

## A QUICK LOOK AT THE INTER-AMERICAN DEMOCRATIC CHARTER OF THE OAS: WHAT IS IT AND IS IT “LEGAL”?

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### INTRODUCTION

As the fourth anniversary of the Inter-American Democratic Charter (Democratic Charter)<sup>1</sup> approaches, the public intergovernmental international organization for the Western Hemisphere (the Organization of American States or OAS) has decided its Secretary General should study how the Democratic Charter has been implemented and make proposals on how to address anti-democratic situations in times of political fragility.<sup>2</sup>

The highest political body of the OAS—the General Assembly<sup>3</sup>—

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1. Organization of American States, Inter-American Democratic Charter, Sept. 11, 2001, OAS Doc. OEA/Ser.P/AG/Res.1 (2001), 28th Spec. Sess., OAS Doc. OEA/Ser.P/AG/Res.1 (XXVIII-E/01) (OAS General Assembly) (Sept. 11, 2001), 40 I.L.M. 1289 (2001) [hereinafter Democratic Charter], available at <http://www.oas.org> (follow “Welcome” hyperlink; then follow “Documents & Reports” hyperlink and choose “Democratic Charter”) (last visited Dec. 30, 2005).

2. Declaration of Florida: Delivering the Benefits of Democracy, paras. 2-3, 35th Sess. of the OAS General Assembly, AG/DEC. 41 (XXXV-O/05), OEA/Ser.P AG/doc.4496/05, (June 13, 2005) (adopted at the Fourth Plenary Session held June 7, 2005) [hereinafter Declaration of Florida].

3. Charter of the Organization of American States, Apr. 30, 1948, O.A.S.T.S. No. 1, as amended by the Protocol of Buenos Aires, Feb. 27, 1967, O.A.S.T.S. No. 1-A, OEA/Ser. A/2(SEPF)Add., by the Protocol of Cartagena de Indias, Dec. 5, 1985, O.A.S.T.S. No. 66, OEA/Ser.A/41 (SEPF), by the Protocol of Washington, Dec. 14, 1992, 1-E Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add. 3 (SEPF), and by the Protocol of Managua, June

took this decision, and another to invoke Article 18 of the Democratic Charter in the case of Nicaragua,<sup>4</sup> at its 2005 annual meeting in Fort Lauderdale, Florida, in June. (However, the General Assembly took no action when the president of Bolivia resigned while the OAS was meeting.)<sup>5</sup>

About two months before that General Assembly, this writer gave a presentation on the Democratic Charter at the annual meeting of the American Society of International Law (ASIL). This article briefly discusses the Democratic Charter—its creation, its perhaps murky legal status, and Chapter IV. But I have added new developments that took place after the ASIL meeting which further indicate the Democratic Charter represents an important expression of the progressive development of international law

First, I want to say that my comments are purely my own and do not necessarily reflect the opinions or views of the Organization of American States (OAS), any Member State, the General Secretariat, or its legal department.

Democracy is a page one topic today, but I never hear the Democratic Charter mentioned in news stories and television broadcasts. President George W. Bush's Second Inaugural Address in January was devoted to democracy, but did not once mention the Democratic Charter,<sup>6</sup> which every country in the Western Hemisphere (with the exception of Cuba) approved by a resolution of the OAS

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10, 1993, 1-F Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add.4 (SEPF), the integrated text reflecting all four amendments available at <http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/juridico/english/chart.html> (last visited February 6, 2006) [hereinafter OAS Charter].

4. See Support to Nicaragua, pmbl. para. 4, 35th Sess. of the OAS General Assembly, AG/DEC. 43 (XXXV-O/05), OEA/Ser.P AG/doc.4496/05 (June 13, 2005) (adopted at the Fourth Plenary Session held June 7, 2005) [hereinafter Support to Nicaragua] (stating: "BEARING IN MIND ALSO Article 18 of the Inter-American Democratic Charter, which establishes that 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 of the OAS may, with prior consent of the government concerned, arrange for visits or other actions in that country. . . .").

5. The Draft Declaration of the General Assembly on the Situation in Bolivia recited six paragraphs concluding with an "express[ion of] the readiness of the Organization of American States to provide all cooperation that may be requested by the legitimate Bolivian authorities to facilitate dialogue as a means of surmounting the crisis and guaranteeing the preservation of democratic institutions." AG/DEC. 42 (XXXV-O/05), OEA/Ser.P AG/doc. 4496/05 (June 7, 2005).

6. See President George W. Bush, *Second Inaugural Address at the 55th Inaugural Ceremony* (Jan. 20, 2005), available at <http://www.whitehouse.gov/news/releases/2005/01/20050120-1.html>. (last visited Dec. 30, 2005).

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General Assembly, on September 11, 2001.<sup>7</sup>

Democratic government is required for every country in the Western Hemisphere.<sup>8</sup> But the Democratic Charter takes this internal domestic right and establishes it as an external collective right as well.<sup>9</sup> The first article of the Democratic Charter clearly states that it is “[t]he peoples of the Americas [who] have a right to democracy and *their governments have an obligation to promote and defend it.*”<sup>10</sup>

Chapter IV of the Democratic Charter is entitled “Strengthening and Preservation of Democratic Institutions.” The six articles in that Chapter outline mechanisms to defend democracy.<sup>11</sup> This is the legal section of the Democratic Charter and the focus of this article.

### I. CREATION

In August 2001, an OAS Working Group edited and revised more than a dozen drafts of the Democratic Charter, which the General Assembly had failed to approve at its meeting the previous June. The Democratic Charter almost was not approved, or at least foreign ministers almost went to Lima, Peru, with an open text. There were several disputes ranging from changing the title of the document to whether specific human rights treaties that not all states had ratified could be mentioned in the document. However, every future General Assembly will now follow up on the Democratic Charter as it has become a permanent agenda item for the General Assembly’s annual meetings every June.<sup>12</sup>

The Democratic Charter fits in with the annual theme of the ASIL this year: “New World Order or a World in Disorder? Testing the

7. See Democratic Charter, *supra* note 1.

8. See Enrique Lagos & Timothy D. Rudy, *In Defense of Democracy*, 35 U. MIAMI INTER-AM L. REV. 283, 283 (2004) [hereinafter Lagos & Rudy] (noting that all active member states of the OAS were democracies at the time the Democratic Charter was adopted).

9. See *infra* note 10 and accompanying text; see generally Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT’L L. 46, 47 (2002) [hereinafter Franck] (recognizing that legal entitlement to democracy is created with the help of regional and international organizations).

10. See Democratic Charter, *supra* note 1, art. 1 (emphasis added).

11. See *infra* notes 24-45 and accompanying text (discussing the legal articles in the Democratic Charter that may be used to defend democracy); see also Lagos & Rudy, *supra* note 8.

12. Promotion and Strengthening of Democracy: Follow-up to the Inter-American Democratic Charter, AG/RES. 1957 (XXXIV-O/03), ¶ 4 (June 10, 2003) (explaining that the purpose for having this issue as a permanent agenda topic is “so that member states that deem it appropriate will report on their progress in promoting, publicizing, and implementing the Inter-American Democratic Charter”).

Limits of International Law.”

The OAS adopted the Democratic Charter, as its long preamble makes clear, to solidify previous strides made in the 1990s to strengthen the OAS' decades-old standard of democracy.<sup>13</sup> That standard is “the effective exercise of representative democracy,” which is found in the OAS Charter, the treaty that established the OAS in 1948.<sup>14</sup>

## II. SOFT LAW

To borrow some terms from the ASIL's 99th meeting program, the Democratic Charter curiously has both robust and gentle provisions. It modifies existing rules and practices, most of which are no more than fifteen years old. Both strong and weak states occupy at least a fictional level playing field. On its face, the Democratic Charter does not differentiate between those countries that were once Spanish colonies and those that were once English colonies. And it only provides for intervention to preserve and restore democracy if that intervention is multilateral. Its sanction is not the use of force. For that, recourse to the U.N. is needed. Rather, its strongest sanction suspends a government from participation in the international organization itself.

Because the Democratic Charter's success will depend on the political will of the member governments, it is arguably more of a political rather than a legal document. In this development, the Democratic Charter resembles what the Annual Meeting's organizers have described as the tendency to supplant classical sources of international law—in this case the OAS treaty or charter—with soft law in the form of a non-binding resolution of an international organization.

In the 1990s, the OAS Charter was amended by the Protocol of Washington, which provides for the suspension of a member state's government in the case of coups.<sup>15</sup> The Protocol of Washington became effective in 1997 and can be found today in Article 9, of the OAS Charter.<sup>16</sup>

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13. See Democratic Charter, *supra* note 1, paras. 14-17 (listing other instruments promoting and defending democracy upon which the Democratic Charter rests).

14. See OAS Charter, *supra* note 3, art. 3(d), at 990.

15. See Protocol of Amendments to the Charter of the Organization of American States, *opened for signature* Dec. 14, 1992, art. 9, 33 I.L.M. 1005.

16. OAS Charter, *supra* note 3, art. 9. Article 9 reads:

A Member of the Organization whose democratically constituted government has been overthrown by force may be suspended from the exercise of the right to participate in the sessions of the General Assembly, the Meeting of Consultation, the Councils of the Organization and the Specialized Conferences as well as in the commissions, working groups and any other bodies established.

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The relationship between the Democratic Charter and the OAS Charter was a matter that concerned the delegates in the summer of 2001. They sought advice from the Inter-American Juridical Committee (IAJC), another OAS body of elected jurists and legal scholars.<sup>17</sup> The IAJC said in its special report of August 2001, at paragraph 5 that:

The provisions of resolutions of this nature generally have as their purpose the interpretation of treaty provisions; the provision of evidence of the existence of customary norms. . . . The provisions of some resolutions of an organ of an international organization may have an obligatory effect . . .<sup>18</sup>

and said further at paragraph 40 of that report:

[I]t would be unnecessary to amend the OAS Charter, provided that the text of the Democratic Charter explicitly states that it is setting forth an interpretation of the OAS Charter, and assuming, of course, that the Democratic Charter is adopted by consensus.<sup>19</sup>

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- a) The power to suspend shall be exercised only 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;
  - b) The decision to suspend shall be adopted at a special session of the General Assembly by an affirmative vote of two-thirds of the Member States;
  - c) The suspension shall take effect immediately following its approval by the General Assembly;
  - d) The suspension notwithstanding, the Organization shall endeavor to undertake additional diplomatic initiatives to contribute to the re-establishment of representative democracy in the affected Member State;
  - e) The Member which has been subject to suspension shall continue to fulfill its obligations to the Organization;
  - f) The General Assembly may lift the suspension by a decision adopted with the approval of two-thirds of the Member States;
  - g) The powers referred to in this article shall be exercised in accordance with this Charter.

*Id.*

17. Article 99 of the OAS Charter defines the purpose of the IAJC as:

The purpose of the Inter-American Juridical Committee is to serve the Organization as an advisory body on juridical matters; to promote the progressive development and the codification of international law; and to study juridical problems related to the integration of the developing countries of the Hemisphere and, insofar as may appear desirable, the possibility of attaining uniformity in their legislation.

OAS Charter, *supra* note 3, art. 99.

18. CJI Res. 32, ¶ 5, LIX O/01 (Aug. 24, 2001) *in* Annual Report of the Inter-American Juridical Committee to the General Assembly, OEA/Ser.Q/VI.32, doc. 79 (2001).

19. *Id.* ¶ 40.

This is what the OAS attempted to do. Two paragraphs were inserted in the preamble of the Democratic Charter to clarify that the resolution adopting the Democratic Charter was the unanimous interpretation of Article 9 of the OAS Charter.<sup>20</sup> The member states unanimously approved the resolution by consensus on September 11, 2001, and, in fact, signed the document. However, not all the member states have adopted the Protocol of Washington.<sup>21</sup> So the OAS may have future legal headaches if it decides to invoke the Democratic Charter to suspend the government of a nation that has never ratified the Protocol of Washington.<sup>22</sup>

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20. The two paragraphs read as follows:

RECOGNIZING that all the rights and obligations of member states under the OAS Charter represent the foundation on which democratic principles in the Hemisphere are built; and

BEARING IN MIND the progressive development of international law and the advisability of clarifying the provisions set forth in the OAS Charter and related basic instruments on the preservation and defense of democratic institutions, according to established practice.

Democratic Charter, *supra* note 1, preamble paras. 19, 20.

21. The countries that have not ratified the Protocol of Washington are: Dominica, Dominican Republic, Grenada, Haiti, Jamaica, Mexico, St. Kitts & Nevis, St. Lucia, Suriname, and Trinidad & Tobago. Organization of American States, A-56: Protocol of Amendments to Charter of the Organization of American States, "Protocol of Washington," OAS Doc. OEA/Ser.A/2 Add.3, "General Information of the Treaty" (Dec. 14, 1992), <http://www.oas.org/juridico/english/signs/a-56.html> (last visited Dec. 30, 2005).

22. The general rule for interpreting treaties is found in the Vienna Convention on the Law of Treaties and is as follows:

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose on the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

a. any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

b. any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

a. any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

b. any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

c. any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Vienna Convention on the Law of Treaties, art. 31, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331.

## III. GENTLE AND ROBUST

Governments and OAS bodies may be reluctant to go beyond rhetoric and invoke the mechanisms of the Democratic Charter to defend democracy. The Democratic Charter is a political document often cited, mainly for its “purposes and principles,” such as the “essential elements of representative democracy” found in Articles 3 and 4.<sup>23</sup>

To date, the OAS has had limited experience with Chapter IV episodes, so the pro-democracy mechanisms of the instrument must be understood principally from the actual text of Chapter IV. (However, after the ASIL conference, the Democratic Charter was invoked twice in the spring of 2005.)

Article 17 applies when the government of a member state claims that its democratic political institutional process or its legitimate exercise of power is “at risk.”<sup>24</sup> The Secretary General or the Permanent Council receive the state’s request.<sup>25</sup> Under Article 17, the Democratic Charter applies when the government of the country makes its request for assistance from the OAS.

Article 18 applies when the development of a member state’s democratic political institutional process or the legitimate exercise of its power are affected by “situations” in the member state.<sup>26</sup> However, as

23. These elements are listed in Article 3 as:

... respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.

Democratic Charter, *supra* note 1, art. 3.

Article 4 reads:

Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy.

The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy.

Democratic Charter, *supra* note 1, art. 4.

24. Democratic Charter, *supra* note 1, art. 17. Article 17 reads:

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 system.

*Id.*

25. *Id.*

26. Democratic Charter, *supra* note 1, art. 18. Article 18 reads, in relevant part:

in the case with Article 17, the consent of the state is required, at least prior to the Secretary General or the Permanent Council taking certain actions.<sup>27</sup> The current government must consent to visits by the Secretary General or “other actions” by the Permanent Council.<sup>28</sup> Article 18 appears to assign the initiative not to the affected member state, but to the Secretary General or the Permanent Council.

Articles 17 and 18 make the Democratic Charter difficult to use when the consent of the state is required and unlikely to be granted, but recent invocations of the Democratic Charter by the governments of Ecuador<sup>29</sup> and Nicaragua<sup>30</sup> suggest that member states may have fewer qualms about requesting diplomatic support in times of crisis by appealing to Chapter IV of the Democratic Charter. Note, however, that no other state has made such a request in the first four years after the Democratic Charter was approved.

Now let's look at the robust provisions of Chapter IV.

Article 19 is a statement of purpose. It reflects the Democracy Clause adopted at the Third Summit of the Americas. Article 19 states the policy of the inter-American system that “an unconstitutional interruption of the democratic order or an unconstitutional alteration of the constitutional regime” that rises to the level of a serious impairment of the democratic order in an OAS member state is “an insurmountable obstacle” to the participation of that member state's government in official hemispheric bodies and meetings.<sup>31</sup>

But the standard permitting the OAS to take action under the Democratic Charter is found in Article 20, and it is worded slightly

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When situations arise in a member state that may affect the development of its democratic political institutional process or its 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.

*Id.*

27. *Id.*

28. *Id.*

29. Support by the Organization of American States for the Republic of Ecuador, CP/Res. 880 (1478/05), ¶ 3 (April 22, 2005) (citing Article 18 of the Democratic Charter, Ecuador invites an OAS mission to visit); Support to the Republic of Ecuador by the Organization of American States, CP/Res. 883 (1484/05), ¶ 3 (May 20, 2005) (supporting Ecuador in the context of Article 18 of the Democratic Charter “with a view to contributing to the stability of democratic institutions in that country”).

30. The government of Nicaragua invoked Art. 18 of the Democratic Charter in the spring of 2005 and requested an on-site OAS mission, which the General Assembly granted on June 7, 2005. See Support to Nicaragua, *supra* note 4, preamble para. 4.

31. Democratic Charter, *supra* note 1, art. 19.

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differently than the Democracy Clause and Article 19.<sup>32</sup> Whether the factual situation can be characterized to meet the Article 20 standard in the opinion of a majority of the member states is probably more of a political question than a legal argument. Further, under Article 21 of the Democratic Charter (and Article 9 of the OAS Charter), only the General Assembly can suspend a member state's participation in OAS bodies.<sup>33</sup> In spite of the "insurmountable" language of Article 19, suspension is not automatic.<sup>34</sup>

The Secretary General or the Permanent Council do not have to receive the state's consent when utilizing Article 20. The grant of authority to the Permanent Council in the first paragraph of Article 20 appears to be plenary.<sup>35</sup> The Council is permitted to make a "collective assessment of the situation," and may "take such decisions as it (the Permanent Council) deems appropriate."<sup>36</sup> The Permanent Council moved under Article 20 in April 2002 after the coup against Venezuelan President Hugo Chavez,<sup>37</sup> and the General Assembly cited Article 20 in

32. See Lagos & Rudy, *supra* note 8, at 294. Compare Declaration of Quebec City, in Official Documents From the Summits of the Americas Process From Miami to Quebec City 313, 313 (OAS Office of Summit Follow-up, 2002), available at <http://www.summit-americas.org> (last visited Dec. 30, 2005) (stating in the Democracy Clause, in relevant part: "[A]ny 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") with Democratic Charter, *supra* note 1, art. 19 (stating, in part "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").

33. See Democratic Charter, *supra* note 1, art. 21 (noting "[w]hen the special session of the General Assembly determines that there has been an unconstitutional interruption of the democratic order of a member state, and that diplomatic initiatives have failed, the special session shall take the decision to suspend said member state from the exercise of its right to participate in the OAS by an affirmative vote of two thirds of the member states in accordance with the Charter of the OAS"). See note 16 for the full text of Article 9 of the OAS Charter.

34. See Democratic Charter, *supra* note 1, art. 19.

35. The first paragraph of Article 20 reads:

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 immediate convocation of the Permanent Council to undertake a collective assessment of the situation and to take such decisions as it deems appropriate.

Democratic Charter, *supra* note 1, art. 20.

36. *Id.*

37. See Situation in Venezuela, CP/RES. 811 (1315/02), ¶ 6 (April 13, 2002) (convening a special session of the General Assembly to discuss the coup pursuant to

a resolution on Haiti, but more than three months after the democratically-elected President had been forced from office.<sup>38</sup> The OAS took no subsequent action regarding the Haitian President under the Democratic Charter in the intervening year.<sup>39</sup>

Under Article 20, any member state or the Secretary General can ask for a Permanent Council meeting when the facts on the ground rise to the level of an “unconstitutional alteration of the constitutional regime that seriously impairs the democratic order.”<sup>40</sup>

Politicians and special interest groups in troubled states in the future will want to interpret the facts in their countries as meeting this standard during times of crisis if they want the Democratic Charter to apply. I predict that many citizens and civil society organizations will be petitioning for action under the Democratic Charter when the facts do not rise to the level of this standard. Chapter IV is silent as to how to define this standard. But it does suggest that the Secretary General, or the other states, will determine if the standard is met.

Former U.S. President Jimmy Carter, in a lecture at the OAS in January 2005, provided what he called “clear definition[s]” for Chapter IV’s “unconstitutional alteration or interruption” standards.<sup>41</sup> He provided the following eight examples as situations meeting his definition of the undefined standards:

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

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Article 20 of the Democratic Charter).

38. Situation in Haiti: Strengthening of Democracy, AG/RES. 2058 (XXXIV-O/04), ¶ 4 (June 8, 2004), <http://www.oas.org/juridico/english/ag02528e08.doc> (last visited Dec. 30, 2005) (“[t]o instruct the Permanent Council to undertake, in accordance with the principles and purposes of the Inter-American Democratic Charter, including Article 20, all necessary diplomatic initiatives, including good offices, to foster full restoration of democracy in Haiti”).

39. In May 2004, twelve Caribbean countries unsuccessfully requested a special session of the OAS Permanent Council to invoke Article 20 in the case of Haiti. OEA/Ser.G CP/INF. 1425/04 (June 17, 2004), available at [http://scm.oas.org/doc\\_public/ENGLISH/HIST\\_04/CP13069E05.DOC](http://scm.oas.org/doc_public/ENGLISH/HIST_04/CP13069E05.DOC) (last visited Dec. 30, 2005).

40. See Democratic Charter, *supra* note 35, art. 20.

41. Jimmy Carter, Former President of the United States, The Promise and Peril of Democracy, Speech at the OAS Inaugural Lecture Series of the Americas (Jan. 25, 2005), <http://www.funglode.org/menu/noticias/2005/01/discursocarter.pdf> (last visited Dec. 30, 2005).

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.
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, such as military officers, 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.<sup>42</sup>

Curiously, the standard used in Article 21 is a bit different from that found in Articles 19 and 20. Article 21 reads “unconstitutional interruption of the democratic order,” whereas Article 19 uses the language “an unconstitutional interruption of the democratic order or an unconstitutional alteration of the constitutional regime” and Article 20 reads “an unconstitutional alteration of the constitutional regime.”<sup>43</sup>

The remainder of Article 20 permits the OAS General Assembly and the Permanent Council to undertake diplomatic initiatives.<sup>44</sup>

Finally, Articles 21 and 22 track the OAS Charter by requiring a two thirds voting procedure when suspending and readmitting a member state.<sup>45</sup>

## CONCLUSION

In the past four years, the people of Venezuela have suffered one failed coup and several arguably anti-democratic developments. The

42. *Id.*

43. *See* Democratic Charter, *supra* note 1, arts. 19, 20, & 21.

44. *See id.*, art. 20 (providing that “[t]he Permanent Council, depending on the situation, may undertake the necessary diplomatic initiatives, including good offices, to foster the restoration of democracy”).

45. *See id.*, art. 21 (mandating that if the General Assembly decides that “there has been an unconstitutional interruption of the democratic order” within a member state, the other member states may, through “an affirmative vote of two thirds,” decide to suspend that member state); *See id.*, art. 22 (requiring a two thirds vote of the member states in order to lift the suspension “[o]nce the situation that led to suspension has been resolved”).

Presidents of Haiti, Bolivia (two leaders), and Ecuador have been removed from office in various scenarios that arguably were not democratic and were questionable from the standpoint of their domestic constitutions. The Democratic Charter is neither a magic bullet nor a panacea for what ails democracy in the Western Hemisphere. But, as the examples of Nicaragua and Ecuador show, the Democratic Charter can be a preventive diplomatic device that may put anti-democrats on the defensive.

Any passion for democracy at the OAS, however, may be weakening as notions of sovereignty and the inter-American norm of non-intervention in the domestic affairs of a nation state reassert themselves.<sup>46</sup> The United States may have overplayed its hand politically in the spring of 2005, when it pushed for an OAS permanent committee to evaluate democracy in the hemisphere, but did not prevail.<sup>47</sup> The OAS General Assembly compromised by asking the Secretary General to report on the Democratic Charter's implementation to date and to prepare proposals for cooperation when anti-democratic situations arise. But those proposals must be limited by the provisions of Chapter IV of the Democratic Charter; the right of self-determination; and the principle of non-intervention.<sup>48</sup> Obviously, both the norm of a legal right to democracy in the Americas and the Democratic Charter itself are still evolving.

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46. OAS Charter, *supra* note 3, arts. 19, 20.

47. See, e.g., *How to protect Latin American democracy*, THE ECONOMIST, June 11, 2005, at 10 (pointing out that Latin America no longer automatically follows Washington, as evidenced by the fact that although American diplomats pushed for a permanent committee to be created to police the practice of democracy in the Americas, the foreign ministers "diluted the American initiative"); Joel Brinkley, *Latin States Shun U.S. Plan to Watch Over Democracy*, N.Y. TIMES, June 9, 2005, at A8 (noting that the U.S. plan ran into opposition by several Latin American countries calling for a less-intrusive plan).

48. Declaration of Florida, *supra* note 2, ¶¶ 2, 3.