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## **A Project for the Americas: Promoting Democracy and Strengthening the Rule of Law in the**

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## INTRODUCTION

### **I. 2009: Challenges and Opportunities**

The Western hemisphere is unlikely to be the source of the most serious and pressing challenges facing the next U.S. administration. Americans will have to cope with Iraq, Iran, and competition from the surging industrial economies of Asia. For Washington to regain lost capital, and make progress on the urgent global economic and security challenges it faces, the next Presidential team will need to rectify some unfortunate legacies of the current administration.

A core decision the new U.S. Administration will face is whether to shift emphasis from the current over-reliance on “hard” power to devote more effort to the restoration of the USA’s “soft” power. A related issue is how far to go in accepting “multilateral” constraints. If the next administration wishes to rebuild its “soft power,” and upgrades its democracy and rule of law commitments in this context, one key element could be a well-designed and carefully implemented strategy to re-emphasize its commitment to multilateral approaches; to working respectfully, on a basis of mutual coordination with its democratic allies; and to the universal obligations that arise with a strengthened and international rule of law.

#### **Why the Western Hemisphere?**

But why highlight the Western hemisphere, when Washington’s biggest challenges arise elsewhere? The short answer is because the U.S. benefits greatly from its location in a large region where open and competitive politics are now the norm; and where there are broadly liberal, constitutional, and rights-respecting institutions and practices. But the region’s political and legal institutions still often fail to live up to the principles on which they are founded. This is why multilateral coordination to reinforce democracy and strengthen rule of law can make a big contribution. The foundations are already in place in the Western hemisphere, as they are not in most other large world regions. So the challenge for policy-makers is to devise country and context-specific strategies and instruments to turn them into reality.

The USA has long benefited from having a relatively “good” neighborhood, and the recent regional consensus has boosted U.S. security and prosperity further. There have always been counter-currents, but in broad geo-strategic terms, the Americas constitute a zone of peace and regional cooperation more favorable to democracy and the rule of law than any other, apart from the recent history of the EU. A new administration attempting a fresh start and crafting a more pluralist and inclusive political strategy can hope to reap early dividends in the Americas, which could have positive repercussions on more intractable relationships with other regions. Many leaders and opinion-formers in Latin America and the Caribbean await a new administration with hope and anticipation. The counter-trends visible in Venezuela and some other countries are mainly reactions to recent U.S. priorities and tactics, and are not widely supported.

A shift towards softer and more inclusive diplomacy in the Americas is worth attempting. Favorable initial conditions, good receptivity, and relatively low risk all point in the same

direction. But if the new administration is to convert vague good intentions into demonstrably positive achievements, it will need to focus on a succession of precise issues and dilemmas.

## **II. Democracy Promotion: Caribbean Contrasts**

Those who wish to see the propagation of democracy and the rule of law must recognize that these need to be locally generated and embedded. Democracy-building is often a process of affirming a particular national identity and set of communal aspirations, in opposition to external models and controls. The U.S. built its own democratic political culture on a rejection of European (and in particular of British monarchical) models and controls, for example.

There are at least three Caribbean islands where the incoming administration will inherit strong and distinctive bilateral policy commitments with a strong Democracy Promotion (DP) content. In all three cases, it will be necessary to decide whether to continue with current policies, or make course corrections.

### **Cuba**

The incoming administration will inherit long-standing policies ostensibly directed toward DP in a post-Castro Cuba, which were “codified” by the U.S. Congress with the 1996 Helms-Burton Law. The Bush administration tightened bilateral sanctions further, and appointed a State Department “transition” coordinator, but that was before Fidel Castro’s illness, and the smooth transfer of power to his brother.

January 2009 will mark the fiftieth anniversary of the Cuban Revolution. Most Latin Americans and much of the rest of the world, but also most U.S. citizens (and even many Cuban-Americans) believe that unilateral U.S. sanctions have proved counter-productive. A different, more ‘soft power’, multilateral approach would likely do more to help Cubans liberalize and democratize; and it would also boost U.S. credibility in the region and beyond. Ending the embargo and engaging with the foreign enterprises that have invested there and are currently subject to sanctions would be a positive step, replicating measures already adopted for China and Vietnam with positive results. Simply facilitating contacts, including family reunification visits, and business, academic and cultural exchanges should help to loosen the hold of regime hardliners.

Cuba presents a policy dilemma: on the one hand, the Cuban Communist Party is likely to remain in a dominant position for the indefinite future, it is not a “reform communist” institution that can evolve into one among various electoral contenders; on the other hand, it retains international recognition and a significant degree of regime legitimacy within the UN. But this is not an acceptable permanent state of affairs for liberal democrats in the Americas, since DP must ultimately be subject to the test of democratic validation. Given that drastic regime change looks unlikely and, moreover, that Washington would find the consequences of a breakdown of order in Cuba hard to handle, it might be more constructive to reinforce the positive characteristics of the Cuban regime, focus on peace and security, rather than human rights and democracy, and work with allies in the hemisphere and beyond to give Havana incentives to liberalize. Despite apparent behind the scenes control by Fidel Castro, the Cuban regime is beginning to liberalize some forms of ownership and allowing some spaces for autonomous expression. And despite the human rights record of the regime, at least since the end of the Cold War, Cuba has developed a clear record of compliance with its

international obligations. In other words, the dividends of positive pragmatism may ultimately be those that the negative ideological approach has unsuccessfully hoped to achieve over the past decades.

Cooperation with the EU on this issue could be fruitful. EU member States are divided over DP in Cuba, between a more punitive position and one based on 'critical dialogue.' A trilateral U.S.-EU-Latin American dialogue on how to address the Cuban issue in the context of the Rio Group or the U.S.-EU trans-Atlantic dialogue could approximate these positions and establish 'shared responsibility' for careful efforts to nurture and support democratization tendencies within Cuba. Washington's condemnation of this regime lacks international resonance in part because the legal black hole of most concern to the international community is the U.S.-run detainee camp at the Guantánamo naval base. The next administration can continue to operate that facility (in defiance of Cuban and international opinion) and to enforce unilateral sanctions against Havana. But this would undermine Washington's credibility as a defender of the rule of law, or as an intelligent and multilateral-minded promoter of democracy.

### **Puerto Rico**

The new administration will encounter two rival pieces of legislation under consideration by the House Insular Affairs Committee designed to settle the island's "status issue," together with bitter divisions between the rival parties there concerning the ultimate shape of insular democracy; the relative weight of two rival sets of (highly politicized) judicial authorities; and the eccentric balance between rights and obligations that the U.S. Constitution imposes on this large community of "second class" citizens.

In 2005 a White House Inter-Agency Task Force classified the current "Commonwealth" status of the island as no more than an interim solution. Only full independence or full statehood would count as constitutionally "final" status solutions. But this position was deeply resisted by the incumbent governor and his party, who assert that upgraded Commonwealth status is a viable and potentially permanent option, and that the democratic sovereignty of the Puerto Rican population requires the choice between the three alternatives to be decided, above all, by an insular constitutional convention, rather than principally by the external authorities in Washington.

Notwithstanding current and prospective federal benefit programs, the fiscal and employment prospects of the islanders are deteriorating. As free trade agreements with other Latin American nations proliferate, and as special tax incentive policies are reined back, Puerto Rico is losing its competitive edge. It remains one of the largest trade and investment sites in the Caribbean, but if they wish to stabilize good quality democratic governance, Washington policymakers will need to clarify the scope and structure of the rule of law in this corner of the Caribbean. For obvious constitutional reasons, the questions of democracy and the rule of law posed by Puerto Rico can only be handled on a bilateral basis. A new administration that has prepared the ground well and developed a constructive formula for consolidating democratic progress and standardizing rights in Puerto Rico could reinforce its credibility and leverage in other parts of Latin America. A more legitimate confident and united Puerto Rico could eventually even serve as a vital partner and intermediary in western hemispheric diplomacy, instead of continuing on its current path as an embarrassing sideshow, best kept out of the limelight.

## **Haiti**

Haiti has a long history of external interventions and sovereignty suspensions. Most recently, in 2004, elected President Aristide was forced from office following growing disorder, and an interim government invited the United Nations to send a “stabilization mission.” Among its functions, the Security Council changed it with demobilizing armed groups, restructuring and reforming the Haitian police, and fostering institutional development and a process of national dialogue and reconciliation. Multinational forces were deployed by MINUSTAH. Four years later, there is still no agreed date for the withdrawal of the UN mission, and some say another five years are necessary to train the replacement police force.

Some might say that it is the UN, rather than the USA or its regional allies, which is in the frontline with this case. But a new administration could take a fresh look at the history of the U.S.-Haiti interactions, and reflect on whether there is not both a prudent and expedient case for trying a different approach. The prospect for Haitian democracy (and some improvements in the rule of law) could brighten as much by a disposition to listen and respect local opinions and preferences, as by a new round of “top down” conditioned aid or state building activities. Haiti is by far the most intractable example of cumulative policy failure in the western hemisphere. But Haiti is significantly more manageable compared to the problems of state-building in other large regions. If Washington intends to demonstrate that it knows how to help rectify state failure elsewhere, then this is a prime site to show what it will now do better.

However, as various state-building exercises have shown, “implanting” democracy in the absence of solid state structures is bound to fail. So the emphasis should be on creating solid institutions, not just courts and police forces, but even the kind of educational facilities that allows Haiti’s youngest citizens to develop the capabilities that their country needs. Like other failed states, Haiti needs at least a ‘generational’ commitment to reform, the results of which will not be visible for years to come.

### **III. Strengthening the Rule of Law in the Americas**

A series of specific and quite intricate ongoing policy issues will largely define the rule of law profile of the new administration. They arise because of existing U.S. policies and commitments in such areas as narcotics control, counter-terrorism, extradition and extra-territoriality, all of which do far more to define external perceptions of Washington’s priorities than do targeted USAID programs to train judges or supply courts with information technology hardware.

#### **Whose Law, Enforced in Which Jurisdiction?**

The Inter-American Court (like the International Criminal Court (ICC) and the International Court of Justice) is entitled to exercise a limited degree of judicial authority at a Supra-national level. But these powers are very weak and derivative, when compared to those of the European Court of Human Rights, or the European Court of Justice, for example.

Many constitutional regimes – those of the Americas included (with variations among them, and the U.S. at the unilateralist end of the spectrum) – accept only the most tentative and provisional of guidance from legal authorities outside their own structure. Thus, for example, the U.S. Supreme Court recently ruled that lower courts are not

obliged to correct their treatment of 51 Mexican nationals whose rights were found by the International Court of Justice to have been violated through lack of access to their consular authorities prior to their trials. In an earlier ruling, the U.S. Supreme Court has upheld prosecutions of Mexican nationals in federal courts without regard to the manner in which they brought into the USA (i.e. they can be kidnapped in Mexico for trial in the U.S.).

At the same time that U.S. courts exercise these powers over foreign nationals, the U.S. has also been urging Latin American governments to sign bilateral agreements to exempt U.S. military personnel from legal liability under local laws (to neutralize the authority of the ICC). Further examples of the extra-territorial extension of U.S. legal authority can be found in the Helms-Burton Law, and further instances of U.S. legal authority taking preference over the domestic laws applying to Latin American nationals in their own countries can be found in the extradition processes currently underway in Colombia and elsewhere. One particularly sensitive case concerns Eduardo Posada Carriles, (accused of a terrorist atrocity that destroyed a civilian airliner killing all passengers on board in 1976) whose extradition to Venezuela has been blocked by the U.S. Justice Department. It is necessary to recall such specific cases because a strengthened hemisphere-wide rule of law system would need to rest on principles of due process and procedural reciprocity that are not currently always in evidence across the region. No doubt, justice systems are deficient and require upgrading in many parts of the Americas. Rule of law weaknesses in most jurisdictions make region-wide cooperation and joint enforcement problematic in many domains, and especially in the fraught areas of drugs trafficking, international crime, terrorism, or arms trading. But if the new administration is to operate on a more multilateral basis, and with greater emphasis on mutual respect and norms convergence, it will need to address some of the more egregious aspects of what is often seen outside the USA as a variant of legal imperialism.

Such practices were present long before September 11, 2001, and they are deeply rooted, but they have become more of an impediment to joint action and internalized legal cooperation on criminal matters as a result of the “war of terror.” An administration that wishes to revive U.S. “soft power,” and to enlist the co-operation of Latin America’s increasingly professional and self-confident democratic judiciaries, would be well-advised to review its own record and consider which aspects of legal unilateralism and extra-territoriality might be reined back.

### **Plan Colombia**

A key test of the new administration’s attitude to “rule of law” cooperation is the way it manages what must presumably be the closing stages of “Plan Colombia,” the counter-insurgency policy launched by the Clinton administration at the end of the 1990s, which has turned into the most prominent and costly feature of the Bush administration’s Latin American activities. The plan is generally well-regarded in Colombia and in the U.S., but has elicited considerable controversy and resistance beyond that bilateral context.

The broad outlines of the Colombia debate are well known. With U.S. assistance, the Colombian government has reasserted control over large rural areas that had long escaped central authority. The security forces are better funded, equipped and trained than before, their morale has risen and they seem to enjoy strong popular support. Although kidnapping continues at an extraordinarily high level, and other indicators of criminality and terrorism remain at alarming levels, the direction of change is

unmistakably favorable, and the main target of U.S.-Colombian collaboration, the FARC, is definitely under severe pressure. At least in major urban areas the pre-requisites for a functioning democracy and an effective rule of law regime are much more clearly in place. However, severe problems remain. Paramilitary forces are also known to have committed atrocities. It remains to be seen whether they can now be curbed by the courts. Current scandals over the high proportion of Congressmen who secured elections by tying themselves to the paramilitary threaten to destabilize the country's democratic institutions. Plan Colombia has built up and professionalized the Colombian armed forces, but it has also destabilized the balance of power in the north Andes, helping to precipitate an arms race with the Venezuelans and provoking the Ecuadorian military into near confrontation both with Colombia and with the USA.

Current Washington policy is to treat the Uribe administration as democracy's best friend, and to build it up as the preferred alternative to Venezuela. Instead of playing one off against the other, the new administration would do better to acknowledge the positive features of each, but hold out for more consistent and less personalist approaches to securing a more stable future.

Whatever overall balance (and U.S. opinion is clearly divided at this point), the next administration will find its desire to strengthen the rule of law in Latin America subject to severe pressure and continual scrutiny depending upon how the end-game in Colombia proceeds. There are strong lobbies on both sides (the human rights NGOs and the AFL-CIO have an active role here) and trustworthy neutral evaluations are hard to come by. Some hold up Plan Colombia as a shining example of a successful U.S. initiative, and want it extended (to Mexico, for instance). Others stress the massive and continuing human rights violations, and call for the U.S. to disengage. But the next administration can neither repudiate what has been achieved, nor extrapolate from it into the future. It will need to work with and listen to a wide array of European and American partners to make this credible and acceptable.

In order to address region-wide issues and interactions, it would be worth considering an international advisory body, with broad representation and a mandate to assemble evidence, offer advice and, if requested, mediation. The Central American precedent was Contadora and the Esquipulas process, which identified points of agreement that shaped the peace process in the isthmus. The tensions dividing Colombia, Venezuela and Ecuador are not yet severe, but they could spin out of control. The current polarization of views about how to defend democracy and advance the rule of law intersect with some extremely specific controversies over, for example, the role of the Manta base in Ecuador, the credibility of accusations allegedly deriving from captured computer data, and further points of contention that cannot be clarified without extensive research and conciliation.

The Contadora precedent is highly relevant to the current tensions in "Grancolumbia" (i.e. Colombia, Ecuador, and Venezuela). At a time in the 1980s when internal violence and interstate ideological conflict were propelling Central America toward region-wide conflict and possible external military intervention, a consortium of neighboring republics, backed up by the EU, came together to define principles for a settlement that would avoid war, address human rights violations, and promote de-escalation, reconciliation, pacification, and eventual democratization throughout the isthmus. The current situation is not so extreme, but it is serious and potentially dangerous. A new U.S. administration should desist from pouring fuel on the fire, and would do better to stand back while more

credible interlocutors develop a Contadora-type framework for a more rule-governed and democratic northern Andes.

The Rio Group, led by Brazil and Mexico, is the most credible of the available interlocutors. Support from the EU is again likely. The OAS could also play a role, provided it could establish its bona fides and independence from Washington. Canada and Chile might help here, as might Cuba once the process gained momentum. As with Contadora, the guiding principles should include the following:

1. Mutual respect for the sovereignty and territorial integrity of the three affected states;
2. Dispute resolution based on international law and regional mediation;
3. Agreement by all parties to use their good offices with opposition groups to facilitate peace and reconciliation in neighboring countries;
4. Reinforcement of legal and democratic procedures within each state to contain and channel internal differences;
5. Externally monitored programs of refugee repatriation, assistance for internally displaced communities, and reintegration of outlawed groups; and
6. Pledges of material support and assistance from the friends of Gran Colombia whenever the three governments demonstrate their agreement and wish for such help.

This would not be "interventionist", because it would just formulate principles that would need to be accepted by all three states in order to trigger more specific commitments. None of the contending parties will be keen to reject these principles outright, although each will doubtless interpret their application differently. So the task of the support group will be to liaise with all sides in the search for mutually acceptable assurances. Washington may anticipate that it is Venezuela that will be the spoiler, but this should not be taken for granted. It would be equally critical for Colombia's friends to win Uribe's participation. It is the soundness and legitimacy of the underlying principles, and the consistency of regional support for them, that will matter over the medium term. All across Gran Colombia opinion formers will need to accept that this is a formula preferable to the present direction of march. If Washington can demonstrate its tolerance of this type of dispute resolution approach in South America, that should set a valuable precedent for similar exercises that may be needed in more troubled contexts elsewhere.

### **Mexico: A Sensitive Partner**

All the rule of law issues outlined above are relevant for Mexico as well, with the additional complications generated by the three thousand kilometer land border, economic interdependence accentuated by NAFTA, and the exceptional scale of the Mexican-born population resident in the USA. The current administration has unsuccessfully attempted to reform immigration laws, with results that may well create more uncertainty and legal conflict. It has addressed the drugs issue by launching the "Merida" initiative, a plan that has yet to be fully realized, and that could tilt either in a counter-insurgency direction (in the style of Plan Colombia) or towards greater emphasis on civilian co-operation and institutional reform.

The next administration will face some early and critical decisions over which aspects of this relationship to prioritize, and which instruments are most appropriate. One crucial dimension will be to define and monitor the terms of cooperation between the justice

systems of the two countries. Parallels between Mexico and Colombia should be de-emphasized as misleading, and potentially counter-productive. One major priority for the administration should be to establish or reinforce systems of issue monitoring, information pooling, and agency coordination directed toward helping the Mexicans to help themselves. Major efforts at police and judicial reform with more selective and professional approaches to crime fighting and to rights-enforcing, are being made by a variety of agencies and political actors within Mexico. They have to contend with many sensitivities and cross currents.

Although a new U.S. administration can build on the positive features of current policies on both sides of the border, it will also need to contend with the mismatch between what U.S. voters demand and what policymakers can actually deliver. Patience, resilience, and an understanding of the sensitivities of the relationship from the Mexican side will be required. There may be scope for progress at state and municipal level (e.g. across the various twin cities such as San Diego/Tijuana and Ciudad Juarez/El Paso) to anchor and reinforce initiatives taken at the federal level. But Washington policymakers will also need to exercise close oversight over the inter-related issues of immigration, the treatment of undocumented migrants, police and judicial cooperation, and enforcement of border controls. It is difficult to single out any one strand for special attention here, but the new administration ought to be concerned at the large number of deaths occurring as a result of increasingly dangerous border crossing conditions (far more die at this “fence” than did at the old Berlin Wall). This is certainly an area where “strengthening the rule of law” and protecting the rights of ordinary workers requires considerably more effort and attention.

### **The Anglophone Caribbean**

The more effectively Mexico controls the flow of narcotics across its border into the USA, the greater the pressure on the small Anglophone common law islands of the Caribbean through whose waters the traffickers can also pass. The problems of state failure noted in Haiti have not yet spread to any small adjoining islands, but their police and justice systems are already extremely overstretched. A dozen democratic members of the OAS can be found in the insular Caribbean, most of them with large diasporas in Britain, Canada, France or the Netherlands.

For the most part, these are societies with law-abiding traditions and functioning institutions, but they are very small and vulnerable. The European Union is withdrawing some of the trade privileges that kept them going as exporters of tropical foodstuffs, and their economies are destabilized by today’s very high energy prices (most of them are importers). Venezuela offers some concessions in return for political partnership, but looking beyond the very short term they may be under severe pressure. CARICOM provides some regional linkage, and they ought to be well placed to mobilize cooperation from Canada, and Europe. They are easily overlooked, but if the new U.S. administration wishes to curb drug-trafficking, avert illegal migration, and demonstrate that “rule of law” institutions can be nurtured through international cooperation, they deserve concentrated attention. In this case, the U.S. should challenge the Europeans and the United Nations to play a full part, working to make the new international conventions to combat money-laundering, international crime and terrorism enforceable.

If current policies continue, record high oil and imported food prices have the potential to create “two, three, many” ‘Haitis’ (or Chávez dependents). But these are very small populations and they could be rescued effectively on quite a modest budget, provided

that their many external partners pooled their efforts and stayed focused. In return, they could require strong Caribbean adherence to their international commitments, but this is already something most small states in the area accept. There already exists a regional joint reaction force, a specialized in anti-kidnapping unit, and a regional intelligence centre. In April 2009, when the next Summit of the Americas meets in Port of Spain, the incoming U.S. administration could help lever up these commitments, making them more substantial than the previous empty agreement with CARICOM signed by President Clinton in 1997.

#### **IV. Consistent and Coherent Policy-Making**

Most of the issues and dilemmas surveyed in this memorandum require sustained monitoring and management at a lower level in the policymaking hierarchy. But coordination is a long standing key difficulty complicating Washington's successive efforts to rework inter-American relations, with various different branches of the federal government having a stake in different areas.

On matters of the highest salience (national security, or fundamental values) the White House can put together a policy framework and instruct key actors to follow through. DP and strengthening the rule of law can be part of such a presidential package, although they would be almost certainly mixed with other concerns (trade liberalization under Clinton, and the war on terror under Bush). In the past, Washington has tackled problems of coordination at the conceptual level through the establishment of bipartisan commissions and institutions. But these are rare and exceptional efforts, and they do not easily affect implementation. So it will be a real challenge for the next administration to establish the appropriate division of labor and coordination of actors to generate consistent and coherent policy on most of the issues examined here.

The task becomes more complex still in those cases where state and municipal governments have a strong interest (Florida and Miami in Cuba; Los Angeles and San Antonio in Mexico) particularly if U.S. public opinion becomes engaged (as it has over border issues). There are also highly motivated non-governmental organizations that wish to contribute to the reshaping of U.S. policy, although many of those wishing to be consulted are single issue advocates, incapable of proposing or conducting a rounded and consistent overall strategy. There are substantial players with stronger ties with particular countries or issues (multinational investors, creditors, commercial partners, and specialized bureaucracies such as Homeland Security or the DEA). They must conduct their business whether or not their activities attract political attention, and while they may want more democracy and a sounder judicial system, they have to work with realities on the ground. All this must be taken into account if White House-inspired initiatives are to generate consistent and coherent results. There are various models for broader participation worth considering here: some essayed with the Miami Summit process, others developed by the EU, Canada and even some UN organizations. The incoming administration should review the lessons from these experiences, and borrow or improve on the best of them.

Moreover, if the next administration chooses to embrace a more multilateral and consultative approach to policymaking it will also need to coordinate with a considerable range of external democratic allies, and to talk with a multiplicity of players in the various Latin American countries. The existing machinery for regional cooperation is in a fairly poor state of repair. Much policymaking therefore takes place at a bilateral or sub-regional level. The predictable consequence is that Latin American neighbors tend to

compete against each other for a favorable hearing in Washington. This has tended to accentuate the rivalry between, for example, Colombia and Venezuela, or Costa Rica and Panama; whereas a coherent and consistent multilateral strategy would keep all participants in balance.

At the international as well as the domestic level there are also single issue lobbyists and non-governmental intermediaries who press rival claims and aim to undercut each other. On issues such as strengthening the rule of law, it is important to develop objective criteria and reliable broad-based monitoring institutions that can counteract these seesaw effects. The inter-American Court and Commission have established some valuable precedents here, but they are insufficiently disseminated and followed. Most legal training remains strongly national in outlook, and there is scope for much more emphasis on comparative and standardized approaches, and on the regional as opposed to national aspects of justice promotion. Some key U.S. partners, such as Canada and the European Union, could contribute a long term and stabilizing influence here.

Another challenge is to review the basis upon which DP and rule of law promoting activities have been undertaken to date. Extensive scholarly and practical research on historical efforts provides many useful lessons for such a review. Perhaps the two most important findings are, first, that long term, sustained commitment is necessary; and, second, that a critical mass of investment must be reached for DP to make more than a marginal difference. This reinforces the argument for better and sustained coordination, and for engaging in international cooperative efforts, to raise investment levels the point where they make a difference. There are various small states in the Americas, some of them reviewed above, which provide the U.S. and its partners with a great opportunity to make a lasting difference, since the degree of financial commitment necessary to make a lasting difference in such countries would not be prohibitive.

## **V. Concluding Suggestions**

2009 offers any new administration a genuine opportunity to revive appropriate U.S. policies on democracy and rule of law promotion in the western hemisphere. This is easier to achieve in the Americas than in more troubled and less U.S.-friendly areas of the globe; and many in the region, in Europe and in the U.S. would respond with enthusiasm. With Washington's attention focused elsewhere, various highly localized problems accumulated, which will demand the urgent attention of a new administration.

The chances of a positive outcome will be enhanced, and the dangers of severe disappointments diminished, if the incoming administration:

- Bases its approach on a realistic and balanced diagnosis of the state of affairs in each country;
- Clearly states its goals and priorities;
- Shares responsibility for this agenda with its democratic partners in the region, in the EU, and with multilateral institutions;
- Gains broad domestic backing for its agenda; and
- Overcomes international skepticism, by complying with its international legal commitments and holding the highest standards of democratic propriety at home.

An initial objective could be to tie all these complex and diverse issues together in a single overarching Project for the Americas, which would be about the consolidation of

peaceful, law-abiding, rights-respecting, and environmentally-friendly democracies, with respect for local diversity and autonomies, and multilateral game rules. But this project cannot be merely rhetorical; it must provide for substantive – even if modest and targeted – cooperation. Further, U.S. citizens should be made aware that such a project would be a slow-maturing investment, but one that ultimately could pay the highest dividends: making the Americas perhaps the “leading” continent of peace and democracy in the world, one that offers U.S. citizens the democracy security guarantees they aspire to.

To forge this Project for the Americas, the new administration would have to back away from some recent excesses (close the Guantánamo prisoner facility and perhaps the base itself, disavow extra-territorial incursions, and reverse U.S. pressure on Latin American states to grant federal agents exemption from the ICC, for instance), and define an inter-American timetable to replace the stalled Miami Summit process, which should address not just trade but also, for example, immigration and criminal justice cooperation. Obviously, no U.S. administration can get very far without enlisting support from the new Congress.

Major democratic allies, including Brazil, Canada, and perhaps Mexico, will need to sign up and establish a degree of co-ownership. If Washington’s partners are too obviously subordinates, the initiative will be seen as little more than a sham. Not only will it require the active engagement of other major and autonomous democracies, there needs to be a clear multilateral framework to structure and direct the partnership.

The OAS is the obvious multilateral forum for political dialogue and collective action, including coordinating DP in the Western hemisphere. But the Organization would have to be overhauled to become the kind of representative and authoritative multilateral guarantor of democracy in the Western hemisphere that it has intermittently purported to be, ever since its foundation in 1948. In the 1990s, it became more assertive, but proved unable to cope with the Haitian crisis of 1994 (which meant that the UN had to play the leading role), and achieved only limited success dealing with political crises in Guatemala, Peru, or Ecuador. The Santiago Declaration and associated 2001 Democratic Charter were meant to mark a new era of stronger multilateralism, but these hopes have not materialized. There are other problems: the OAS lacks credibility as an interlocutor with Havana (Cuba was suspended 45 years ago); it is a Washington-based entity identified with the traditional U.S. position; it has no standing on Puerto Rico, given the non-sovereign status of the island; and other large countries, including Argentina, Brazil, Colombia, Mexico and Venezuela, have different reservations about the extent to which the OAS should be invited to become involved in their internal political affairs.

Although the OAS may be a weak instrument, there is no plausible substitute, and 2009 might provide an unusual opportunity to reform and revitalize the Organization, since its current leadership is the most promising for a very long time. The Inter-American Commission on Human Rights and the Inter-American Court in San Jose Costa Rica do have very positive track records that are worth enhancing to support rule of law initiatives. On the broader issue of democracy, the OAS Democracy Promotion Unit (now dependent on European support) could be strengthened, so that when a state invites the OAS to offer advice or mediate a conflict (as Bolivia and Ecuador have done recently) it is in a better position to make a difference. In short, the OAS can only play a role if the parties in contention recognize its neutrality and good offices.

## **VI. Summing Up**

The next administration will need to concentrate on the practicalities of policymaking in a succession of exacting and urgent arenas. Good strategy will require forward planning, effective coordination within the U.S., and respectful consultation with international allies. In a number of awkward situations, Washington will do best to hold back from intrusive involvement, perhaps allowing some leadership to pass to more credible allies, perhaps tolerating pluralist experimentation, possibly even correcting U.S. conduct, in the lights of external feedback. The so-called Bolivarian Alternative, for example, does not merit frontal condemnation. It would be better handled as a challenge to other democracies to do better. Playing off favorites against miscreants is a temptation to be resisted. Respectful dialogue over differences could be helpful