

## **The IADC and Venezuela**

### **I. Introduction**

On April 14, 2004, the Colombian Senate, under the initiative of Senator Enrique Gómez Hurtado, passed a resolution calling for the Organization of American States (OAS) to sanction Venezuela under the Inter-American Democratic Charter (IADC) for serious violations of the country's constitutional regime. The gesture, although merely symbolic,<sup>1</sup> nevertheless provoked the wrath of Chávez's government. Members of the Venezuelan government were quick to call the resolution an 'unacceptable' intromission into their country's domestic affairs, and called Colombian senators a bunch of puppets of an American imperialist regime. Other observers, however, disagree with this view and instead consider that the OAS has been negligent for failing to apply the Democracy Clause of the IADC considering the serious signs of anti-democratic behaviour already exhibited by Chávez's regime. There is no doubt that the decision of whether or not to apply the Democracy Clause to Venezuela is very difficult considering the country's complex political situation; nevertheless, this paper will argue that the OAS has been wise in restraining to apply this clause until a final decision on the recall referendum (RR) is made. The OAS, however, should continue to carefully monitor the situation in Venezuela to ensure that the government does not illegally block attempts to convoke a RR this year and destroy any possibility of finding a democratic solution to the country's current political crisis.

### **II. History of the IADC and its Inherent Difficulties**

The IADC was signed in Lima, Peru on September 11, 2001. Given the dramatic events that were unfolding in New York that same day, it is not surprising the little publicity this important document received. The main proponent behind the Charter was the Peruvian government who saw the need for the OAS to draft an instrument which dealt more effectively with unconventional threats to democracy such as the one presented by ex-president Alberto Fujimori. Previous to the drafting of the IADC, one of main problems of OAS instruments such as Resolution 1080 and the Washington Protocol was that they addressed only overt threats to the democratic regime of its member states (i.e. military coups), and not authoritarian behaviour by democratically elected regimes.<sup>2</sup> It was under this loop hole that Fujimori was able to suspend the constitution, dissolve congress, and rule by decree without incurring sanctions under Resolution 1080. According to Venezuela's Foreign Minister at that time, José Vicente Rangel, the abuses of the Fujimori government did not constitute a valid rupture of the "constitutional order."<sup>3</sup>

In order to remedy this situation, on December 11, 2000, soon after the fall of the Fujimori government, Peruvian Foreign Minister (and former U.N. Secretary General), Javier Pérez de Cuellar, in a speech before the Peruvian Congress called for the creation of a Democratic Charter.<sup>4</sup> Preliminary discussions on the Charter began at the OAS Summit Implementation Review Group (SIRG) held in Barbados in January of 2001. At this meeting, there was already significant controversy surrounding the Democracy Clause of the Charter.<sup>5</sup> Venezuela along with a number of the Caribbean countries was

particularly vocal in its opposition to the creation of new enforcement mechanisms within the Inter-American system.<sup>6</sup> Despite their objections, however, Peru with the help of two significant allies, the U.S. and Canada, managed to draft a clause which received sufficient support from OAS member states to be included in the final declaration (Quebec Declaration) of the Quebec City Summit of the Americas in April 2001. This Democracy Clause would remain at the heart of the final draft of the IADC which was approved in September 2001.<sup>7</sup> By that time, however, the Charter had significantly expanded to include a number of provisions regarding human, education, economic, social and cultural rights.

The Democracy Clause included in the IADC, however, is far from perfect. One of the main problems with the clause is its ambiguity. Article 19 of the Charter states: "...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...(emphasis added)." Without a doubt one of the factors behind the use of such vague language in the provision was the need to pacify those countries most virulently opposed to it.<sup>8</sup> Another factor behind the use of such language is the difficulty in distinguishing democratic from anti-democratic behaviour. Unconstitutional ruptures of the democratic order such as when a military coup occurs are fairly easy to identify, the difficulty lies in determining what actions of a democratically elected government constitute such a serious alteration of the constitutional regime that one can consider that regime to be authoritarian.<sup>9</sup> Given such difficulties, it was necessary to give the interpreter of the text sufficient liberty to consider all the relevant factors before making such a difficult decision. The events in Venezuela, however, since the implementation of the IADC have highlighted some of the difficulties in applying this provision.

### III. The IADC and Venezuela

On April 11, 2002, the OAS had its first clear opportunity to apply the Democracy Clause to Venezuela. Although there is still significant controversy regarding that day's events, what is certain is that Chávez ceased to hold power for a period of approximately 48 hours. During that time, Pedro Carmona Estanga, head of Venezuela's leading business chamber, briefly came to power. During his brief stint in office, Carmona promptly suspended the activities of the different branches of power and practically gave himself nearly dictatorial powers.<sup>10</sup> On April 13, 2002, OAS Secretary General, César Gaviria, invoking Article 20 of the Charter convened a session of the Permanent Council in order to take an assessment of the events in Venezuela.<sup>11</sup> The Permanent Council (some members less eager than others) condemned the alteration of the constitutional order and convened a special session of the General Assembly five days later. On April 18, 2002, the OAS adopted a resolution which called for diplomatic initiatives to reinforce democratic institutions in Venezuela. In the "Support for Democracy in Venezuela" resolution, the OAS exhorted the Venezuelan government to respect the essential elements of representative democracy and the rule of law and to make greater efforts towards national dialogue and reconciliation.

In his address to the General Assembly that day, U.S. Secretary of State, Colin Powell, recognized that the organization had been slow to act to the events in Venezuela.<sup>12</sup> These feelings were echoed by Roger Noriega, former U.S. Ambassador to the OAS, who in a speech on May 3, 2002, to the Center for Strategic and International Studies in Washington D.C. stated: “[t]he symptoms of the declining state of Venezuelan democracy had been clear for many months.”<sup>13</sup> As evidence of Venezuela’s fragile democracy, Mr. Noriega highlighted among other things: Chávez government’s disregard for the separation of powers and the independence of the branches of government; Chávez’s infringement upon the freedom of association through his constant attacks upon Venezuela’s trade union movement; his disregard for the freedom of expression through his constant attacks on the media; and finally, his attacks on such highly respected institutions in Venezuelan society like the Catholic church.<sup>14</sup>

Following the events of April 11, however, the political situation in Venezuela continued to deteriorate. After a brief reprise, Chávez’s attacks on his opponents resumed. Events reached a boiling point in December 2002 when Carlos Ortega, leader of Venezuela’s main labour movement, organized a national strike calling for Chávez’s immediate resignation and the convocation of elections. Eventually, many workers in Venezuela’s state-owned petroleum company, PDVSA, joined the strike bringing the country’s most important industry and its economy to a halt. Once again, the OAS considered it necessary to intervene and on December 16, 2002, passed resolution 833.<sup>15</sup> This resolution basically emphasized the need to find a peaceful solution to the conflict through negotiations at the Forum for Negotiation and Agreement. After months of intensive negotiations, both parties eventually managed to reach an agreement on May 23, 2003 which among other things contemplated a constitutional solution to the conflict through the mechanism of the recall referendum (RR) established in Article 72 of the Venezuelan constitution.<sup>16</sup> This article establishes the possibility of revoking any public official’s mandate once they have completed half their time in office and that at least 20% of the registered voters seek are in favour of his or her removal.<sup>17</sup>

Following the provisions of the Venezuelan constitution, a RR was scheduled between November 26, 2003 and December 1, 2003. According to Venezuela’s electoral body, Consejo Nacional Electoral (CNE), the opposition would need the signatures of at least 2,437,080 voters for a RR to take place. On March 2, 2004, after much delay, the CNE finally released the results of the petition for the RR. According to the electoral body, of the 3,086,013 signatures collected by opposition, only 1,832,493 signatures were valid.<sup>18</sup> In order to invalidate a large number of those signatures, the CNE took a very ‘creative’ interpretation of Articles 22 and 29 of the Rules for the Revocation of the Mandate of Public Officials.<sup>19</sup> The electoral body argued that the fact that some voters received assistance in filling out their personal information violated the personal nature of the act, even though the signatures did belong to the voter. Applying Article 31 of the same Rules, however, the CNE stated that the opposition would have the opportunity to correct at a later date the defects for 876,017 of those signatures.

Since the CNE's decision, the entire RR has been slowed down by both legal and administrative battles. On March 15, 2004, the Electoral Chamber of Venezuela's Supreme Court issued an injunction in favour of opposition members setting aside the CNE's decision of March 2, 2004, and ordering the electoral body to add the 876, 017 signatures to the number of valid signatures.<sup>20</sup> As a result of this decision, the number of valid signatures would be 2,708,510, well above the number needed to convene a RR. On March 23, 2004, however, the Constitutional Chamber of the Supreme Court, which is considered to be controlled by the government, overturned the Electoral Chamber's decision arguing that this body's decision was ultra vires since only the electoral body had the power to decide on the validity of the signatures.<sup>21</sup> Furthermore, the Constitutional Chamber stated that it had exclusive jurisdiction over matters related to the RR. While the legal battle continues, opposition and government members continue to try to reach an agreement with the CNE over the amount of invalid signatures and the procedure to correct them. Although there continues to be discrepancies over the number of invalid signatures, according to the latest estimates, the opposition will need to re-validate approximately 552,188 signatures between the 28<sup>th</sup> and 30<sup>th</sup> of May.<sup>22</sup>

#### IV. The OAS's Restraint

As the entire process regarding the RR continues to unfold in Venezuela, the OAS has kept a very careful eye on the proceedings. Some have criticized the OAS for failing to find Venezuela in breach of Article 19 of the Charter considering that many of the problems that caused the events of April 11, 2002, not only continue to exist, but in many cases have actually been magnified: the idea of check and balances and the separation of powers as fundamental components of a democracy is still foreign to the Venezuelan government; Chávez continues to relentlessly attack the media, labour unions, and the Catholic church; and finally, the government has been less than supportive of referendum efforts. Considering these factors, why has the OAS not found Venezuela in breach of the Democracy Clause?

First of all, I believe that the OAS is simply waiting for the entire RR process to run its course. Considering the nature of Chávez's regime, it is probably better to continue to withhold international sanctions until absolutely necessary. One of the major problems of applying sanctions prematurely is the very real possibility that Chávez's regime will feel increasingly threatened and adopt a more radical position. Despite some of its declarations, Chávez still wants to be viewed by the international community as a democratic leader and although not very enthusiastic about the RR process, he has still refrained from openly sabotaging the entire process. Therefore, at this point in time, it is better for the OAS to continue to carefully monitor the RR in Venezuela, while continuing to withhold sanctions until there has been a clear breach of the rules regulating the process.

Second of all, the OAS has taken a very careful approach to the situation in Venezuela because it is aware that its conduct is being closely analyzed by all its members. Any international organization is only as strong as the support it receives from its members. In considering applying the Democracy Clause to Venezuela, the OAS has to carefully

balance on the one hand the support for democratic principles in the Hemisphere; while on the other hand, it has to be extremely careful to respect the sovereignty of its member states. The OAS runs a real danger of falling into disrepute with its members if it is seen to apply the IADC in a manner which is perceived to excessively intrude into the domestic affairs of each country. This danger becomes particularly relevant when the U.S. government intervenes since many countries continue to harbour the suspicion that the OAS is simply an extension of the world's most powerful country. That is why it is probably better for the OAS to continue to refrain from applying the Democracy Clause to Venezuela until there is a general consensus among its members that the Venezuelan government has incurred in an unconstitutional alteration of the democratic regime. At the same time, the OAS should continue to work with those governments that have close ties with the Venezuelan government (i.e. Brazil) in efforts to find a democratic solution to the conflict.

## V. Conclusion

The IADC was created to deal with situations such as the one created by the Fujimori government in Peru. There are, however, still significant difficulties in determining at what point a democratically elected government ceases to be democratic and becomes authoritarian thereby incurring a breach of Article 19 of the Charter. The current political crisis in Venezuela highlights these difficulties. In considering any actions under the Charter, the OAS runs the risk if it acts prematurely to be accused of interfering in the sovereignty of its member states; on the other hand, if it is too delayed in its actions, the OAS will be accused of being negligent for taking actions only after the situation has reached unmanageable levels. Until now, the OAS's decisions regarding Venezuela have been accurate. There is, however, the continuous need for the OAS to carefully monitor the situation in Venezuela to ensure that appropriate measures are taken to avoid any further escalation in the conflict. Hopefully, this situation can be avoided and a democratic solution can be found to the country's problems.

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## Endnotes

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- <sup>1</sup> OAS, *Inter-American Democratic Charter* (11 Sept 2001), [http://www.oas.org/OASpage/eng/Documents/Democratic\\_Charter.htm](http://www.oas.org/OASpage/eng/Documents/Democratic_Charter.htm) Art. 20 of the IADC states that only a member state (i.e. Colombia's Ambassador to the OAS or the Secretary General of the OAS) have the power to call for the application of the Charter to any member state.
- <sup>2</sup> P.A. Ferguson, "The Inter-American Democratic Charter: Challenges and Opportunities" (April 2003) <http://www.ligi.ubc.ca>. At p. 1.
- <sup>3</sup> J.W. Graham, "A Magna Carta for the Americas-The Inter-American Democratic Charter: Genesis, Challenges and Canadian Connections" (September 2002) <http://www.ligi.ubc.ca>. At 4.
- <sup>4</sup> A.F. Cooper, "Negotiating the Inter-American Democratic Charter: A Case of 'New' Multilateralism?" (12 November 2003) <http://www.ligi.ubc.ca>.
- <sup>5</sup> See: *Supra* note 3 at 4.
- <sup>6</sup> See: *Supra* note 4 at 7.
- <sup>7</sup> See: *Supra* note 3 at 4.
- <sup>8</sup> See: *Supra* note 4 at 3.
- <sup>9</sup> See: *Supra* note 2 at 8.
- <sup>10</sup> *Acta de Constitución del Gobierno de Transición Democrática y Unidad Nacional* (12 Abril 2002), Venezuela Analítica [http://www.analitica.com/bitbliblioteca/carmona\\_estanga/decreto1.asp](http://www.analitica.com/bitbliblioteca/carmona_estanga/decreto1.asp).
- <sup>11</sup> OAS, *Resolution 811* (13 April 2002) <http://www.oas.org/OASpage/press2002/en/Press2002/april2002/VEResolution.htm>.
- <sup>12</sup> R.F. Noriega, "The Organization of American States and the Democratic Charter" *The DISAM Journal* (Summer 2002) [http://www.disam.dsca.mil/pubs/journal\\_index.htm](http://www.disam.dsca.mil/pubs/journal_index.htm). At p. 101.
- <sup>13</sup> *Ibid.*
- <sup>14</sup> *Ibid.*
- <sup>15</sup> OAS, *Resolution 833* (16 December 2002) <http://www.oas.org/OASpage/eng/Venezuela/CP10628E01.htm>.
- <sup>16</sup> *Acuerdo Entre la Representación de la República Bolivariana de Venezuela y los Factores Políticos y Sociales que lo Apoyan y la Coordinadora Democrática y las Organizaciones Políticas y la Sociedad Civil que la Conforman* (23 Mayo 2003), Venezuela Analítica <http://www.oas.org/OASpage/eng/Venezuela/Agreement052303en.htm>.
- <sup>17</sup> *Constitución de la República Bolivariana de Venezuela* (17 Nov 1999) <http://www.tsj.gov.ve/legislacion/constitucion1999.htm>. Art 72. The process of removing an elected official in Venezuela is rather complex. First, at least 20% of the voters who initially elected the official have to be in favour of his or her removal. If sufficient signatures are collected, a RR is then scheduled. In order for the official's mandate to be revoked in the RR, the amount of votes in favour of his removal must be equal or greater than the amount of votes by which that official was originally elected. In addition, the number of votes in favour of his removal must also be greater than the amount of votes against his removal.
- <sup>18</sup> CNE, *Resolución Sobre la Solicitud de Referendo Revocatorio contra el Presidente Hugo Chávez* (2 Marzo 2004) [http://www.cne.gov.ve/documentos/resol\\_040302\\_131.asp](http://www.cne.gov.ve/documentos/resol_040302_131.asp).
- <sup>19</sup> CNE, *Normas para Regular los Procesos de Referendo Revocatorios de Mandatos de Cargos de Elección Popular* (25 Septiembre 2003) Venezuela Analítica [http://www.cne.gov.ve/documentos/reg\\_referenda01.asp](http://www.cne.gov.ve/documentos/reg_referenda01.asp).
- <sup>20</sup> TSJ (Sala Electoral), *Sentencia que Valida las Firmas Objetadas por el Consejo Nacional Electoral* (15 Marzo 2004- Exp No. AA70-E-2004-000021) Venezuela Analítica <http://www.tsj.gov.ve/decisiones/selec/Marzo/24-150304-X00006.htm>.
- <sup>21</sup> TSJ (Sala Constitucional), *Sentencia de la Sala Constitucional anulando la Sentencia de la Sala Electoral* (23 Marzo 2004-Exp. No. 04-0620) <http://www.tsj.gov.ve/decisiones/scon/Marzo/442-230304-04-0620.htm>
- <sup>22</sup> E. Martínez, "Firmas Objetadas se Encuentran en Seis Estados" *El Universal* (24 Abril 2004) <http://www.eluniversal.com/2004/04/24/24A448353.shtml>.