



UNDERSTANDING THE INTER-AMERICAN DEMOCRATIC CHARTER

Report on the seminar organized by the Centre d'Étude sur le Droit International et la Mondialisation (CÉDIM)
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I. Welcome

Official welcome: **Lucie Lamarche, UQAM, Director, Centre d'études sur le droit international et la mondialisation (CÉDIM)**

II. Introduction : The OAS and Democracy in the Americas: Human Rights

Presentation by His Excellency Ambassador Paul Durand, Permanent Representative of Canada to the OAS

Ambassador Durand began by thanking the organizers of the seminar for the opportunity to discuss and debate the Inter-American Democratic Charter. He then highlighted the participation of a number of civil society actors in the drafting of the Democratic Charter; notably, Warren Allmand from Rights and Democracy, Maxwell Cameron from the University of British Columbia, and John Graham from the Canadian Foundation for the Americas.

Mr. Durand stated that the Democratic Charter represents a consensus around the meaning of democracy, and a commitment to defend democratic practice in the hemisphere. He noted that the negotiations around the Democratic Charter amongst OAS member states were both challenging and enriching. In this sense, the Democratic Charter is very much the product of a particular moment in the history of the region.

Mr. Durand continued by affirming that the essence of the Democratic Charter is reflected within Article 1(1): "The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it". He then noted that the obligation to defend democracy is a political, rather than a legal, obligation.

Mr. Durand indicated that the Americas is the only world region to adopt such a document so specifically concerned with the promotion of democracy. He also pointed out that the OAS was the first international organization to condemn the September 11 attacks on the United States: coincidentally, the very same day that the Democratic Charter was adopted. The OAS was also the very first international organization to draft an international convention against terrorism. These developments, according to Mr. Durand, are not insignificant when one considers that the OAS is an organization dedicated almost exclusively to regional affairs.

Had this newest instrument been adopted earlier, it might have been used to help resolve a number of crises, such as those in Guatemala and Peru in the early 1990s, the more recent Peruvian breakdown, or the situation in Haiti. *À propos*, the January 16, 2002 adoption of OAS General Assembly Resolution 806 on Haiti is an indirect consequence of the approval of Democratic Charter. Recognizing that Haiti would be a perfect case for the first application of Democratic Charter, the Haitian government agreed to allow for assistance to be proffered, thus averting the need for punitive measures. With

reference to the case of Venezuela, Mr. Durand added that even if a government is not popular with the international community, it has the right to demand respect under the Democratic Charter.

Ambassador Durand concluded his presentation by explaining that the Democratic Charter represents an important initiative in the eyes of the Canadian government. Canada considers the promotion of democracy to be an essential condition in the development of the hemisphere. As such, the Canadian government has provided funds of \$1 million to support the activities of the Unit for the Promotion of Democracy (UPD). For Canada, the adoption of the Democratic Charter is one of the key commitments made by the heads of state at the Summit of the Americas in Quebec in April 2001.

FIRST PANEL: How can the Inter-American Democratic Charter Contribute to Promoting Democracy in the Americas?

Chair: **Hon. Warren Allmand**, President, Rights and Democracy

I. The Inter-American Democratic Charter and its negotiating process: a political reviving of the OAS

Presentation by Antonio García Revilla, Permanent Mission of Peru to the OAS

Mr. García Revilla began by thanking CÉDIM and Rights and Democracy for having asked him to participate in the seminar. Educating the people of the hemisphere about the Democratic Charter is important not just so people can be made aware of their rights, but so they may also be made aware of the mechanisms used to defend them. Mr. García Revilla then continued his presentation by discussing in-depth the consensus within the inter-American system on the issues of human rights and democracy; the consensus around which support for the Democratic Charter was built.

In the past few years, considerable progress has been made in terms of cooperation and collaboration between states. And a hemispheric consensus on the issues of human rights and democracy was developed, thus transforming the OAS into a regional meeting place for the peaceful resolution of disputes. The Summit of the Americas process is exemplary as it reflects the openness of OAS member states to dialogue at the highest levels. Member states have identified shared priorities, and developed mechanisms to collectively address the problems that continue to affect the region.

In Peru for example, corruption, electoral manipulation, human rights violations, and other authoritarian practices persisted behind a democratic façade. When the countries of the Americas sought to correct the situation in Peru, it was discovered that the legal instruments at their disposal responded to the needs of a previous era, and could not be used to effectively confront these new threats to democracy. Because the issues of democracy and human rights were considered to be a matter of political consensus, the legal instruments designed to defend these principles proved inadequate. This conclusion thus gave rise to the idea of drafting the Inter-American Democratic Charter, rather than merely updating or reviving existing mechanisms.

Mr. García Revilla proceeded to analyze the instruments used previously by the OAS for the purposes of defending democracy; namely Resolution 1080 (1991) and the Protocol of Washington (1992). Resolution 1080 established a mechanism for collective action in the case of an abrupt and irregular interruption of the political process or the legitimate exercise of power by a democratically elected government. It also allowed the OAS Secretary General to call a meeting of the Permanent Council. Along the same lines, the Protocol of Washington introduced Article 9 to the OAS Charter, allowing for the suspension of member states where a legitimate constitutional government has been overthrown. Such a suspension is only possible with the 2/3 approval of the General Assembly at a special session, and only after diplomatic efforts fail.

But these instruments refer only to interruptions of the democratic institutional order, and do not serve to protect against threats to democracy other than *coup d'états* or classic military takeovers. There was therefore a gap that needed to be filled; clear and flexible rules were needed that could provide legal security to the system, and that could allow for fair and efficient collective action. This gap was evident during the May 31, 2000 session of the Permanent Council, when Peru's chief electoral officer, Mr. Eduardo Stein, reported on the electoral process in that country. Following that session, the United States delegation demanded the application of Resolution 1080 in the case of Peru, but a number of other states maintained that the situation in Peru did not constitute an interruption of the democratic order. This led, in turn, to the adoption of Resolution 1753 at the OAS General Assembly in Canada in June of that same year, authorizing the visit of a high-level mission to Peru, led by the President of the General Assembly and the Secretary-General.

Given these circumstances, it is perhaps not surprising that the initiative behind the Democratic Charter originated in Peru. On December 11, 2000, Peru's minister of foreign affairs, Mr. Javier Pérez de Cuéllar, presented the initial idea to the Peruvian congress. Peru's permanent mission to the OAS then worked to make the initiative a reality. To do so, it was decided that the heads of state would mandate their ministers of foreign affairs to draft a document that could be approved at the General Assembly in June 2001. The drafting of the Democratic Charter would thus benefit from the support of the heads of state, and the political and logistical backing of the OAS. A compromise was reached, a democratic clause was included in the Declaration of Quebec, and the ministers were mandated to draft the Democratic Charter.

Mr. García Revilla continued by underlining that the negotiation of the Democratic Charter during the 2001 Summit of the Americas was difficult. An ad hoc working group of five countries presented a proposal to the Permanent Council, to be the subject of negotiation within the Council itself. The active participation of regional blocs helped to facilitate the consensus process, and the proposal was presented to the General Assembly in Costa Rica in June 2001. However, the Democratic Charter was not approved at that time. Instead, member states opted to continue the process, confirm the will of the organization to draft a Democratic Charter, and recommend that a revised version of the document be presented at the Assembly in Lima in September of that same year. Another round of negotiations was thus initiated, during which civil society was consulted, and an official working group created, presided by the Colombian representative to the Permanent Council, Mr. Humberto de la Calle. The proposed Democratic Charter was again modified. Notably, a chapter on the link between democracy and development in terms of the struggle against poverty was added.

The Democratic Charter was adopted on September 11, 2001. After giving a brief summary of the different chapters of the Democratic Charter, Mr. García Revilla stated that its adoption should not be considered the end of a process, but rather a step that requires political will in order for it to have a real positive impact on the lives of the peoples of the Americas. As such, the task at hand is to disseminate information about

the Democratic Charter, because a well-informed citizenry is the ultimate guarantee towards the promotion and strengthening of democracy in the region. It is important to pick up where things were left off, and revive the dialogue that was interrupted by the September 11 attacks. Towards this end, Peru has asked that the Democratic Charter be the subject of an informal dialogue at the upcoming OAS General Assembly in Barbados in June.

II. Why do we need an Inter-American Democratic Charter? Views from the Peruvian NGOs.

Presentation by Ms. Sofía Macher, Rights and Democracy, Member of the Truth Commission of Peru, formerly Executive Secretary of the Coordinadora Nacional de Derechos Humanos of Peru

Ms. Sofia Macher began by expressing her grief for the nine innocent victims of a car bomb detonated the previous day in front of the United States Embassy in Lima (March 20, 2002). She described the attack as serious because it would force Peruvians to confront a fundamental dilemma in Peru's transition to democracy; namely, the contradiction between the defence of democratic principles, and authoritarian responses to terrorist groups.

Ms. Macher recalled the beginnings of the Democratic Charter leading up to the Summit of the Americas at Quebec in April 2001. Peruvian human rights organizations, in concert with other groups from throughout the hemisphere, organized a consultation for the purposes of reinforcing democracy, and drafting national and regional human rights agendas. These were to be presented to the heads of state at the Summit.

The proposal presented at the Quebec Summit contained three main points: human rights, the protection of democracy, and corporate responsibility. The agreement eventually adopted by the non-governmental organizations (NGOs) covered five principal themes: (1) Upholding justice and putting an end to impunity; requiring the ratification of various international and regional human rights instruments, strengthening of the inter-American human rights system, respect for the decisions of the Inter-American Court of Human Rights, ensuring the independence of the judiciary, limiting the competence of military tribunals to disciplinary cases, and other, complementary measures. (2) Reaffirming economic, social and cultural rights and the importance of eliminating extreme poverty. (3) Ending discrimination and promoting human rights. (4) Guaranteeing access to information and the freedom of expression. (5) The subordination of the armed forces to civilian authorities. While it is true that some of these issues were addressed by the plan of action adopted by the heads of states at the Quebec Summit, others were omitted, including the subordination of military to civilian authority.

Ms. Macher explained that one of the conclusions that came out of the NGO consultation process was that there is a vast wealth of experience amongst human rights groups in the region, and that this experience should be employed in the defence of democracy.

Ms. Macher proceeded to make observations about the text of the Democratic Charter itself. She reiterated that many national and regional NGOs welcomed the adoption of the Democratic Charter, particularly since the initiative behind the Charter came out of Peru. Indeed, the Democratic Charter began with the OAS intervention in Peru in 2000. Led in large part by then-Canadian minister of foreign affairs Lloyd Axworthy, a number of immediate actions were undertaken, including the opening of a dialogue on 24 agenda items for the promotion of democracy in Peru, and the approval of both an electoral observation mission and a high-level diplomatic mission.

These actions served to restore democratic order in Peru. And the formula employed in doing so proved much more efficient than the response to the 1992 crisis, which in the final analysis merely served to reinforce president Alberto Fujimori's regime.

Ms. Macher said that Peruvian NGOs are satisfied that the Democratic Charter recognizes the link between development and democracy; that the two are indivisible and interdependent. NGOs are equally pleased that OAS member states have affirmed their political will to defend democracy against alterations of the constitutional order.

Various recommendations articulated by civil society groups in the region were eventually included in the Democratic Charter. Nevertheless, the document is weakened by a number of significant omissions. For instance, there is no explicit reference to the inter-American human rights system. Many NGOs are of the opinion that the Inter-American Commission on Human Rights could play an important role: monitoring human rights, initiating debate around situations that appear to threaten democratic governance, helping to raise "early warnings" about breakdowns in democracy, studying situations that merit the adoption of measures under the Democratic Charter, and evaluating the application of such measures. During the Peruvian crisis, for example, the breakdown of legal and political institutions within the country meant that the inter-American system was the only recourse open to Peruvian civil society. It is therefore a shame that the Democratic Charter does not assign a clearer institutional role to civil society organizations, or to the institutions of the inter-American human rights system.

The Democratic Charter nevertheless reflects the efforts by states to increase their capacity to react in situations affecting the constitutional and democratic order. But this does not ensure that political considerations will not override the importance of defending democracy; that is to say, the OAS will exercise its own discretion when choosing to intervene (or not) in the defence of democratic principles. Many NGOs maintain that the Democratic Charter must make more explicit the mechanism by which sanctions can be applied.

In conclusion, Ms. Macher summarized the NGO position. The Democratic Charter is a *fait accompli*: the 34 states within the inter-American system met for the exclusive purpose of defending democracy. NGOs believe that the origins and eventual adoption of the Democratic Charter are closely linked to the Peruvian situation. And this initiative on behalf of the Peruvian government marks a significant change in attitude. Mr. Javier

Pérez de Cuéllar made a simple statement, and six weeks later a document appeared. At the Quebec Summit, the heads of state expressed their political will to deal with situations that go beyond the question of *coups*. The Peruvian experience demonstrated clearly that a *coup d'état* is not necessary for the international community to judge that an interruption of the democratic order has taken place. Such interruptions take diverse forms, and can even be concealed by the pretence of democracy.

Once the heads of state at the Summit of the Americas were sensitized to the idea of a Democratic Charter, they requested more time to discuss the possibilities. Soon thereafter, at the OAS General Assembly in Costa Rica in June 2001, the General Assembly failed to agree on approving what the heads of state had decided in Quebec two months earlier. Long debates were required before the General Assembly was ready to put into practice the Democratic Charter proposal. Given the hesitation of the General Assembly, and the fact that the General Assembly will be responsible for implementing the Democratic Charter, there is reason to believe that problems will continue to arise.

Finally, Ms. Macher stated that the adoption of the Democratic Charter represented an important step forward for the OAS. The final text of the Democratic Charter is the product of a political transaction, and its importance stems from the fact that it establishes recognized norms. Notably, a people's right to democracy is affirmed, and the protection of human rights are defined as essential, above and beyond the holding of periodic elections. In sum, the Democratic Charter is well written, yet is limited in terms of collective mechanisms aimed at intervening *in anticipation* of serious interruptions of the democratic order. The Democratic Charter is a point of reference that opens the political playing field in favour of democracy; and this is a game that civil society groups in the Americas know how to play.

III. Is there a 'right to democracy' in International Law?

Presentation by Brad R. Roth, Associate Professor of Legal Studies and Political Science and Adjunct Professor of Law at Wayne State University in Detroit, Michigan.

Mr. Roth began by describing the "right to democracy" as ambiguous. Firstly, he said, it remains unclear as to whether human rights law necessarily gives rise to institutional forms that serve to protect democracy. Moreover, it is unclear as to how international law could be used to challenge governments in apparent violation of democratic norms. This ambiguity persists, in spite of the significance that the issue has been ascribed by scholars from the "democratic entitlement" school, who view liberal democratic governance as an ascendant norm in international law.

Mr. Roth posed whether it was even desirable to define a "right to democracy", particularly given that democratic values are so widely varied and contested. There is, he said, a danger in entrenching so-called universal norms, and imposing particular standards that are overly formalistic. By ignoring the problems on the ground – the question of popular empowerment – one may end up entrenching grossly unequal

systems of privilege. In short, what is the point of more people voting in elections that mean less and less?

As recently as fifteen years ago, the governance of a state was defined as a problem of sovereignty and politics, not a problem of international law. The Charter of the United Nations, for example, recognizes the “sovereign equality” of states, based on an understanding that justice and order are not subject to negotiation in the international system. Increasingly, however, the debate is being couched as a problem of sovereignty **in** international law.

Article 2(4) of the UN Charter clearly indicates, “Members shall refrain... from the threat or use of force”. Similarly, Article 2(7) says the UN itself will not authorize intervention in matters “essentially within the domestic jurisdiction”. Early thinking about international law, in general, and charter norms, in particular, suggested that the existence of a legal obligation does not carry with it the license to compel compliance. Compulsion is, as such, identified as a separate step, and one that needs to be very explicitly clarified.

Above all else, this applies to the use of force and coercion; whether it is direct military intervention or the financing of insurgent groups in a third country, economic blockades or policies that disrupt a state’s trading relationships. One can think of several examples of economic coercion carried out by the United States in the Americas, including Cuba in the current period, or Chile in 1973 prior to the *coup d’état*.

The United Nations Security Council claims a monopoly on compulsion, as specified in Articles 41 and 42 of the Charter, authorizing the use of sanctions and the use of force. As the title of UN Charter Chapter VII suggests, these are considered appropriate responses to “Threats to the Peace, Breaches of the Peace, and Acts of Aggression”. In the event that the Security Council is deadlocked, there are no provisions in international law licensing the aforementioned kinds of coercion. While it may be argued that some licenses do exist, albeit at the margins, it must be said that these licenses only exist in cases of the most extreme violations of human rights.

What, then, is legitimacy? The history of the concept is chequered, going back to the days of the French Revolution, when “legitimacy” was equated with “dynastic legitimacy”. Later, Thomas Jefferson referred to the “will of the people substantially declared”, which is really a euphemism for effective control through internal processes. This is a closer approximation of more modern concepts of legitimacy, and is clearly a measure of patterns of obedience and acquiescence within a state. It sounds like “the right to be ruled by your own thugs”, and often that is the case. Nevertheless, one of the central presumptions of this notion is that there is a greater confluence of interests between people and their government, however unjust, than between people and foreign forces that may have some ulterior motive for wanting to intervene in internal affairs.

Thus, while the flag of “humanitarianism” is often unfurled to justify intervention, the reality is that most so-called “humanitarian” campaigns are driven by other factors.

Problematic though it may be, the “effective control doctrine” is an attempt to respect the rights of people, including the right to self-determination.

Under the Tobar Doctrine (1907) a number of Latin American states entered into treaties that provided for the de-recognition of states, in the event of an interruption of the constitutional order. This was widely viewed, not as a means of shoring-up democratic principles, but as a way of stifling challenges to the regional status quo. The Tobar Doctrine was succeeded by the Estrada Doctrine (1930), which reaffirmed the notion of effective control, and the Montevideo Convention on the Rights and Duties of States (1933), which reasserted the rights of states against intervention in internal affairs. Subsequently, during the Cold War, ideology was used as a measure of the legitimacy of states.

Can we find a supra-ideological doctrine that can protect the rights of peoples to democracy? If we look at the Universal Declaration of Human Rights as an example, we note that while there are explicit references to the “will of the people” and “genuine elections”, there are no specifications which would allow us to privilege the legitimacy of a given electoral process or system. In fact, attempts to specify multi-party elections were rebuffed at the time the Universal Declaration was being drafted.

When the right to political participation became codified in legal documents, specifically in the International Covenant on Civil and Political Rights (entered into force 1976), the line about the “will of the people” being the basis of the authority of government was erased.

However, these international norms are forever being manipulated for political purposes. Elliot Abrams – former United States Secretary of State for Human Rights, Democracy and Labor during the Reagan administration – extolled elections held in El Salvador to obfuscate vicious human rights abuses on the part of the government, while simultaneously calling into question the legitimacy of the Sandinista regime in Nicaragua.

In the post-Cold War era, other circumstances have again tested the international community’s commitment to democracy. Haiti during the 1991-1994 period of military dictatorship is one example. Another is that of Sierra Leone, when the civilian government of Ahmad Tejan Kabbah was overthrown in May 1997, just one year after it had been elected to power. This gross violation of the democratic process gave the Economic Community of West African States (ECOWAS) implicit license to intervene militarily to restore the deposed leader to power.

Mr. Roth ended his remarks by re-stating that while liberal democratic principles may be fundamental to the long-term achievement of human rights, transparency, and economic development, it is dangerous to rely on mechanistic means of marking the political high ground. To do so allows the international community opportunities to wave the flag of democracy in pursuit of other, less humanitarian, objectives. History confirms that the “right to democracy” is not unproblematic, particularly when described as a legal right.

IV. The Inter-American Democratic Charter and the Inter-American Commission on Human Rights

Presentation by Dr. Brian Douglas Tittlemore, Staff Attorney for the Inter-American Commission on Human Rights in Washington, DC.

Dr. Tittlemore said he was grateful to have been invited to contribute to an important discussion on the Inter-American Democratic Charter from the perspective of the inter-American human rights system. While Dr. Tittlemore currently holds the position of Staff Attorney with Inter-American Commission on Human Rights, he was careful to point out that he would be speaking in a personal capacity, and that his opinions do not necessarily reflect those of the Commission.

He began his address by providing a brief overview of the interrelated histories of regional human rights institutions, instruments, mechanisms and jurisprudence. Dr. Tittlemore then focussed on the way in which the question of democracy is addressed by the principal human rights instruments of the inter-American system; namely the American Declaration on the Rights and Duties of Man (1948) and the American Convention on Human Rights (1969). Subsequently, he examined the Inter-American Commission on Human Rights' landmark recommendations concerning democratic development in Haiti, Peru and Chile. In his concluding remarks, Dr. Tittlemore stated that while the Democratic Charter reinforces some of the key values that guide the work of the Commission and the Inter-American Court of Human Rights, the Charter does not contemplate significant changes to the functioning of these institutions.

The Inter-American Commission was created at the Fifth Meeting of Consultation of Ministers of Foreign Affairs in Santiago, Chile, in 1959. The Commission was charged with the mission of promoting human rights in the hemisphere through annual reports and *in loco* visits to study the human rights situations in specific countries. The first *in loco* visits were being carried out by 1961, and in 1965 the Commission's statute was amended so that the Commission could receive petitions on individual cases. The Commission was made an official organ of the OAS by virtue of the 1967 Protocol of Buenos Aires. The American Convention entered into force in 1978, strengthening the supervisory role of the Commission, and establishing the Inter-American Court. Though not conceived as an organ of the OAS, the Court was granted "contentious competence" vis-à-vis the American Convention. States that recognized the jurisdiction of the Court would therefore be bound to comply with its interpretation of the Convention.

The authority of the Commission has been exercised through 80 *in loco* visits, more than 50 country-specific and thematic reports, and numerous reports on individual cases. Throughout its history, the Commission has contemplated the relationship between human rights and representative democracy. Indeed, the 1958 Meeting of Consultation that created the Commission recognized the link between human rights and democracy, and encouraged "the study of the possible juridical relationship" between the two.

The American Declaration was approved at the Ninth International Conference of American States in Bogotá, Colombia in 1948, several months prior to the approval of the Universal Declaration of Human Rights. The American Declaration was not initially conceived of as binding, though that perception has since changed. That it is generally considered to be binding is of special relevance to countries such as Canada and the United States, neither of which have ratified the more recent American Convention.

Both of these instruments underscore the right to democracy, defined in terms of the right to participate in a democratic political process and the democratic exercise of political power. Article XX of the Declaration identifies “The right to vote and to participate in government”. However, Articles 23, 27 and 29(c) of the Convention more clearly recognize and expand upon the intrinsic relationship between democratic governance and the protection of human rights. These articles have served to guide the work of the Commission and Court, especially in the protection of political rights.

The work of the Commission, in particular, has always reflected a serious concern for political rights and democratic participation, in large part due to the persistence of clearly anti-democratic political practices in the region, including military dictatorship. For instance, Chapter V of the Commission’s 1990-91 Annual Report included an in-depth discussion on “Human rights, political rights and representative democracy in the inter-American system”. Submitted in February 1991, the Report effectively foreshadowed OAS General Assembly Resolution 1080 on Representative Democracy, approved at the Fifth Plenary Session in June of that same year.

Resolution 1080 defines representative democracy as an exercise of sovereignty, and as an “indispensable condition for the stability, peace, and development of the region”. In this context, the Resolution is unequivocal that the exercise of democracy leads to a wide variety of potential forms of government. Notwithstanding the principle of non-intervention, the Commission has worked to provide some guidance in determining how to judge democratic standards.

Following the September 29, 1991 coup that deposed Haitian President Jean Bertrand Aristide, the Permanent Council of the OAS called an ad-hoc meeting of Ministers of Foreign Affairs (as stipulated in Resolution 1080). This first-ever invocation of Resolution 1080 was subsequently noted by the Commission, and laid the groundwork for the Commission’s *in loco* visit to Haiti in November of that same year.

The Commission’s 2000 Second Report on the Situation of Human Rights in Peru went even further, commenting extensively on the electoral process, on anti-democratic legislation and on the suppression of political rights throughout the rule of President Alberto Fujimori. This report helped contribute to the case against President Fujimori, leading eventually to the adoption of Resolution 1753 at the OAS General Assembly, and collective action by member states.

Likewise, the Commission has contemplated the principles of representative democracy as applicable to individual cases. In a 2000 decision in *Aylwin v. Chile*, petitioners

challenged the provision of the 1980 Chilean Constitution that reserved approximately 20 per cent of seats in the Chilean Senate for lifetime appointees. The petitioners claimed the provision to be in violation of Articles 23 and 24 of the American Convention, creating inequality in terms of political participation. The Commission concurred, and decided in favour of the petitioners. However, Commissioner Robert K. Goldman dissented, arguing it was not correct for the Commission to adjudicate in this matter; citing European examples to argue that states enjoy considerable latitude in establishing criteria for the status of legislators.

Dr. Tittmore observed that since the Democratic Charter is not a treaty, it is unlikely to be seen as a source of clear and binding legal obligations for states. Nevertheless, some of the language used in the Democratic Charter is strong, and seems to imply binding obligation. In any event, Article 21 of the Charter suggests that even if a state is suspended under the terms of the Democratic Charter, it will not be exempted from its human rights obligations, and the Commission and the Court would maintain competence in cases brought against suspended states.

As such, Dr. Tittmore concluded that the Charter should help to inform the interpretation and application of American Declaration and the American Convention. It remains to be seen how the inter-American human rights system will utilize the Charter, and in this respect much may depend on whether petitioners invoke the Charter before the Commission.

DISCUSSION

Following the first panel, a number of questions were raised concerning the political and legal dimensions of the Democratic Charter, and its potential significance in international customary law. Brian Tittmore responded to this question by saying that some scholars believe political declarations can be interpreted as expressions of law. Most, however, are more sceptical, and view such documents merely as indicators of how international law is evolving. That being said, certain declarations can at least be said to codify international law. One significant example is that of the UN General Assembly resolutions on international humanitarian law, which have been recognized by the International Criminal Tribunal for the Former Yugoslavia.

The case of the Democratic Charter is perhaps less obvious, precisely because OAS member states have insisted that the Democratic Charter is a political document, rather than a legal one. But it is worthwhile remembering that similar assertions were made in approving the American Declaration of the Rights and Duties of Man in 1948. Yet, in time, various organs of the OAS, and the General Assembly itself, demonstrated that there is a broad acceptance of the American Declaration as reflecting obligations under the OAS Charter. Dr. Tittmore added that Article 3 of the Democratic Charter describes some of the essential elements of representative democracy, and these closely reflect the indicia identified by the Inter-American Commission.

Rights and Democracy's Warren Allmand noted that the Inter-American Commission could probably use the Democratic Charter with reference to Article 20 of the American Declaration and Article 23 of American Convention on Human Rights, both of which deal specifically with democracy. To illustrate how international instruments can be used in domestic contexts, he then cited the 1999 *Mavis Baker v. Canada* decision, when the Supreme Court of Canada invoked the 1989 UN Convention on the Rights of the Child. Mr. Brian Roth pointed out that while the Universal Declaration of Human Rights was also articulated as a political document, it has become a reference point for subsequent treaties, and has passed largely into the realm of customary international law.

A number of questions were then raised regarding the way in which civil society actors can use the Democratic Charter, particularly with reference to the Summit of the Americas processes. Certain participants also asked whether it would be possible to scrap the Democratic Charter altogether, should it prove to be overly problematic.

Mr. Antonio García said that the Democratic Charter demonstrates that political will does exist amongst OAS member states. The fact that they chose to draft a charter, rather than a convention, merely reflects their judgment that such a process would have taken much longer. Indeed, the adoption of the Democratic Charter by means of a resolution has allowed the work to be done by consensus. And even though the Democratic Charter has yet to be tested, Mr. García said he believes that it has already served as a deterrent in the regional context.

For Ms. Sofia Macher, the inter-American human rights system is more effective than the broader international system precisely because there is greater resource to legal means that facilitate change. Moreover, the fact that the Democratic Charter recognizes democracy as a right of all peoples provides civil society groups with a basis upon which to demand greater respect for democratic principles.

In terms of the Summit of the Americas process, Ambassador Paul Durand said he believes that while the relationship is not made explicit in the text of the Democratic Charter, the issue would not be excluded. Effectively, states that are excluded from OAS activities under the terms of the Democratic Charter would probably also be excluded from the Summit of the Americas processes.

SECOND PANEL: Democracy, Trade and the Struggle Against Terrorism: Searching for Common Principles

Chair: **Lucie Lamarche**, Director, Centre d'études sur le droit international et ma mondialisation (CÉDIM)

I. Promoting Democracy after the Charter

Presentation by Pablo Policzer, I.W. Killam Post-Doctoral Research Fellow at the Institute of International Relations, at the University of British Columbia in Vancouver, BC.

Mr. Policzer said he was honoured to be a participant in the seminar. He then explained that University of British Columbia (UBC) professors Maxwell Cameron, Lloyd Axworthy, and himself are organizing a conference at UBC in the fall of 2002 on the subject of the Inter-American Democratic Charter. He hopes to build on the lessons learned at the CÉDIM seminar, and would welcome input.

Mr. Policzer noted that his own work has mostly been concerned with authoritarian regimes and the institutions of state coercion, especially in Chile under the dictatorship of General Augusto Pinochet (1973-1989).

Mr. Policzer's address was divided into three parts. Firstly, he provided an overview of the steps that led to the adoption of the Democratic Charter. He then undertook a critical examination of the Democratic Charter itself, focussing on two sets of issues: "taking" versus "exercising" power, on the one hand, and "democracy" versus "constitutionalism", on the other.

Since the 1947 Rio de Janeiro Conference for the Maintenance of Peace and Security, the OAS has had a poor record with respect to the promotion and defence of democracy. Neither did it prevent the rise of military dictatorship in the 1960s and 1970s, nor did it contribute to their eventual demise. In this context, the 1991 Santiago Commitment on Democracy and the Renewal of the Inter-American System represents an important milestone. Not insignificantly, the Santiago Commitment was adopted at the end of the Cold War, just a few months subsequent to the signing of the Charter of Paris for a New Europe (1990).

Canada joined the OAS on January 8, 1990, and was instrumental in advocating for the creation of the Unit for the Promotion of Democracy in June of the same year (Resolution 1063). Canada's participation in the OAS was defended very much in terms of promoting democracy and trade in the hemisphere.

OAS General Assembly Resolution 1080 on Representative Democracy (1991) and the Protocol of Washington amending the OAS Charter (adopted 1992, entered into force 1997) recognize the Americas as a democratic community. They also provide

mechanisms for possible collective action by the OAS in the event of “interruptions” of the democratic process in member states. Though no country has been suspended under the terms of these agreements, the application of Resolution 1080 has been threatened against Haiti (1991), Guatemala (1993) and Paraguay (1996 and 1999) and Peru (1992 and 2000).

Then, in April 2001, the heads of state present at the Summit of the Americas in Quebec agreed to include a “democracy clause” in their final declaration, the wording of which implies that non-democracies will be excluded from the Free Trade Area of the Americas process.

It is worthwhile noting that the Inter-American Democratic Charter was signed on September 11, 2001, a day that marked a radical shift in United States foreign policy priorities. In the wake of September 11, many have expressed concerns that the enjoyment of human rights may suffer, and that the United States may be willing to sacrifice democratic freedoms in expediting the objectives of its campaign on terrorism. For instance, International Relations expert Joshua Muravchik has said that assistance to an undemocratic ally is sometimes essential to United States security, and therefore justifiable. Still, much remains to be seen.

Incidentally, September 11 also marks the anniversary of the 1973 military coup d'état in Chile, which was abetted by the United States, using an “ends justify the means” rationale.

In understanding the Democratic Charter, it is useful to distinguish between the “taking” and “exercising” of power. The taking of power by means of a *coup d'état*, for instance, is rather unambiguous. The undemocratic exercise of power, on the other hand, may be less obvious. There are multiple ways in which power may be exercised undemocratically, including: the restriction of press freedoms, the stacking of the judiciary, and the erosion of civilian control of the military. So, while Articles 6-9 of the Democratic Charter acknowledge the importance of the separation of powers, and of a healthy civil society, these assertions are not well connected to the mechanisms by which states may be held to account for undemocratic practices.

Articles 17-21 of the Democratic Charter define when the OAS will take action. Possible actions include visits by the Secretary General, diplomatic pressures, and outright suspension from the OAS and its various activities. However, the Democratic Charter provides no specific references to undemocratic actions that fall short of a *coup*, or a stolen election.

In this respect, Mr. Policzer offered four possible guiding principles: (1) there should be no illegal suspension or closure of legislatures, (2) there should be no illegal removal of Supreme Court justices, or stacking of courts or tribunals, (2) un-elected officials should not exercise jurisdiction over elected authorities, and (4) incumbent officials should not be allowed to use political majorities or sympathetic courts to silence or harass their

political opponents. Failure to specify such conditions constitutes a major shortfall of the agreement.

History has taught us that wealthier countries are less prone to dramatic breaches of the democratic order, especially *coups*. Insofar as the American region is growing wealthier, we might imagine a future scenario where the *coup d'état* is a thing of the past. But this by no means precludes other undemocratic practices.

With respect to the distinction between “democracy” and “constitutionalism”, it is important to look at Article 2 of the Democratic Charter. This Article states that “representative democracy” is the basis of the rule of law, and that democracy is strengthened by “the respective constitutional order”. The ideas contained in Article 2 are either self-contradictory, or perhaps just the result of muddled thinking. The Article begins by stating that democracy is a precondition of the rule of law, although many observers would argue that their relationship is the opposite. It then states that the rule of law strengthens democracy. And while this may be true, it fundamentally contradicts the first assertion.

This point requires clarification precisely because the mechanisms that trigger collective action, as described in Article 19 of the Democratic Charter, are based on violations of constitutional provisions. Constitutions are not inherently democratic, nor are they particularly effective in defending democracy. Indeed, in a number of Latin American cases, military regimes have invoked their “constitutional role” as guarantors of national security. Many constitutions in fact provide for “regimes of exception” that enable interruptions of the democratic order. These may include the concession of exceptional powers to the executive, martial law, and so forth.

Mr. Policzer concluded his remarks by stating that while the goal of strengthening democracy in the hemisphere is certainly noble, the contradictions of the Democratic Charter may create confusion and conflict. The Democratic Charter is a significant advance, in its assertion of democratic principles. But the OAS has missed an opportunity to make clear the mechanisms that would trigger collective action. Mr. Policzer said, moreover, that he fears the Democratic Charter has placed far too much weight on the importance of constitutional orders.

II. Security and Democracy in the Americas: ensuring coherence amongst the various initiatives

Presentation by Mr. Étienne Savoie, First Secretary, Permanent Mission of Canada to the OAS

Mr. Savoie began his remarks by posing the following question: do we require more security in order to preserve democracy, or do we require more democracy in order to guarantee security? Security or democracy? The Charter of the OAS (1948) deals with both elements, more or less equally. In the course of his address Mr. Savoie went on to

discuss the broader context in which the concept of security has developed in the Americas. Afterwards, he explained how this concept has evolved with the emergence of new and different perceived threats.

The OAS Charter dates from 1948, the dawn of the Cold War era. And the OAS itself was built on an historical vision embodied by the older Pan-American Union. Thus, an inter-American system existed prior to the adoption of the OAS Charter, and this system was designed primarily for the purpose of collective self-defence. The Inter-American Defence Board was established in 1942, following the entry of the United States into WWII. And while the Board initially had an institutional link to the Pan-American Union, it was clear that no state wanted the Board to be subordinated to a political organization. Therefore, there has always been a parallelism between security, military defence and political activity in the region.

The Inter-American Treaty of Reciprocal Assistance was in place by 1947, one year prior to the adoption of the OAS Charter. As such, we can say that we had formulated a legal framework on the issue of security before taking-on the question of democracy. Then in 1962, the Inter-American Defence College was created to respond to new threats to security in the Americas. And so an evolution took place over several eras; WWII, the Cold War and the Cuban Revolution. We faced new threats, and went on to periodically redefine the concept of security in the Americas. Having said that, the 1960s and 1970s were marked by relative stagnation; while the impact of the Cuban Revolution had reached its peak, the OAS was relatively ineffective in preventing the civil wars that ravaged the region. The OAS was likewise ineffective in responding to the invasions of Panama and Grenada, and was silent on the issue of the Falkland Islands (Islas Malvinas) war, which was never even classified as an invasion, *per se*.

The end of the Cold War brought a shift from a predominant military phase, to the current political phase. We have seen the establishment of the Summit process, and the creation of the Commission on Security (1995). In short, the OAS has never really had a consistent mechanism for dealing with security issues; matters were discussed at the Permanent Council, but there was no body or agency specifically mandated to treat security problems.

The OAS eventually began to grasp that states were not the only actors to pose threats to security; non-state actors did as well. At this point, terrorism and environmental degradation were identified as major security threats. Smaller states have been especially vulnerable to climactic change and, as such, have been especially outspoken in identifying environmental threats to security. At the same time, new ideas concerning the subordination of the armed forces to civilian authority were also gaining recognition; something that would have been practically unimaginable in the 1970s and 1980s.

Mr. Savoie underscored just how much had changed since September 11. While the OAS has continued to be engaged in the area of security, there is now a two-pronged focus to the work. On the one hand, the Commission on Security continues to work on the issues

of anti-personnel mines, small arms trafficking, etc. On the other hand, it was decided to begin negotiations on a convention against terrorism.

Through different stages the OAS has continued to make the link between security and democracy. Mr. Savoie thus indicated that the strengthening of democracy and the strengthening of security must go hand-in-hand. The link between the two, while not always made explicit, is certainly implicit. Efforts to improve the security context therefore favour the democratic development of the Americas.

Mr. Savoie said the OAS cannot aspire to have the same capacity for intervention as the United Nations, especially because “keeping the peace” is not part of its mandate. The Inter-American Treaty of Reciprocal Assistance bears no resemblance to NATO, and it would be pointless to draw comparisons between the two. The OAS is, however, a regional organization that counts amongst its members the only world superpower. And while United States involvement in the OAS is definitely a benefit, it can complicate matters from time to time.

Mr. Savoie concluded his remarks by reiterating the importance of the Democratic Charter. Even if the OAS has limited powers in terms of security, the will expressed by member states can be of great value. As such, the OAS can make a substantial contribution to the climate of security in the region.

III. Is the recent emphasis on anti-terrorism in Canadian legislation compatible with democracy?

Mr. Julius Grey, Quebec Bar, Associate Professor, Faculty of Law, McGill University

Mr. Grey began by saying he was pleased to participate in the conference. He then said that he would focus his address on issues pertinent to Canadian law, and more specifically on the question of whether emergency measures taken by the Canadian government to combat terrorism were compatible with democracy. According to Mr. Grey, democracy has become an increasingly narrow category, and it can be difficult to challenge the issue without appearing totalitarian. But before taking-on the issue of democracy in Canadian law, Mr. Grey cited Canadian journalist James Manishen, who observed in the 1960s that the OAS is “an association of mice presided by a cat”. As such, it is important that the OAS work in favour of democracy, rather than in favour of the “cat”.

Are the anti-terrorism measures adopted by Canada compatible with the Democratic Charter? Mr. Grey responded in the affirmative; to the extent that citizens are not being led to the guillotine, there does indeed persist some semblance of democracy. By all appearances, the Canadian government has acted in good faith, and does not plan to replace the Criminal Code with the recently approved Anti-Terrorism Act (C-36). Still, over the long term, such measures are not compatible with democracy because they foster a climate of permanent crisis, and formulate in general terms what amount to regimes of exception. If the law remains in place for 5, 10 or 15 years, it will eventually act against

democracy, and play a role in transforming democracy into a means by which we will be constrained, rather than made free.

Mr. Grey raised what he sees as a number of disturbing features of the law, including the definition of terrorist groups and terrorist acts. Many fear that the law may punish people that are active in certain organizations, or that take part in certain activities, even if there is no terrorist link. These are legitimate concerns, but what is even more disturbing is that part of the law dealing with economic crimes associated with terrorism, including attempts to harm the economy or to traffic in industrial secrets. Within a few years, these definitions could be used not in the service of democracy, but in the service of economic liberalism; the basis of which is not a matter of fundamental rights. Mr. Grey gave the example of somebody who engages in alleged industrial espionage or piracy for the purposes of treating illness in Africa, yet could be prosecuted as a terrorist under the terms of this law.

It is equally shocking that ideology is contemplated as an aggravating factor, rather than as an extenuating factor. If we were to transpose this law to 1860, then Giuseppe Garibaldi would have been considered a terrorist. Are we never allowed to revolt against the state in the context of a democracy? The goal of democracy seems to be to avert confrontation. But would we have had sympathy for the slaves who revolted in the context of an ostensibly democratic United States in 1830? Was there an extenuating or aggravating factor motivating their drive for freedom? Mr. Grey asserted that, in his view, ideology should not necessarily be considered an aggravating factor in a crime. For example, while it could be considered an aggravating factor in the case of a murder, it should not be considered as such in economic crimes.

There is nothing more sacred in a democracy than process, and this new Canadian law allows for a process whereby evidence is not revealed to the accused, and even the identity of a judge can be kept secret. There may be aspects of the law that are reasonable (airport security, for example). The government did not intend to obstruct democracy, but in the long term this new legislation is dangerous. Because once new powers are made available, we have a tendency to use them. Guarantees could have been added as additional clauses. And it would have been important to ensure that evidence collected under the terms of the law would only be used in cases prosecuted under this law.

Democracy is a subtle instrument, not limited to electoral considerations: it includes the protection of privacy, education, health, the environment, etc. This Canadian law ought to express total repudiation of terrorism, yet still take into account these aspects of democracy. The law could have included a clause forbidding the use of tax shelters by terrorists, or an article affirming that Canada refuses to collaborate with the death penalty. Most of all, the law could have considered social measures designed to fight poverty and injustice, conditions that provide fertile ground for terrorist activities. The law could have at the very least recognized the social dimensions of terrorism.

Mr. Grey concluded his presentation by reaffirming that this new Canadian law privileges a mechanistic or technical perspective, emphasizing security, constitutional order, the principle of elected government: in short, a narrow definition of democracy. According to Mr. Grey, we must promote a broader humanist vision of democracy that includes social dimensions. However, as long as this new Canadian law remains in place, it will continue to promote the narrower vision.

IV. NGO Strategies for the next General Assembly of the OAS: a Canadian Perspective

Presentation by Hon. Warren Allmand, President of Rights and Democracy

Mr. Allmand began by stating that the mandate of Rights and Democracy is to promote and defend human rights and democracy in the international arena, and as such, the organization has taken a great deal of interest in the Inter-American Democratic Charter.

Mr. Allmand continued his address by listing the qualitative indicators developed by Rights and Democracy for the purposes of evaluating democracies. He then identified the growing democratic deficit caused by globalization as one of Rights and Democracy's chief concerns. Using this as a point of reference, he proceeded to look critically at the content of the Democratic Charter. In doing so, Mr. Allmand recounted how Rights and Democracy and other non-governmental organizations (NGOs) had worked to influence the final draft of the Democratic Charter. Ultimately, Mr. Allmand concluded that while the Democratic Charter can be regarded as a positive first step, it must be viewed critically, and applied as fairly as possible. Towards this end, Mr. Allmand suggested how NGOs might strategize around the upcoming General Assembly of the OAS in Bridgetown, Barbados (June 2-4, 2002).

Democracy means much more than free, fair and regular elections. Democracies can also be judged by looking at the rule of law, the independence of both the judiciary and the legislature, respect for human rights, respect for minority rights and gender equity, civilian control of the military, the existence of a competitive multi-party system, equitable distribution of wealth, public accountability, transparency, and processes of consultation with civil society.

Rights and Democracy first employed these criteria to evaluate the Democratic Charter when a draft was made public at the OAS General Assembly in June 2001 in Costa Rica. Indeed, as soon as Rights and Democracy heard that the Democratic Charter was being discussed, they sought to obtain a draft copy for the purpose of formulating a position.

But this was hardly the first time that the question of democracy had been taken up by the OAS. In fact, the inter-American system has a long-standing commitment to democracy, as described in the OAS Charter (1948), the American Declaration of the Rights and Duties of Man (1948), the American Convention on Human Rights (1969), Resolution 1080 on Representative Democracy (1991), the Washington Protocol amending the OAS

Charter (adopted 1992, entered into force 1997), The Managua Declaration (1993) and Resolution 1753 on the situation in Peru (2000). Furthermore, the countries of the Americas have displayed strong support for the United Nations Charter and the Universal Declaration of Human Rights, as well as other important international human rights agreements and covenants.

But by any account, the sum of these agreements and instruments does not fully ensure democracy. There is little doubt that many countries in the Americas would rank quite low if they were to be judged by Rights and Democracy's criteria.

At the 2001 Summit of the Americas, the leaders recognized that democracy in the Americas continues to be under attack in ways that are often subtle, but nevertheless damaging. The recent experiences of Peru and Haiti, on the one hand, and the broader democratic deficit created by globalization, on the other, moved the leaders to propose that something concrete be done. And so the heads of state present at the 2001 Summit included a "democracy clause" in the Declaration of Quebec City, and instructed their ministers of foreign affairs to draft a Democratic Charter, to be approved at the next General Assembly.

A key grouping of NGOs were present at the General Assembly in Costa Rica a few months following the Summit, where they studied the draft Democratic Charter, and lobbied for changes to be made. Working in conjunction with others, Rights and Democracy took the position that while the draft Democratic Charter was a good working document, it was too weak and ambiguous, and could thus be put to capricious use. Worse, it could easily become inoperative.

The adoption of the Democratic Charter was eventually postponed until September 11, 2001 (at the 28th special session of the OAS General Assembly in Lima, Peru). Some of the NGOs suggestions were actually taken into account, and the delay afforded groups time to meet with one another, and to develop their critique even further.

Mr. Allmand described six basic elements of the critique that was developed at the time.

- (1) One of the main concerns expressed was the vague, inconsistent and confusing language used to define democracy. The terms "democracy," "representative democracy" and "the democratic order" were used interchangeably throughout the document.
- (2) Equally ambiguous were the mechanisms for evaluation and enforcement, and many NGOs feared that such a Charter might amount to little more than a public relations tool, to be used selectively, and only against political enemies.
- (3) Concern was also expressed that the role of the Inter-American Commission on Human Rights was left undefined.
- (4) Similarly, no recourse was provided to victims or civil society groups seeking to trigger an investigation into alleged violations of the Democratic Charter. If member states were to ignore violations of the Democratic Charter for political

reasons, the wounded citizens of a given country would have no clear means of soliciting an inquiry.

- (5) The Democratic Charter did not make explicit how it would be applied within the context of the ongoing Free Trade Area of the Americas (FTAA) negotiations. Though it has been suggested that the Charter could be interpreted as having bearing on the FTAA talks, this was not specified.
- (6) There was not a strong enough linkage made between the concepts of human rights and democracy, between the inter-American human rights system and the enforcement provisions described in the Democratic Charter.

Some changes were made to the draft Democratic Charter, but many of the problems identified by the NGOs remain unresolved. As such, it is important that civil society stay vigilant, and develop a strategy for working towards the next General Assembly, and beyond.

What are the issues that will be brought up in Barbados? As a basic principle, it is imperative to press the issue of a greater role for victims and civil society in invoking the Democratic Charter. It is equally important that an illegal alteration of the democratic order be considered (and sanctioned) as seriously as an illegal interruption, such as a *coup d'état*. Another area requiring attention will be the proposed Inter-American Convention Against Terrorism (a draft of which was made public on April 3, 2002). And, finally, civil society organizations need to continue to work on the Haiti situation, which continues to deteriorate.

Mr. Allmand concluded by appealing to the governments of the United States and Canada to ratify the American Convention on Human Rights. He explained that in the case of Canada, the reasons for doing so are mostly foreign policy reasons, so that Canada may be viewed as a full player in the inter-American human rights system, and so that Canada's endorsement of the Democratic Charter is seen to be consistent with Canada's support for regional human rights instruments.

V. NGO strategies for the next General Assembly: a perspective from Latin America

Presentation by Viviana Kristocecic, Executive Director of the Center for Justice and International Law, CEJIL, Washington, DC.

Ms. Kristocecic said she was honoured to participate in the seminar, and expressed special gratitude to Rights and Democracy. She then went on to describe the mission and work of her organization, the Center for Justice and International Law (CEJIL). Since 1992 CEJIL has worked with non-governmental organizations (NGOs) and the inter-American human rights system, towards strengthening human rights protection and the rule of law throughout the region. As such, their work is closely linked to the promotion of democracy, and the strengthening of the inter-American system in general. Over the years, CEJIL has developed close ties with renowned human rights NGOs in Canada, Mexico, Peru, and many other countries.

Ms. Kristocecic recognized the importance of the work that preceded the Inter-American Democratic Charter, namely the adoption in 1991 of the Santiago Commitment on Democracy and the Renewal of the Inter-American System, and OAS General Assembly Resolution 1080 on Representative Democracy. She also pointed out that NGO work with the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights has had an important impact in shaping human rights and democratic standards and legislation in the region.

Notwithstanding the relative progress that has been made, many NGOs recall the long and difficult struggle for democracy in Peru. And the limitations of Resolution 1080 have been particularly significant in this regard. Not surprisingly, NGO responses to the Democratic Charter have very much been shaped by these past experiences.

One of the main reservations identified by NGOs is the way in which the Democratic Charter defines democracy. This is highly contested terrain, and there exists a rich academic literature on the subject. NGOs such as Rights and Democracy have described the Democratic Charter as vague and confusing.

Moreover, given the lack of equity between countries, many NGOs, and some governments, have expressed fears around the consistency with which the Democratic Charter may be used. More concretely, there are fears that in its present form, the agreement could be used as a political tool, to punish countries that may be weaker, and less capable of defending themselves.

A third concern raised by NGOs revolves around the effectiveness of the Democratic Charter. For example, while there may be consensus on the need to defend democracy in Peru, it must be pointed out that authoritarian rule had prevailed under President Alberto Fujimori long before the OAS finally took action in 2000. A complex combination of internal and external political factors undoubtedly prevented the international community from agreeing on the need for group action. Yet very early on, Peruvian NGOs had managed to develop and convey an unambiguous critique of President Fujimori's government.

Given all of these concerns, many NGOs feel the need for a mechanism that will allow civil society to input into the processes of identifying, evaluating and making decisions, as crises emerge.

To illustrate her argument, Ms. Kristocecic said that there were various stages at which the debate around the Peruvian situation could have been energized through direct NGO participation. The acknowledgement on the part of the OAS that President Fujimori's regime was fundamentally authoritarian came very late indeed. Meanwhile, local and international NGOs, a handful of governments, the Inter-American Commission and the Inter-American Court had been monitoring and denouncing evidence of authoritarian rule in Peru for years.

In a very practical sense, the Peruvian experience demonstrates that the Commission and the Court can play key roles. Their status as independent organs of the inter-American system, capable of assimilating input from civil society, is of considerable value. Ms. Kristocecic said that the Commission, in particular, should be authorized to catalyze debate on alleged violations of the Democratic Charter.

Ms. Kristocecic noted that the NGOs of the region have never sought to undermine the roles played by member states within the inter-American system. But they do feel a responsibility to point out that the existing mechanisms leave a lot to be desired.

Ms. Kristocecic said that the debate around alterations of the “constitutional regime”, as described in Article 19 of the Democratic Charter, has been a major source of contention in the case of Peru, and more recently in the cases of Venezuela, Argentina and even Colombia. And, unfortunately, the Democratic Charter does not provide clear guiding principles.

For instance, the mechanism described in Article 17 of the Democratic Charter – “When the government of a member state considers that its democratic political institutional process or its legitimate exercise of power is at risk...” – suggests that member states must invite OAS intervention, at least in the first instance. This is problematic, since it is highly improbable that Argentina, for example, will want to advertise to the world at large that it is suffering a serious institutional crisis. It is equally difficult to imagine at what point President Fujimori would have asked for assistance to repair and strengthen the Peruvian “institutional process”.

In the case of a more dramatic “interruption” of the constitutional order, such as a *coup d'état*, any member state can request that a process of assessment be initiated; the consequences of which could, conceivably, include suspension from the OAS. However, the mechanism for collective action is weak because it is still unclear whether or not the acquiescence of the state in question is a precondition for collective action.

Ms. Kristocecic said that as the June 2-4 OAS General Assembly approaches, NGOs will be seeking a more formal role in monitoring and evaluating democratic conditions in member states. She said she would like to see some guidelines or tools developed that can be used to facilitate the participation of NGOs. But, she acknowledged, most states are likely to oppose such a proposal, because closer monitoring by NGOs may be viewed as weakening their negotiating positions.

NGOs need to participate fully in all aspects of the OAS process pertaining to human rights and democracy. And NGO participation needs to be critical and timely. The proposed Inter-American Convention Against Terrorism will be an important point of engagement in this sense. Likewise, it will be important for NGOs to develop a more acceptable definition of democracy for use by the inter-American system.

There are many specific issues that are likely to come up, including the situations in Argentina and Venezuela. At the 2001 General Assembly in Costa Rica, the Inter-

American Commission requested that Resolution 1080 be applied in these two cases, just as they had done in the case of Peru at the 2000 General Assembly in Canada. But the truth is that what happens between now and June in Venezuela, Argentina and other countries will invariably determine issues and priorities. Much remains to be seen.

DISCUSSION

Many of the questions posed following the second panel concerned the role of the Inter-American Commission and Inter-American Court in ensuring the fairest, most effective application of the Democratic Charter. During the ensuing discussion, Dr. Brian Tittlemore restated his personal view that both the Commission and the Court (and the Commission in particular) can play important roles in defining the uses of the Democratic Charter. Moreover, according to Dr. Tittlemore, it would be important for the Commission to work with the political organs of the OAS to help clarify the legal significance of the Democratic Charter.

During the course of the debate, it was suggested that democracy is not easily defined, particularly when governments are forced to confront threats from groups that reject democratic principles. In response, UBC's Pablo Policzer stated that democracy is, of course, an imperfect system. What kinds of powers are we willing to give to elected authorities in combating evil? In any event, it remains clear that we need to disaggregate what we mean by democracy: it is not an either/or category. According to Mr. Julius Grey, if a democratic state intends to use force to address a particular threat, such measures must be accompanied by policies that address the social dimensions of violence and political instability.

One of the participants questioned whether the draft Convention Against Terrorism was compatible with the Democratic Charter, particularly considering that preliminary versions of the Convention make no mention of human rights. Mr. Étienne Savoie responded to this query by affirming that Canada hopes the final text of the Convention will be more explicit in this regard, adding that he believed OAS member states were in general agreement on this point. It is, he said, a matter of finding a good formula.

The next point of discussion was the tension that persists between the notions of human rights and democracy. According to one of the participants, the relationship between these two issues is treated differently in Europe, as compared to the Americas. In Europe, human rights are considered a bulwark of democracy, and an effort is made to protect the rights of individuals against the majority. By contrast, in the Americas, we think of democracy as a precondition for the enjoyment of human rights. Mr. Grey said if we conceive of democracy as the application of the law of the majority, then individual rights are indeed endangered. As such, he said it is necessary to understand democracy in liberal, humanist terms, and recognize that it is comprised of many elements.

The last two questions raised during this session concerned the possibility that NGOs might seek the modification of the Democratic Charter, considering that a number of

serious gaps had already been identified. More questions were then raised concerning Canada's refusal to sign the American Convention on Human Rights.

Ms. Viviana Kristocecic from the Center for Justice and International Law addressed this last point, saying that Canadian NGOs are effectively being denied opportunities to be more supportive of both the victims and the human rights defenders that have chosen to work with the Commission. Mr. Allmand added that while Canada may be an active player in promoting human rights internationally, the Canadian government has occasionally found its hands tied on specific issues that come up in the context of the OAS. For instance, at the OAS General Assembly in Guatemala in June 1999, both Trinidad and Tobago and Peru sought to opt out of the American Convention. Canada was not in a position to speak out to defend the value of the inter-American human rights system. This not only limits the Canadian government's capacity to advocate for human rights within the inter-American system; it also compromises the position of Canadian NGOs that wish to be more proactive in their work with the Inter-American Commission.

Mr. Étienne Savoie, representative of Canada's permanent mission to the OAS, stated that the Democratic Charter would probably not be re-opened for revisions, and reiterated his belief that the Democratic Charter represents a significant step forward in the defence of democracy in the Americas. He then observed that the Democratic Charter had not yet been tested, and that it would be best to wait and see how it is applied to a specific case before drawing any conclusions.

Mr. Allmand added that the Democratic Charter could really only be revised or scrapped if it were proven to be fundamentally inoperative. He said that unless this conclusion can reasonably be drawn, it is wisest to focus efforts on developing a shared critical perspective, and holding OAS member states to task for breaches of democratic principles.