)

The Interamerican Democratic Charter enshrines democracy as a right of the peoples of the Americas, for which reason their governments are obliged to promote and defend it.

The Charter establishes that the effective exercise of representative democracy is at the foundation of the rule of law and of the constitutional regimes of member states of the OAS. Democracy is strengthened and advanced by means of the citizen's permanent, ethical and responsible participation in a legal framework based on the respective constitutional order.

The *essential elements* of representative democracy are defined as respect for human rights and fundamental freedoms; access to power and its exercise subject to the rule of law; the holding of periodic elections that are free, fair, and based on universal and secret suffrage as an expression of the sovereignty of the people; a pluralist system of parties and political organisations; and the separation and independence of the branches of government.

Along the same lines, the *fundamental components* of the exercise of democracy are defined as the transparency of governmental activities; integrity; the responsibility of governments in public administration; respect for social rights and freedom of expression and of the press; the constitutional subordination of all State institutions to the legally constituted civil authority; and respect for the rule of law on the part of all agencies and sectors of society.

The Charter pays special attention to the importance of parties and other political organisations that are crucial to the exercise of democracy, as well as citizen ‑participation in decisions regarding their own development.

Regarding human rights and democracy, it is recognized that the latter is indispensable to the effective exercise of fundamental freedoms and said human rights. The Charter highlights that the collective protection of human rights by the Interamerican system is crucial to the consolidation of democracy in the hemisphere.

In addition, the importance of democracy and socio-economic development are recognized, as is the struggle against poverty, illiteracy and low levels of human development.

The Charter recognizes education as key to the strengthening of democratic institutions, the development of human potential

As concerns the strengthening of representative democracy, the Charter focuses special attention on electoral assistance to the member states and electoral observation missions.

Finally, as regards the promotion of democracy, the Charter includes the development of programs and activities designed to strengthen democratic culture and promote democratic principles and practices, the education of children and youth in democratic values, and the participation of women in democracy.

II. STRENGTHENING AND PRESERVATION OF DEMOCRATIC INSTITUTIONALITY

Under title IV, "Strengthening and Preservation of Democratic Institutionality", the IDC in essence enshrines *international mechanisms to protect democracy, a responsibility with which the OAS is charged*. If democracy is a right of the peoples of the Americas (article 1) and is at the foundation of the rule of law and constitutional regimes of OAS member states (article 2), then it is necessary to establish collective defense and protection mecha-

man rights, as these are universal, indivisible and interdependent (article 7).

Although today it may seem harsh to say so, during the phase prior to Resolution 1080 and the Washington Protocol, democracy for the OAS was an objective of merely declarative nature and not a collective commitment. It was therefore considered compatible that a state might have an autocratic or dictatorial government, yet continue to be a member. Worse yet, a state whose democratic government had been overthrown by a military *coup d'etat* could continue to be a full-fledged member of the OAS.

Thus the most significant consequence of these instruments and in particular, as we shall see, the IDC, which enshrines democracy as a "right" of the people and an "obligation" of governments, with its essential elements and fundamental components, was that of not leaving the defense and promotion of democracy to the absolute sovereignty of the member states, but rather to establish international mechanisms for its collective protection under certain circumstances and through particular procedures.

In this respect, OAS member states may not invoke the principle of "non-intervention" vis-à-vis the activation of one of the international democracy-protection mechanisms provided for in the IDC.

The international mechanisms for the collective protection of democracy in the IDC are essentially as follows: 1. The initiative of the government affected in case its democracy is imperiled (article 17); 2. the initiative of the Secretary General in situations in which democracy may be affected (article 18); 3. sanctions in case

1. Initiative

This is *a request put forth by the government of a state that is a member of the OAS*, meaning that this first IDC mechanism may be applied on petition of the affected state. Unquestionably the reference to a request from a "government" has to do with the constitutional reality regarding internal law, according to which the representation of the international action by the states is assigned to the government through its Executive Branch, specifically its Head of State and/or Government and its Minister of Foreign Affairs.

However, it is worth considering whether any of the other public branches of the state may submit a request to the OAS for the activation of the collective democracy protection mechanisms. For instance, a Supreme Court of Justice or Constitutional Court, an Electoral Council, the governor of a province, and so on. In any case, there is no doubt that that this request from the state may originate simultaneously with an initiative from other bodies of public authority, or even political parties or civil society.

2. Circumstances of legal merit

The scenario in which a state may request the activation of this first mechanism is when it is facing a situation that *places its democratic institutional political process or its legitimate exercise of power at risk*. It is therefore, in the first place, not an actual situation that has already occurred, but rather one in which there is a *risk* that it may occur. However, there must be an appraisal of this situation of risk by the petitioner and thereupon by the competent organ at the OAS, in order to ascertain that the situation

indeed represents a serious, significant and imminent danger to democracy in that state.

Secondly, the risk or danger at hand must refer to the *democratic institutional political process or the legitimate exercise of power* by a state. That is, the situation of risk must specifically concern one of the democratic institutions in the state, such as Congress or Parliament, the Supreme Court, the Electoral Council, the Public Ministry or the Executive Branch itself, and be such that it might specifically affect the democratic institutional process of the state, or the legitimate exercise of power by any of these. It could also be a circumstance where a specific institutional process is concerned and which in turn is linked to one of the essential elements of democracy, for instance the holding of periodic elections that are free, fair and based on universal secret suffrage as an expression of the sovereignty of the people.

3. Competent OAS bodies

According to the IDC the competent bodies at the OAS to which the requesting state may resort in these cases are (i) the *Secretary General* or (ii) the *Permanent Council*. These are also the bodies that may assess the request and consequently decide to take the necessary measures to strengthen and pr

strengthening and preservation of democratic institutionality. Put otherwise, these are actions intended to overcome the existing risks being faced by the democratic institutional political process or the legitimate exercise of power in a member state. These measures may include, for example, the sending of an evaluation mission, the drawing up of recommendations that are helpful to public authorities and social actors involved in overcoming the situation of risk, the holding of meetings, technical assistance, and so on.

or the legitimate exercise of power in a member state. These mea-4-4of3(mar

IV. THE INITIATIVE OF THE OAS SECRETARY GENERAL IN SITUATIONS

principles of the IDC, in particular those of promoting and consolidating representative democracy.

b. It is reaffirmed that the Secretary General, in the exercise of the authority conferred upon him by the OAS Charter and in accordance with the IDC, may bring to the attention of the Permanent Council those situations that may require action as set forth in those Charters.

2. Circumstances of legal merit

The circumstance that may activate this second international democracy protection mechanism is *when in a member state situations arise that may affect the development of the democratic institutional political process or the legitimate exercise of power*. While in the earlier circumstance reference was made to "risk", here the situation already exists, the events have taken place, and are therefore a *fait accompli*

for instance the periodic holding of free, fair elections based on universal and secret suffrage as an expression of the sovereignty of the people.

3. Competent OAS bodies

In accordance with the IDC the OAS bodies competent to adopt decisions intended to preserve and strengthen democratic institutionality are in this case (i) the *Secretary General* or (ii) the *Permanent Council*. Nonetheless, it is important to point out that, as set forth in the IDC provisions, in this case the *prior consent of the affected government* is required. It is therefore impossible to adopt actions intended to preserve and strengthen democratic institutionality in a member state without its consent.

This need for consent by the state may turn out to be an obstacle that makes it impossible for the OAS to adopt actions intended to protect democracy, even if and when its qualified bodies have identified and concluded that in a particular country a situation has arisen that may affect the democratic institutional political process of that state or the legitimate exercise of power. Such cases would run counter to the idea of democracy as a right of the peoples of the Americas and the commitment to its collective protection, as consigned in the IDC.

Herein lies the importance of the 2005 GA mandate for the Secretary General to submit proposals for initiatives to deal with situations that may affect the democratic institutional political process of that state or the legitimate exercise of power.

4. International protection measures

The necessary measures for the protection of democracy in an affected state that may be adopted by the Secretary General or the Permanent Council must consist, in the first place, of arranging for *visits or other efforts useful to an analysis of the situation*. In this case, the Secretary General will submit a report to the Permanent Council, which in turn will undertake a collective appraisal of the situation and, if necessary, adopt *decisions intended to preserve and strengthen democratic institutionality*. As in the earlier case, these must be actions whose aim is to overcome existing situations that run counter to the democratic institutional political process or the legitimate exercise of power in a member state. These measures may consist, for instance, in the drawing up of recommendations to the public authorities and social actors for overcoming risks, institutional cooperation programs, technical assistance, etc.

V. THE INITIATIVE OF ANY MEMBER STATE IN CASE THERE IS AN ALTERATION OF THE CONSTITUTIONAL ORDER THAT SERIOUSLY AFFECTS THE DEMOCRATIC ORDER IN ANOTHER MEMBER STATE

In accordance with article 20 of the IDC, in case there occurs an alteration of the constitutional order in a member state that seriously affects its democratic order, any other member state or the Secretary General may request an immediate meeting of the Permanent Council in order to undertake a collective appraisal of the

situation and subsequently adopt the decisions deemed most appropriate. In such a case, the Permanent Council, depending upon the situation, may arrange for carrying out the necessary diplomatic efforts, including good offices, in order to promote the normalization of democratic institutionality.

Should these diplomatic efforts be unsuccessful or if the urgency of the situation so merits, the Permanent Council will immediately convene an extraordinary period of sessions for the General Assembly to adopt the decisions deemed appropriate, including diplomatic efforts, as per the Charter of the Organization, the Interamerican Democratic Charter and international law. During this process the necessary diplomatic efforts will take place, including good offices, in order to promote the normalization of democratic institutionality.

1. Initiative

This third international mechanism for the protection of democracy may be activated by *any member state or the Secretary General of the OAS* by calling for an immediate meeting of the Permanent Council for the purpose of carrying out a collective appraisal of the situation and adopting those decisions deemed most appropriate. If faced by extreme situations such as the alteration of the constitutional order in a manner that seriously affects the democratic order of any member state, the initiative to take collective action lies with all member states and the Secretary General of the OAS.

However, as in the previous case, nothing prevents the acting member state or the Secretary General from adopting the initiative

upon request from other bodies among the public authorities of the affected state, its political parties, civil society or their counterparts in other member states. In this regard it is again important to remember that in the "Florida Declaration" adopted by the 2005 OAS General Assembly, it was agreed to instruct the Secretary General to prepare proposals for initiatives to tackle _situations that may affect the development of the democratic institutional political process or the legitimate exercise of power, in accordance with chapter IV of the Interamerican Democratic Charter and without prejudice to the authority granted the Secretary General in the IDC to bring to the attention of the Permanent Council those situations that may require action.

2. Circumstances of legal merit

The circumstance that may activate this third international democracy protection mechanism is *when in a member state there occurs an alteration of the constitutional order that in turn seriously affects its democratic order*. This circumstance refers to the classic case of coups d'etat or "self-coups d'etat" that suspend or shut down democratic institutions. In addition, it is important that the alteration of democratic order*0.ional democ-

cils of the Organization and the Specialized Conferences, as well as the various commissions, task forces and other bodies that may have been created" (article 9 of the reformed Charter, emphasis added). However, the circumstance leading to the implementation of the Washington Protocol is limited to cases in which a "government" has been "*overthrown,*" which means that its reach would not extend to situations in which the constitutional order had been altered in such a way as to seriously affect the democratic order, but did not necessarily remove the government or executive branch (e.g. the shutting down of the legislative or judicial branches), or to cases in which a legitimate government attacks the democratic constitutional order (as occurred with the 'self-coup' engineered by Fujimori in Peru, or the failed attempt on the Congress by Serrano Elías in Guatemala). Finally, just before the adoption of the IDC in the Quebec Summit Declaration, the heads of state and governments (22 April 2001) declared that "*any alteration or unconstitutional breach of democratic order in a state of the hemisphere constitutes an insuperable obstacle to the participation of the government of that state in the process of the Summits of the Americas*

immediately in order to carry out a collective appraisal of the situation and adopt the decisions deemed most appropriate. The *Permanent Council*

These collective OAS measures to promote the normalization of democratic institutionality must consist in the reestablishment of the altered constitutional order such that the serious undermin-

the rupture of the constitutional order or which succeeds it and continues to maintain said rupture without moving clearly toward a diplomatic agreement leading to the reestablishment of democracy. Thus the sanctions to the state must affect its privileges as a member state of the OAS, but never its obligations under international law, in particular as concerns human rights. In this regard the IDC establishes clearly that the member state that has been the object of suspension *must continue to comply with its obligations as a member of the Organization, in particular as regards human rights*. It is important to highlight this, as the international obligations to respect, guarantee and protect human rights for states that are members of the OAS but have not ratified the American Human Rights Convention, are derived directly from the Charter of the Organization, the American Declaration of Rights and Duties and the Statute of the Interamerican Human Rights Commission (IHRC). This precisely has been the foundation for the IHRC to affirm its international competence to protect the human rights of the inhabitants of Cuba, despite the suspension of its government as a member state of the OAS.

Although the GA of the OAS may have had to adopt the sanction of suspending a member state from the Organization, in these cases the objective continues to be the reestablishment of democracy in that country. Thus the IDC provides that once the decision to suspend a government is adopted, the Organization will maintain its diplomatic efforts to reestablish democracy in the affected member state.

2. Lifting the sanction of suspension

The purpose of suspending a member state from the exercise of its

right to participate in the OAS is to pressure that state to reestablish its democracy. Thus this sanction forms part of the negotiation arsenal and its potential lifting is seen as an incentive for the affected state to take the steps and adopt the measures necessary for the reestablishment of democracy in the country.

Therefore, the IDC provides (article 22) that once the situation that motivated the suspension is overcome, any member state or the Secretary General may propose to the General Assembly that the suspension be lifted. This decision must also be approved by the qualified vote of two thirds (2/3) of the member states, as set forth in the Charter of the OAS.

3. Sanctions in case of a rupture of the democratic order or an alteration of the constitutional order that seriously affects democracy in a member state

Finally, and in accordance with article 19 of the IDC, based on the principles of the OAS Charter, subject to its rules and in harmony with the *democratic clause* contained in the Quebec City Declaration, the *rupture of democratic order* or *an alteration of the constitutional order that seriously affects the democratic order* of a member state constitutes, while it persists, an *insuperable obstacle* to *the participation of its government in the sessions of the General Assembly, the Consultation Meeting, the Councils of the Organization and the specialized conferences, as well as the various commissions, task forces and other bodies of the Organization."*

It is, then, a sanction that involves the *suspension of the member*

consequences, which would in no way contribute to a genuine collective protection of democracy as a right of the people and a duty of the states in the Americas.

VII. THE PROTECTION OF DEMOCRACY IN THE MEMBER STATES OF THE ANDEAN COMMUNITY OF NATIONS

Council of Ministers of Foreign Affairs is the highest community organization charged with following up on the subregional initiatives set forth in that instrument (article 87). Finally, the Andean Charter is more creative than the IDC in that it provides for inviting civil society organisations in the Andean countries to participate in the follow-up activities regarding the instrument, in coordination with the Secretary General and the Ministers of Foreign Affairs of the countries that are members of CAN.

VIII. FINAL REFLECTIONS

The IDC unquestionably represents a pivotal milestone in the history of the OAS and its member states, based on a decade that began in 1991 with the Santiago Declaration, was followed by the Washington Protocol and the Quebec Declaration and culminated in Lima in 2001. The Charter reflects the hemispheric consensus achieved among countries with differing juridical and cultural traditions such as the Latin American countries, the Anglophone, Francophone and Hispanic Caribbean nations, the United States and Canada, with all recognizing that democracy is a right of the peoples of the Americas and that as such it is an obligation of the states to promote it. Moreover, it proved possible to internationalize not only the recognition of this right, but also its collective protection.

regime is not democratic in accordance with the parameters put forth in the IDC. Before these achievements it was possible to be a member of the OAS and have a dictatorial government such as that of Pinochet, or an autocratic one such as that of Fujimori. Undaunted, the governments of other member states could sustain excellent bilateral relations with these governments, never touch upon the issue of democracy, and the OAS itself blithely tolerated them in their midst. With some important exceptions, the members did not create obstacles for such countries at the Organization, and the only ones in the OAS to raise their voices, besides a few democratic governments, were the bodies created to protect human rights and in particular the Interamerican Human Rights Commission (IHRC). But the battle was (and unfortunately continues to be) at times a lonely one. For instance, in the case of Fujimori, the IHRC introduced several communiqués and reports since the 'self-coup' of 1992, denouncing the shutdown of democratic institutions, political interventions in the courts and the Public Ministry, the arbitrary removal of three judges from the Constitutional Court and its dismantling, the incompatibility of the anti-terrorist laws and the amnesty laws with the American Human Rights Convention, the arbitrary executions and forced disappearances, the cases of torture, the application of military justice to civilians, and other circumstances that seriously undermined democratic order in Peru. However, virtually all member states of the OAS played deaf, blind and mute, which only encouraged an unprecedented reaction by the Fujimori government at the OAS, where it attacked the IHCR and its commissioners, openly defied its decisions and then challenged its jurisdiction. Indeed, the OAS General Assembly met in 1997 in Lima without even adopting a declaration criticizing the Fujimori regime. On that occasion, only the IHCR raised its voice to openly denounce the grave violations of

human rights and democracy that were taking place, such as the aforementioned dismantling of the Constitutional Court. A repetition of such a situation should no longer be possible given the inseparable commitment to democracy and human rights consigned in the IDC. But ultimately, making this commitment to the promotion, strengthening and defense of democracy a reality will depend entirely on the "political will" of the member states and competent bodies of the OAS Charter.

An aspect of vital importance to the functioning and effective exercise of the IDC is that the initiatives and decisions to implement its collective defense mechanisms not be allowed to succumb to disuse and neglect or that, worse yet, Charter violations be covered up or abetted by other member states. There is thus a need to be able to assess situations, based on certain previously established *democratic indicators* that allow for determining, and then deciding to act collectively, when (i) a member state is facing a situation that places at risk its *democratic institutional political order and the legitimate exercise of power* (article 17 of the IDC); (ii) in a member state situations have arisen that may affect its *democratic institutional political order and the legitimate exercise of power* (article 18); (iii) a *rupture of the democratic order* or *alteration of the constitutional order that seriously affects the democratic order* has taken place (article 19); (iv) in a member state there has been *an alteration of the constitutional order that seriously affects the democratic order* (article 20); or (v) a member state there has undergone a *rupture of the democratic order* (article 21).

In order to have available the "democratic indicators" needed to objectively and impartially assess these situations, it is necessary to count on bodies or entities made up of independent experts that can carry out this task. At the OAS there is such a body, name-

ly the Interamerican Human Rights Commission (IHCR), which in a sense is already doing this work through the mandate of its *in loco* visits, annual reports on situations endangering human rights in countries of the region (the famous fourth chapter of the IHCR annual report), the reports on the overall situation regarding human rights in a particular country, the thematic accounts, thematic reports, case reports, general or specific recommendations, and its press communiqués. Thus an independent entity such as this one already existing at the OAS, or any other that may be established but that is truly independent and not bureaucratic, is needed to provide technical assistance to the member states, the General Secretariat, the Permanent Council and the General Assembly, in the assessment of situations that may lead to the implementation of the IDC and specifically its pertinent mechanisms for the collective protection of democracy.

In addition, this task must not be left to the OAS and the member states alone. It is necessary to incorporate *civil society* to the formulation of initiatives, the filing of complaints regarding particular situations, the supply of information, the assessment of situations and their effects, and the measures to be taken for the international protection of democracy. In this regard, non-governmental organisations that may be of great usefulness in this process and carry out serious and consistent work on the matter already exist, such as for instance the Andean Commission of Jurists. After all, democracy according to the IDC is a right of the people, and they therefore also have the right to participate in its international defense and protection.

I would like to conclude with a thought that I consider essential: democracy must legitimate and defend itself vis-à-vis its peo-

It is therefore necessary to make the transition from an electoral democracy to a comprehensive democracy, that is to say a political, social, economic and cultural democracy as conceived of in the IDC, within the framework of the rule of law and with respect for human rights. Only thus will democracy be truly one of citizen participation at its origin, its exercise, and its defense, both nationally and internationally.