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Toward a Constructive Inter-American Partnership

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INTRODUCTION

The next U.S. president will face a hemispheric scenario substantially different from that of the past.

Latin American countries have diversified their economic and political relations, attaining greater maturity and autonomy. As democracy takes hold in the region, new actors and new agendas are appearing. Some governments (Bolivia, Ecuador, Venezuela, Chile, Brazil, Guatemala, and Paraguay in a few months) and various international bodies (the World Bank, UNDP, ECLAC, and the IDB) are focusing attention on such problems as social exclusion, inequality, poverty and fiscal matters, which have not been adequately addressed, and which indeed have become exacerbated in many countries in recent years, despite reform and economic growth.

Although inter-American trade is increasing and the United States and Latin America are sharing more values and principles – especially those of democracy and human rights – than ever before, the U.S.-Latin American relationship has deteriorated.

Latin Americans expect relations with the United States to be based on political consultation and a shared vision of the region's future, one that is not limited to financial and technical cooperation or trade. If the United States would like to have more influence on good governance and rule of law in Latin America and to pursue other shared interests with the countries of the region, it must regain its prestige and moral authority in the region. This would lay the foundation for a new, truly multilateral partnership to consolidate democracy and development.

In the areas on which this paper mainly focuses — rule of law and democratic governance — the region overall has made significant progress. The United States is widely recognized in Latin America as having tried to play an active, positive role in judicial and police reform and support for civil society, human rights and fair elections.

But as democratic processes include new sectors and actors, complex, populist tensions have arisen in countries such as Bolivia, Ecuador, Venezuela and Nicaragua. Perhaps no country better exemplifies the need for sustained international cooperation to solve the region's most serious problems than Haiti. In these sensitive cases, better coordination with the region's most consolidated democracies — such as Brazil, Mexico and Chile — and the strengthening of regional and sub-regional bodies, which are seriously debilitated, should aid the pursuit of common goals.

II. Rule of Law in Latin America

Progress on rule of law in the region has been uneven. Overall, there is greater awareness of and respect for human rights. Judicial systems and police forces are engaged in reforms and innovation that are increasing access to justice and providing fairer enforcement of the law. Freer media and a dramatic growth in civil society stakeholders have led to greater oversight of the State and shone a spotlight on government malfeasance, a dramatic change from the decades during which authoritarian rule placed the State above the law. Nevertheless, countries that serve as sources of and transit points for narcotics find their societies threatened by well-armed and organized criminal bands. Crime and corruption pose the greatest threats to rule of

law, and violence remains rampant in many countries because of weak institutions and the challenges posed by organized crime and youth gangs.

Progress in the Application of Rule of Law

Establishment of and respect for the rule of law in Latin America seems to take two steps forward and one step back — or sometimes two steps back, when weak governments and judicial systems are overwhelmed by the resources and violence of the drug trade. Nonetheless, progress since the end of the Southern Cone dictatorships and the Central American conflicts is underscored by the following factors:

- Respect for human rights has increased, and the legal framework for human rights protection is relatively strong. Several countries (Argentina, Chile and Peru) have combated impunity in human rights cases while ensuring respect for legal procedures and due process.
- At the regional level, long-established bodies such as the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have become, in many cases, real mechanisms for handling citizens' complaints. Active civil society networks also monitor human rights, and many governments are willing to cooperate with international and regional human rights bodies.
- A highly visible element of the rule of law has been the relative success with which free and fair elections have been established. Ensuring the right to vote through independent and professional election commissions, and the existence of independent election-monitoring groups in many countries, have helped strengthen the rule of law, even as illicit sources of campaign funds regularly make headlines. Strong foreign involvement in the professionalization of election administration and support for civil society election-monitoring groups seem to have had a positive influence.
- Anti-corruption efforts have been aided by greater judicial autonomy and freer and more independent media willing to expose government officials to public scrutiny.
- While public security is perceived as deteriorating in most countries, there have been some success stories. Bogotá once had the highest homicide rate among the region's capitals, but a multi-dimensional Development Security and Peace Program (DESPAZ) lowered it from about 80 murders per 100,000 people in 1993 to 21 in 2004. Using a variation of the measures implemented in Colombia, São Paulo has seen a steady decline in homicide rates since 1999, contrasting with Brazil's overall upward trend. Crime fighting through the development of new institutions and policies, such as those used to reduce homicides in Bogotá, Cali and São Paulo, appears to be most successful when driven by local demand and designed locally.

Institutional Developments in Rule of Law Policies

Much of the progress in addressing a legacy of impunity and human rights abuses can be attributed to institutional measures spurred by greater awareness of and demand for basic rights.

In various countries (Peru, Colombia, Chile, and Brazil), oversight bodies such as the Supreme Court, Constitutional Court and Ombudsman's Office have played an important role in bolstering democracy and respect for human rights.

In some countries (Guatemala, Argentina, Chile and Peru), truth commissions have proposed ways of addressing the aftermath of violence, aiding victims and deepening democracy. These bodies have helped affirm countries' commitments to human rights, even if perpetrators of abuses have been brought to justice only infrequently. With the prosecution of several high-profile corruption and human rights cases, however, governing elites no longer are assured of peaceful retirement if they commit crimes while in office, as illustrated by the trials of General Pinochet and President Fujimori.

Democratization in the region is accompanied by a flourishing civil society that takes on oversight functions when the state is unwilling or poorly equipped to audit itself. Independent media and freedom of information acts also provide greater access to government information.

Challenges for Rule of Law

While efforts to measure rule of law are still incipient and inexact, the World Bank estimates that rule of law in Latin America declined by about 18 percent between 1996 and 2006. Among the challenges faced by the region:

- Latin America's homicide rate is second only to that of Africa, and the region's average is twice the world average. Notwithstanding the localized successes mentioned above, in most countries in the region (18), crime is the No. 1 public concern. In Rio de Janeiro, an estimated 700 people are shot to death by police each year. Since the end of armed conflict in El Salvador, Guatemala and Honduras in the 1980s, murder and crime rates have soared.
- Drug trafficking fuels both high-level organized crime and street-level youth gangs, which are an increasing source of terror for inhabitants of cities in Guatemala, El Salvador and Honduras. In some countries, drug barons finance the election of some candidates, assassinating others who do not pledge fealty. Dozens of candidates were murdered during Guatemala's recent congressional election campaign. Despite the "war on drugs" and increased drug seizures, the United Nations reports that street price of cocaine has been dropping steadily and significantly in the United States, indicating greater supply and failure in interdiction even as interceptions increase.
- While there are great variations within the region, overall Latin America is ranked as the world's second most corrupt region, after Africa. Thirty-two percent of people who have had contact with police reported paying bribes. In general, poorer countries suffer disproportionately from corruption, and Central American and Caribbean nations, which serve as a transit points for drug trafficking, find their government institutions infiltrated and hijacked by organized crime. Despite international conventions and anti-corruption collaboration between civil society and international organizations, some governments still lack the political will to take decisive action. Corruption poses a substantial obstacle to development, and more creative methods and incentives for promoting good governance and rule of law — such as those recommended by the World Bank Institute — need to be considered. Justice systems generally are mistrusted and underfunded; the poor often lack access to the justice systems. Judges are underpaid, and prisons overcrowded. While there has been progress in modernization of judicial systems, larger budgets also are needed, especially in the Andean countries.

III. Democratic Governance

Latin America and the Caribbean are caught in a political paradox. While democracy is becoming more firmly entrenched, it is also being questioned. According to Latinobarómetro, support for democracy dropped from 58 percent to 54 percent between 1995 and 2007. Costa Rica and Uruguay indicate the highest levels of support for democracy, and Bolivia and Venezuela take third and fourth place with 67 percent of citizens in both countries expressing support for the idea that democracy is preferable to any other type of government. Countries with the lowest scores are those facing public security crises: Honduras, El Salvador and Guatemala.

Disenchanted citizens, however, do not seek a return to authoritarian regimes; rather, they are “dissatisfied democrats.” The dissatisfaction is not with democracy, but with its failings, and is prompted by the urgency of reforms that would transform these systems from electoral democracies into true citizen democracies.

One of the most important developments in Latin American democracies in recent years has been increasingly inclusive politics. The 2000 presidential elections in Mexico and the recent Paraguayan elections have brought new political movements to power, breaking the long-standing political monopolies of the PRI in Mexico and the Partido Colorado in Paraguay.

Traditionally excluded identity groups have also gained ground. The percentage of women elected to Latin American parliaments nearly doubled between 1997 – 2007 from 10 percent to 18 percent, while over the course of 15 years the number of women cabinet ministers has increased from 9 percent to 24 percent. Although Latin America has had only four elected female presidents in its history, two have taken office since 2006. In Bolivia, indigenous people’s political participation has been transformed since the December 2005 election of President Evo Morales, although another turning point came in the mid 1990s with their increased participation in municipal elections. Though less dramatic, Ecuador has also seen indigenous movements succeed in municipal and legislative elections and in the executive branch, as part of a coalition. While women and indigenous people still have a long way to go to achieve representation proportionate to their population, their increasing inclusion has begun to make a difference in terms of equity.

Progress in Democratic Governance

In recent years, significant strides have been made in democratic governance:

- Political crises in Ecuador, Bolivia, Venezuela, Peru and Argentina were managed through legal, constitutional means, accompanied by political pacts and reforms to improve the quality of elections, political representation and democracy itself.
- Increasingly fair, transparent elections have helped increase the legitimacy of governments and electoral authorities and ensure alternation of power. In most countries, elections have reflected the will of the people and helped consolidate democratic governance. In many elections, the international community, particularly OAS observation missions, have played a key role in ensuring transparency. Election monitoring by civil society groups has been important in

- Mexico, Guatemala, Nicaragua, Panama, Colombia, Ecuador, Paraguay and Peru.
- The international community and national and international NGOs have promoted dialogue, consensus, support for a stronger party system and public participation in and oversight of democratic culture. Experiences such as Peru's National Accord, or the naming of the Supreme Court in Ecuador in 2005 after the resignation of President Lucio Gutiérrez, are examples of the positive relations among the international community, civil society and political parties.
 - The Inter-American Democratic Charter adopted on September 11, 2001, deserves special mention. While it has not functioned as it should - because of a lack of commitment from governments - it should be strengthened as a potential mechanism for defending democracy and fair elections.

Challenges to Democratic Governance

Although a few countries have experienced a deterioration of civil and political rights, a more widespread challenge for democracy today stems not from authoritarian threats, but from the complexity of expansion and strengthening of democracies that do not respond adequately when large sectors of the population, long sidelined from political life, demand to be included.

While much has been learned in recent years — building on a foundation of constitutional legality, free elections, electoral oversight, defense of human rights and the consolidation of democratic institution —some serious and complex problems persist in the region:

- In most countries, the State is weak. There is a lack of responsible fiscal policy to promote equality, legality, equal opportunity and substantial improvement of public services (justice, health, education, public security, water, etc.). Despite economic growth throughout the region, poverty has increased or held steady in sub-regions such as the Andean countries and Central America. This creates opportunities for U.S. and European cooperation in programs to address the food and energy crises and reduce poverty, as well as discussion of ways to decrease the negative impact of farm subsidies in developed countries.
- Dissatisfaction with politics is related to inequality, poverty and social exclusion, as well as the poor functioning of institutions. The 2007 Latinobarómetro survey concluded that respondents were calling for “more State”: “The region’s inhabitants perceive that the fruits of economic progress do not reach everyone. It is the hand of the State that somehow reaches them with development.” In other words, “lower poverty and unemployment rates are not enough to make people believe that the market economy is the only system that will bring development.”
- There is great disenchantment with politics and pessimism about democratic institutions (legislative and judicial branches and oversight bodies) and political parties. Hyper-presidentialism is the norm in a number of countries with parliaments and opposition parties too weak to provide effective checks and balances.
- The media have increasing influence in politics and democracy. The danger is that they may obey powerful economic interests and are increasingly concentrated in fewer hands, undermining the public debate that is a cornerstone of democracy.

Besides these general challenges, certain countries face specific hurdles:

- Venezuela and Nicaragua face a risk of what some call authoritarian involution and others call radical populism. This is reflected in a high concentration of power that threatens alternation of power and the guarantees necessary for effective political opposition, as well as greater influence in and control of public powers and democratic institutions, and violations of civil and political rights, such as freedom of expression, organization and the press. In Venezuela, however, President Hugo Chávez's defeat in the December 2007 referendum suggests that the government respects election results. The upcoming regional elections, scheduled for late 2008, will be the next test of the multiparty system.
- In Bolivia, political polarization and efforts to impose a new Constitution that was not based on consensus threaten governance, political stability and economic growth, while the opportunities offered by a strong international economic situation are passing the country by.
- Like Bolivia, Ecuador's constitution-building process takes place against a backdrop of high polarization, though President Correa's position is bolstered by a broader base of popular support and a weakened opposition.
- In Colombia, the persistence of guerrilla forces, "parapolitics," paramilitaries and drug trafficking threatens democratic governance. The country is implementing reforms in an effort to decrease narcotraffic influence in government, but the recent dispute sparked by Colombia's bombing of a FARC camp in Ecuador highlights the danger of Colombia's internal conflict spilling over its borders.

IV. Eight Steps toward a Constructive and Respectful Partnership for Improved Governance and Rule of Law in the Americas

1. Establish high-level dialogue on sensitive issues

Regional problems require regional dialogue and cooperation. It is crucial for the United States, Canada and Latin American countries to start talks on a new regional security strategy that should highlight, in particular, the problems related to drug trafficking and immigration.

- The "War on Drugs" has had numerous unintended effects, including the funding of organized crime (according to some estimates, 70 percent of organized crime proceeds come from drugs, with human and arms trafficking as other important sources) and the creation of a narco-industrial complex that creates jobs for financial institutions, prisons, security forces, government bureaucracies, weapons manufacturers and criminal groups. The negative effects of prohibition may outweigh the benefits, leading some serious analysts in the region to call for some degree of drug legalization. A respected, independent, inter-American panel should clarify the effects and costs of drug control and the ways in which government agencies and illegal organizations have become mutually dependent. The outcome could signal the need for a paradigm shift from "war" to a "more realistic focus on harm reduction" recognizing the complex legal, moral and public health issues involved. One area on which there seems to be growing consensus is that combating drug-related criminal networks necessarily depends

on enhanced regional cooperation processes aimed at training and assistance to police, prosecutorial and judicial institutions.

- U.S. immigration policies also have a direct impact on the rule of law and therefore merit regional consideration. About 85 percent of immigrants to the United States are from Mexico and Central America, and millions are in the country illegally. Far from deterring illegal immigration, U.S. policies have spurred the growth of a vast human-trafficking industry that fuels organized crime and undermines the rule of law in both Latin America and the United States. Deportation of gang members to countries to which they have only tenuous ties exacerbates crime and aggravates relations. A recent Zogby poll suggests that many Americans would like to address illegal immigration by supporting job creation in Latin America.

2. Seek dialogue and multilateral action on “sensitive” countries

Consultation and informal multilateralism are effective tools for rule of law and democratic governance in the region. It is crucial to respect and encourage regional and sub-regional political and economic integration and security efforts in Latin America and the Caribbean to lay the groundwork for dialogue and joint actions involving as many countries as possible.

Particular attention should be paid to:

- Haiti. The UN presence in Haiti should strengthen and broaden cooperation among the United States, Europe and Latin America. The 12-month mandate of the UN Mission for the Stabilization of Haiti should be extended and support for its objectives should specifically prioritize training of police forces and prison officials, and strengthening of the criminal justice system, as well as other broader actions that lay the groundwork for a modern State and economy.
- Cuba. The U.S. government should recognize the failure of the 40-year embargo and forge a new policy that would include an immediate end to heavy-handed pressure on other countries to isolate Cuba; review of the impact (often unintended and possibly negative) of economic assistance to dissidents; development of a realistic and effective people-to-people strategy; initiation of official dialogue; and lifting of the embargo.
- Venezuela. While the situation in Venezuela must be monitored to ensure that political and civil rights do not deteriorate further, it is important to avoid unilateral policies that only result in greater polarization and complicate possibilities for dialogue between the government and the opposition. The U.S.—along with other countries—should support an OAS observation mission for the November elections.
- Bolivia. Active cooperation is needed to support dialogue between the government and the opposition to avoid greater polarization and political instability. Given the rocky state of relations between Washington and La Paz, the U.S. cannot engage in direct mediation, though it can discretely encourage the efforts of third countries (i.e. Brazil). The U.S. should correct imbalances in its bilateral cooperation by decreasing the amount of funding for opposition regional governments in favor of activities coordinated with the central government and a broad range of municipal actors.

3. Generate a new (post-Washington) Consensus

Although the Washington Consensus is widely considered defunct, or at least inadequate in the face of today’s challenges, a clear successor has not emerged. The

European Union's support for discussion of "social cohesion," as a response to inequality and exclusion, fills part of the gap. The Venezuelan-led "Bolivarian Alternative" has also gained ground in many circles. It is high time to have new ideas and proposals from Washington.

If development is to lift all boats, democracy and rule of law must be based on common strategies in areas such as public spending, tax reform, property rights and fighting corruption. The United States should pursue this by:

- a) Promoting debate on issues that go beyond economic growth, in a process that includes the European Union, developing regions of the world, and under-represented sectors such as women, the poor, and indigenous and other ethnic groups.
- b) Grounding the new consensus in the broad-based development framework laid out in the Millennium Development Goals.
- c) Supporting research and evidence-based policy making on the interdependence of democracy and development and the effectiveness of aid programs,
- d) Engaging international financial institutions in debate on and implementation of the new consensus. This can be achieved in a number of ways. While the World Bank has focused on corruption, less has been done to identify emerging critical issues such as the effectiveness of development, the quality of the public sector, and workers' rights. The U.S. government should use its influence in the World Bank and Inter-American Development Bank to promote transparency, inclusion and accountability mechanisms. A renewed focus on development should also shift responsibility for international financial institutions from the Department of the Treasury to USAID.

4. Create an Inter-American Democracy Fund

As part of a broader review of U.S. foreign assistance, cooperation with Latin America on governance and rule of law requires closer, more empirical examination. Democracy is the dominant form of government in Latin America, and there is substantial agreement that the focus in the region must be on improving the efficiency, competence and integrity of democratic institutions.

With several decades of democratic governance behind it and a range of bilateral and multilateral assistance providers available, Latin America no longer feels dependent on the United States for the transfer of technical skills. Instead, there is interest in access to a broader range of ideas, innovations and experiences from within Latin America and other regions.

A framework for cooperation is needed, along with a higher level of democracy strengthening efforts that places emphasis on empirical assessments of needs, demands and policies for governance and rule of law. An Inter-American Democracy Fund should be created and funded by contributions from the United States, Canada, EU and Latin American countries. Its governance should be managed either through an existing multilateral organization or an ad hoc structure. The fund's priorities would include:

- **Civil Society.** Latin America has developed a vibrant civil society, sometimes with the support of foreign donors. Well-targeted support for civil society organizations

- can enrich democracy and the rule of law by enhancing their educational, advocacy and oversight functions and helping them become a training ground for future government officials. Efforts to enhance civil society's advocacy capacity can be strengthened by a clearer understanding of State-society interactions and the selection of organizations with solid membership and political clout. Proper targeting also implies that organizations do not become wholly dependent on foreign funds or serve as mouthpieces for U.S. or other partisan interests, but that they develop genuine foundations of popular support and are managed efficiently and transparently.
- Political representation. Despite their flaws, there is no substitute for parliaments and political parties. The Democracy Fund should strengthen parties' outreach, transparency, internal democracy and programmatic capacity. The inclusive, non-partisan approach increasingly adopted by U.S. party foundations should continue. Funding to strengthen parliaments could help to facilitate demand-driven political reforms that enhance party cohesion, research and policy-planning, and capacity for the review and analysis of national budgets,
 - The media. Media ownership is organized as monopolies or duopolies in many countries (including Mexico, Brazil, Argentina, and Colombia). Declining levels of trust and participation in political parties have made the media more powerful in agenda setting and elections. The United States can contribute to increased freedom of the press by promoting links between U.S. and Canadian media and those in Latin America, transparency in media ownership and equitable media access during elections, monitoring of press coverage and freedom by the OAS and civil society groups, and promoting the development of alternative media.
 - Cooperation in pan-American education. While the United States has provided strong pan-American military support and coordination, it has underinvested in education. The ability of Latin Americans to solve their own problems depends to a great extent on the quality of education and the sharing of ideas and experiences in the region. While U.S. universities have helped train Latin America's political and economic elites, they also have promoted a "brain drain" from the region. At the same time, many Latin American students lack access to U.S. universities or find it increasingly difficult to obtain visas. The United States should support greater academic cooperation in the social sciences, including scholarships or funding to expand Latin American institutions such as FLACSO (the Latin American School of Social Sciences) and programs that would help professionalize public administration. Scholarships and support should be expanded, and government officials should be allowed sabbaticals to reinforce and share their intellectual capital, increase the professionalism of public administrators, and provide incentives for good governance. Generous investment in education would be repaid many times over while fostering greater regional cooperation and integration.
 - Justice. U.S. and European cooperation agencies should evaluate previous efforts at justice and police reform, and identify opportunities to more effectively support genuine improvements in their competence and impartiality. In addition, the international community should assist the development of better internal controls, anti-corruption measures, and civil society participation in reform and oversight, and assist the design of indicators for the judiciary, public defense systems, and stronger justice of the peace systems. Facilitating the sharing of local experience is critical to finding creative solutions to common problems.

5. Recognize that rule of law begins at home

The United States' influence on Latin American rule of law policies is severely undermined by its perceived lack of moral authority. To change this, the new U.S. president should promptly address two issues:

- The Guantánamo prison has had a negative effect on U.S.-Latin American relations as it symbolizes for many Latin Americans a disregard for human rights and the rule of law as well as an affront to the region, which has not forgotten its dark decades of state-sponsored abuses of human rights and civil liberties. Closing the prison immediately would go a long way toward restoring Latin Americans' trust and confidence in the United States.
- U.S. advocacy for human rights rings hollow as long as the United States defers joining the inter-American human rights system, including the Inter-American Court of Human Rights. This, along with membership in the International Criminal Court, would help improve the United States' image the region as a defender, and not just preacher, of human rights.

6. Build a domestic constituency for hemispheric cooperation

U.S. citizens are woefully ignorant of Latin American processes and politics. A 2007 Zogby poll found that only 10% of survey respondents are familiar with Brazilian President Luiz Inacio Lula da Silva while only 20% knew of Mexican President Felipe Calderon. The lack of knowledge regarding Latin American politics is paralleled in the area of development aid with a majority of Americans vastly overestimating the percentage of the federal budget allocated to foreign assistance.

Yet the sustainability of political support for improved U.S.-Latin American relations depends on the development of a domestic constituency with increased awareness and commitment to hemispheric issues:

- The Latino community should play a special role in educating U.S. citizens regarding Latin American realities.
- Education on hemispheric issues and cooperation should be developed as part of a broader overhaul of U.S. education systems with the aim of developing citizens better prepared for a globalized world.

7. Cooperate regionally to strengthen the Inter-American Democratic Charter and the role of OAS electoral missions

The Charter, which has served primarily as a statement of principles, should incorporate economic and social rights as substantive elements of democracy. A number of options exist for its strengthening. First, the Secretary General should be empowered to promote greater application of the Charter in the Region. Additionally, the invocation of Article 17 by a member country would be an opportunity to apply and de-stigmatize the Charter. Furthermore, the Charter should be reinforced through the creation of a civil society monitoring network and of an international coalition of "friends of the charter" countries to promote its implementation. Electoral missions, besides having the support of most countries in the region, promote regional cooperation in reform and greater transparency in electoral systems.

8. Support for global anti-corruption instruments and practices

The U.S. Foreign Corrupt Practices Act is a credible deterrent; in the interests of U.S. businesses and the region, the United States should urge the European Union to implement a similar measure. The United States should actively support other complementary measures aimed at mutual accountability and transparency. One example is the Extractive Industries Transparency Initiative which sets a global standard for companies to publish what they pay and for governments to disclose what they receive.