

# **Inter-American Democratic Charter and Democratic Governance: Challenges and Opportunities for the Ninth Summit of the Americas**

Prepared by students in the School of Public Policy and Global Affairs course on “Policymaking and Democratic Deliberation in Global Politics” (PPGA 591Q) at the University of British Columbia (UBC)<sup>1</sup>

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## **Executive Summary**

On June 5-10, 2022, the Ninth Summit of the Americas will be held in Los Angeles. A key theme of the Summit will be strengthening democratic governance through “regional cooperation in support of the Inter-American Democratic Charter.” The Inter-American Democratic Charter (IADC) was adopted by the members of the Organization of American States (OAS) in 2001. Its effectiveness as an instrument to promote and defend democracy has been hindered by national and regional polarization, democratic backsliding, and democratic deficits. In light of these challenges, this policy brief outlines an opportunity to strengthen the IADC and equip the OAS with a mechanism to respond to democratic challenges and maintain state members’ democracies. We argue that an independent, long-term monitoring mechanism could help avoid abuse and provide early warning of democratic crises. A guiding document could outline a series of graduated responses to democratic backsliding and provide a mechanism to encourage re-democratization.

## **Challenges to the IADC and OAS Enforcement**

The OAS identifies, “unconstitutional interruption of the democratic order or an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order” (Article 19)<sup>2</sup> as the most significant threat to democracy in the western hemisphere. Alterations or interruptions of the constitutional order that prove to disempower democratic process often involve encroachments by the executive on other branches of government. However, OAS members are represented by the executive branch of their respective governments. Therefore, given that the OAS cannot violate the sovereignty of member states and short of suspending a state’s membership, the OAS cannot bypass the executive and involve other branches in its deliberations without the agreement of the government in question. This means that in moments of regime crisis it is often the decision-maker responsible

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<sup>2</sup> Organization of American States 2001.

for the crisis who is at the table purposed to resolve it. The predominance of presidentialism in the Americas makes this issue especially critical.<sup>3</sup> Whereas Prime Ministers enjoy the confidence of parliament as a condition of forming government, in presidential systems the dual legitimacy of directly elected executives and legislatures can create situations in which the two branches compete to represent the will of the majority.<sup>4</sup>

The application of the IADC in these democratically critical situations has been hindered by the lack of consensus on the meaning and interpretation of democracy. Governments are increasingly cautious at employing the IADC to criticize one another and are highly sensitive to threats to national sovereignty—especially in a hemisphere with such great power disparities. As a result, the IADC can seem ineffective, imprecise, unevenly applied, vulnerable to exploitation by non-democratic governments, or used punitively by powerful states. The IADC is only as strong as the collective political will of the member states of the OAS, which in turn depends on cooperation and trust.

### **Context**

The Ninth Summit of the Americas (SOAs) will bring together the heads of state and government, foreign ministers, and other officials to articulate their aspirations, which must then be implemented through legislation, regulation, and policy practices.<sup>5</sup> The OAS Summit Secretariat is responsible for coordinating the gathering and following up on commitments made by member states. This year, the theme will be “Building a Sustainable, Resilient and Equitable Future.”

The Ninth Summit of the Americas occurs as democracy faces threats around the world.<sup>4</sup> It offers leaders an opportunity to reaffirm their commitment to democracy. They can do so by strengthening the use and implementation of the IADC, which was negotiated following the Declaration of the Quebec City Summit and adopted in Lima on September 11, 2001. The Declaration and Democratic Charter affirmed that OAS members would respect representative democracy as a condition of OAS membership and participation in the Summits process. It was adopted by consensus in a moment of optimism about the prospects for cooperation among governments in the hemisphere.

### **Current Challenges to Democracy**

Early optimism about the implementation of the IADC has been diminished by a number of developments in the region:

- Partisan polarization as the election of left-wing governments in the early 2000s was followed by a right-wing backlash.
- In extreme cases, the breakdown of democratic regimes, often with the support of authoritarian states from outside the region.

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<sup>3</sup> OAS-UNDP, 2011, p. 117.

<sup>4</sup> Rodriguez Olivari 2014.

<sup>5</sup> Lambert 2021; Legler, Lean, Boniface, eds. 2007; Legler 2013; Rosenberg 2001.

- In less extreme cases, a decline in support for democracy as citizens increasingly expressed indifference between democratic and non-democratic regimes<sup>6</sup>.
- The emergence of new regional organizations contesting the space in which the OAS operates and challenging its legitimacy.<sup>7</sup>

Democracies are confronting challenges that demand greater cooperation on a range of issues including but not limited to:

- National and transnational corruption.
- Endemic violence and citizen insecurity.
- Large-scale displacement and migration.
- Inequality and social exclusion of marginalized populations.
- New forms of disinformation and political manipulation facilitated by social media.
- Weaknesses in health and welfare systems exposed by the Covid-19 pandemic.
- The climate crisis and threats to vulnerable populations.

### **The Inter-American Democratic Charter**

The IADC is a political affirmation of a shared commitment to democracy that was designed to assist the OAS in responding to the challenges to democracy arising from interruptions or alterations of the democratic process within member states. It sought to prevent a return to the dictatorships that spread throughout Latin America in the 1960s and 1970s by establishing that “The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.”<sup>6</sup>

Democracy was defined as a system of representation that included “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” (Article 3).

The IADC is a source of “soft power.” It helps the OAS establish norms, standards, and principles as well as a toolkit for the peaceful resolution of conflicts.<sup>8</sup> As a diplomatic body, the OAS is well-suited to foster dialogue and deliberation. The Secretary General has the power to convene the Permanent Council to assess and take diplomatic initiatives to resolve crises. By a vote of two-thirds of OAS members, a state may have its membership suspended for failing to uphold constitutional democracy.

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<sup>6</sup> Latinobarómetro <https://www.latinobarometro.org/lat.jsp>. Includes surveys in Argentina, Bolivia, Brazil, Colombia, Costa Rica, Chile, Ecuador, El Salvador, Guatemala, Honduras, México, Nicaragua, Panamá, Paraguay, Perú, Dominican Republic, Uruguay, Venezuela.

<sup>7</sup> Nolte 2018.

<sup>8</sup> Kornblith 2021.

The IADC could not fully anticipate the kinds of threats to democracy that would appear following its adoption. It recognized that threats to democracy might come from elected leaders, but not that they might seek to gradually undermine the constitutional and democratic order. This may occur through the convening of constituent assemblies to rewrite constitutions in order to expand executive powers, undermine the separation of powers, and weaken the rule of law to the point that free and fair elections could no longer be accepted as meaningful expressions of the sovereign will of the people.

### **Strengthening the IADC**

In this section, we outline an opportunity for strengthening the role and implementation of the IADC and improving democratic governance in the Americas.

#### *A Guiding Document to Strengthen the IADC*

The IADC provides a broad definition of democracy, which has the advantage of including many components of democratic regimes but makes it difficult to draw a line between which regimes are democratic and which are not. Article 20 tends not to be invoked when the process of democratic backsliding is gradual. Although Article 2 states that "The effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes of the member states of the [OAS]," compliance with Article 20 is left to interpretation. The clause relating to the collective defence of democracy specifies that an offence is any "unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state." This leaves it to representatives of OAS member states to decide whether a democracy is "seriously impaired." But impaired in what respect, by what standards, and in what dimensions?

Ruben Perina notes that although an "alteration" could include "(a) rigged elections; or (b) an illegal challenge by the legislative or judicial branch, or the military against the legitimate government in place," it does not necessarily include a "process that involves increasing autocracy and monopoly of power by the executive branch, which slowly undermines the democratic process." Therefore, an independent, long-term monitoring mechanism could avoid abuse and provide early warning of democratic crises.<sup>9</sup> The OAS already monitors democratic processes on a case-by-case basis. These data could be incorporated into a longer-term democratic evaluation, not to criticize or cause embarrassment, but to provide benchmarks and incentives to improve. Without the clear definition of democracy the evaluation could be evaluated based on each own countries benchmark status. This limits comparison between states and avoids creating an 'ideal' democratic system. A guiding document could then outline a series of graduated responses to any democratic backsliding. The guiding document could include minor adjustments and acknowledgements that may assist the OAS in helping re-democratizing a member state without having to use deterrence mechanisms such as exclusion and/or suspension.

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<sup>9</sup> Perina 2015, 80; Perina 2012.

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