

# OVERVIEW OF US HUMAN RIGHTS POLICY IN LATIN AMERICA AND THE GROWTH OF A REGIONAL HUMAN RIGHTS REGIME

## ABSTRACT

International Governmental Organizations (IGOs) are inhibited by the power politics that reign supreme in the region. This can be illustrated by the unwillingness of the United States to recognize the International Criminal Court. Politically powerful countries in the hemisphere, like Brazil and Chile, who have accepted the jurisdiction of the Inter-American Court, have demonstrated a willingness to comply with its decisions, when historically they have ignored the decisions of the Commission. While Latin American states have accepted the authority of the Court and Commission, the English speaking states of the inter-American system have only partially embraced the workings of the human rights regime. This paper lays out what current US administrations should do in order to fully participate and lead the human rights regime in this hemisphere. The capacity of this regional human rights regime to function optimally in the future, resides in the total cooperation of states within the Intergovernmental Organizations that makeup the regime itself; primarily the cooperation by the most important actor in the hemisphere, the United States of America.

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The United States of America remains the leading power globally and with this power comes an immense responsibility. This administration has made it known that the propagation of global human rights is on the agenda; and that this nation has responsibility to curtail governments from infringing upon the basic human rights of its people. In strategically doing so we can remain at the helm of international superiority and ensure that the basic principles of democracy not only flourish, but also spread to every afflicted area of the globe.

In our hemisphere specifically, our foreign aid and military assistance has neither been used in the most effective manner possible to stop human rights abuses from occurring, nor has it been efficient in spreading human rights norms and practices. The United States foreign policy in Latin America has been marked with positive and ground breaking movements toward a greater respect for human rights, but contrarily, there are rampant periods of state violence and gross human rights violations throughout the region. The US economic and military influence within the inter-American system is unrivaled and it is with this superiority that we have become a beacon of light and an example of a prosperous and sound democracy. It is by this notion and this obligation that a new doctrine is drawn in continuing the support for human rights throughout the region.

This proposed doctrine will address the most effective ways in which US foreign aid and military assistance should be employed within Latin America with sustaining democratic principles of human rights. It will demonstrate that by advancing human rights policy in the region, US interests can still be achieved. This includes the advancement of US geostrategic stability, a greater access to regional markets, a more

effective drug enforcement policy, and secure US borders and coastlines from terrorist infiltration. Before examining future policy options, this paper will give a basic overview of US human rights policy in the region. Moving to more specific instances in which the US has been unsuccessful in addressing human right in the region, by highlighting the misuse of foreign aid and military assistance. This will be contrasted with examples of US foreign policy in Latin America that have been successful in supporting human rights while maintaining US priorities in the region. This doctrine will then lay out specific strategies for implementing a pronounced human rights policy that will simultaneously address domestic political considerations and concerns.

### *Overview of US Human Rights Policy in Latin America*

During the 1960s states within the inter-American system began negotiation on a legally binding treaty, the American Convention on Human Rights. States could choose to accept the jurisdiction of the newly created Inter-American Court of Human Rights.<sup>1</sup> When this convention was entered into force on July, 18, 1978, it was agreed upon by the signatory members of the Organization of American States (OAS), that the essential rights of man are not derived from one's being a national of certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states.<sup>2</sup>

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<sup>1</sup> Sikkink, Kathryn. *Mixed Signals: U.S. Human Rights Policy in Latin America*. Cornell University Press/Century Foundation. 2004. Pg 44-45.

<sup>2</sup> American Convention on Human Rights, O.A.S.Treaty Series No. 36, 1144 U.N.T.S. 123, *entered into force* July 18, 1978, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25. 1992.

The major principles of this convention were derived from the ideas set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights.<sup>3</sup> As states of the inter-American region were engaged in human rights discourse, this same time period also saw the various waves of repression afflicting all of Latin America.<sup>4</sup> To determine the most prominent origins of repression, the US in the inter-American system must be evaluated.

When the national security ideology propagated by the United States government hit Latin America it created an environment of repression. From Guatemala to Chile, US “security” policy seemingly required over throwing democratically elected regimes. This security consideration has dictated suppressing mass social movements while supporting pro-Western despotic elites.<sup>5</sup> These despotic military elites have been influenced by the same place of origin, causing them to share similar ideology and similar use of state repression. It is argued that this shared mindset of many Latin American military rulers of the recent era, known as “national security ideology,” has served as an inter-related set of constructs that spark the resort to terror by the government.<sup>6</sup> Turning now to specific regional cases, this paper will include an analysis

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<sup>3</sup> Farer, Tom. “The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not Yet an Ox,” in *The Inter-American System of Human Rights*. David J. Harris and Stephen Livingstone, eds. Oxford: Clarendon Press. 1998.

<sup>4</sup> For the evaluation of the waves of state repression see Sikkink (2004).

<sup>5</sup> Ishay, Micheline. *The History of Human Rights from Ancient Times to the Globalization Era*. University of California Press .2004. Pg. 227.

<sup>6</sup> George Lopez 1986, “National Security Ideology as an Impetus to State Violence and State Terror,” in *Government Violence and Repression: An Agenda for Research*, Michael Stohl and George A. Lopez, eds. (Westport: Greenwood Press), 73-96.

of old foreign policy practices and failures. All of which will help shape this new proposed doctrine on foreign aid and military support in Latin America.

### *The Southern Cone*

Beginning in the Southern Cone, state repression started in Brazil in the late 1960s, eventually moving to Chile and Uruguay by 1973 and to Argentina and Paraguay after 1976. US foreign policy in this region has been marked by support for, if not the installment of, the most oppressive military dictatorships in Latin America. Between 1950 and 1979, nearly seven thousand Chilean officers were sent for advanced instruction at the US military- run School of the Americas in Panama, or at other American bases where national security concepts and counterinsurgency techniques were taught.<sup>7</sup> When the socialist President Allende was democratically elected in the Chilean election of 1970, the US indoctrination of the cold-war thinking was already in place within the Chilean military. The CIA, which had been tracking military unrest, fabricated evidence of Cuban military links to Allende and passed them on to Chilean military officials. This sparked the coup which installed Pinochet as dictator in 1973. The CIA maintained an active propaganda apparatus after the coup and prepared the White Book, an alleged plot known as Plan Z. This was widely circulated in Washington in an effort to justify the coup, and the Chile Plan Z became a military obsession.<sup>8</sup>

The US backing of Pinochet's 1973 coup is a specific example of how US foreign policy trumped democratic principles and human rights policy in this region. From

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<sup>7</sup> Pamela Constable and Arturo Valenzuela 1991, *A Nation of Enemies: Chile Under Pinochet*, (Norton). Pg. 47.

<sup>8</sup> *Ibid.*, Pg. 37-38.

various reports, after the fall of Pinochet's regime in 1990, this dark period saw over 30,000 people murdered, disappeared, or tortured. The support for this regime, both covertly and openly, has attributed to the weakening of democracy and a worsening of a US perception globally.

Specifically in 1974, the systemic influence of the US on one military regime in the region has been shown to spread to other military regimes; facilitating the breakdown of democracy in Latin America. Security forces for Pinochet propagated the systematic use of torture and repression, not only within Chile, but throughout the Southern Cone. The DINA<sup>9</sup> (Chilean Secret Police) in conjunction with Argentinean security services, SIDE (Argentinean Intelligence Service), and other federal police, took steps to coordinate intelligence services in the Southern Cone in order to engage in the same kind of political repression found in Argentina, Brazil, Chile, Paraguay, and Uruguay.<sup>10</sup> The group that emerged, known as "Operation Condor," coordinated by the DINA, maintained bilateral relations with various foreign intelligence services, including the United States CIA.<sup>11</sup> There is no doubt that US intelligence was aware of the level of repression and human rights abuses in the Southern Cone and this support was a grave mistake in formulating a protective human rights policy. Learning from this case will aid in the creation of a formidable human rights policy and help direct where

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<sup>9</sup> According to Guissen et. al. (1990), The DINA was said to be a "military body of a technical and professional nature, under the direct command of the junta. Its mission is to be that of gathering all information from around the nation and from different fields of activity in order to produce the intelligence needed for policy formulation and planning and for the adoption of those measures required for the protection of national security and the development of the country." This agency was staffed by personnel from the armed forces under Pinochet's control.

<sup>10</sup> Raúl Rettig Guissen et. al. 1990, *Report of the National Commission for Truth and Reconciliation*, translated by Phillip Berryman (Washington, D.C.: United States Institute of Peace). Pg.624.

<sup>11</sup> *Ibid.*, Pg. 624.

foreign and military aid should be used in the interests of the US. At the expense of thousands of lives, the United States helped eliminate a real or imagined Marxist threat in Chile and other parts of the Southern Cone. This administration must weigh the options between the importance of international perception and the backing of puppet regimes that violate all matters of human rights.

### *The Andean Region*

Massive state repression also moved to the Andean region around the same time as the adoption of the American Convention on Human rights, beginning in Bolivia in 1980, Peru in the 1980s and continuing on to Colombia and Venezuela through the 1990s. Specifically, human rights violations are occurring in Colombia in concert with US foreign policy and the War on Drugs. State repression occurs within the realm of civil conflict between Colombian right-wing paramilitary and guerilla forces such as the FARC.<sup>12</sup> Contrary to the conventional wisdom, a department-level analysis of the country suggests that coca production is not the driving force of contemporary Colombian guerrilla violence. It is instead attributed to economic factors and coca eradication sponsored by the US. These emerge as prominent explanatory factors to account for different levels of violence in Colombia.<sup>13</sup> There is evidence to suggest that current U.S. foreign policy, predicated on a link between coca cultivation and guerrilla

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<sup>12</sup> Julia E. Sweig 2002, "What Kind of War for Colombia?" *Foreign Affairs*, Vol. 81, No. 5 (Sep.Oct.), 122-141. Pg. 123.

<sup>13</sup> Jennifer S. Holmes, Sheila Amin Gutiérrez de Piñeres and Kevin M. Curtin. "Drugs, Violence, and Development in Colombia: A Department-Level Analysis" *Latin American Politics and Society*, Vol. 48, No. 3 (Autumn, 2006), pp. 157-184. Overall findings from analysis.

violence, may be counterproductive to eliminating the human rights abuses or violence.<sup>14</sup>

Colombia's gross inequality and a culture of violence that existed 50 years ago has encouraged a large-scale war over drugs and oil that is growing even more violent by the day. This administration and Bogota now face a significant decision: dirty war, or less dirty war. It is imperative that the United States must not repeat the mistakes of the past by once more limiting its role to the military sphere.<sup>15</sup> The direction chosen by this administration will have far-reaching consequences, for Colombia, the Andean region, and the United States. The War on Drugs is a war the US must win, but the massive amount of military aid that has been pumped into this nation has had a counter impact on human rights, as well as, encouraged more violence between both armed groups.

### *Central America*

Central America was also infected with a wave of state repression, beginning in Nicaragua in 1977. Rampant human rights atrocities engulfed El Salvador and Guatemala in the late 1970s and early 1980s.<sup>16</sup> In Central America, the US was motivated by Cold War concerns, and helped to build up institutions within these states that were most prone to kill, most isolated from accountability, most heavily influenced by extremely conservative civilian elites, and most ideologically predisposed to see civilian regime opponents as enemies of the state.<sup>17</sup> An extreme case is seen in US foreign policy and military assistance to the nation of Guatemala.

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<sup>14</sup> Ibid., Pg. 183

<sup>15</sup> Julia E. Sweig 2002, "What Kind of War for Colombia?" *Foreign Affairs*, Vol. 81, No. 5 (Sep.Oct.), 122-141. Pg. 123

<sup>16</sup>For the evaluation of the waves of state repression see Sikkink (2004).

<sup>17</sup> This assertion comes from Stanley, William. *The Protection Racket State: Elite Politics, Military Extortion, and Civil War in El Salvador*, Temple University Press. 1996.

The policy switch in US/Latin American relations from a noninterventionist “Good Neighbor” policy of the Roosevelt Administration, to the more interventionist anticommunist policies of the Cold War can be marked by the US covert intervention that overthrew the democratically elected government of Jacobo Arbenz of Guatemala in 1954.<sup>18</sup> This intervention was a clear symbol of the precedence that the anticommunist agenda of the Cold War took over concerns about human rights and democracy.

The thirty-six year long civil war in Guatemala, between 1960 and 1996, saw an estimated 34,346 killings and disappearances, committed by the State as part of a deliberate government policy of extra-judicial killing.<sup>19</sup> The Commission for Historical Clarification (CEH) registered a total of 42,275 victims.<sup>20</sup> For much of the period of armed conflict, state terror was directed at active government opponents, principally those committed to the use of violence in the struggle for political change, the armed insurgents. By the early 1980s, it has been identified that most victims of state violence were unarmed Indian peasants living in the guerrilla zones of operation.<sup>21</sup>

Throughout the civil war the US afforded military assistance towards reinforcing the national intelligence apparatus and for training the officer corps in counterinsurgency techniques, key factors which had significant bearing on human

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<sup>18</sup> Sikking (2004).

<sup>19</sup> Patrick Ball, Paul Kobrak, and Herbert Spierer 1999, *State Violence in Guatemala, 1960-1996: A Quantitative Reflection*, (Washington, D.C.: AAAS). Pg. 11.

<sup>20</sup> Commission for Historical Clarification 1999, *Guatemala: Memory of Silence Tz'inil na 'Tab'al*, (online at: <http://shr.aaas.org/guatemala/ceh/report/english/toc.html>).

<sup>21</sup> Patrick Ball, Paul Kobrak, and Herbert Spierer 1999, *State Violence in Guatemala, 1960-1996: A Quantitative Reflection*, (Washington, D.C.: AAAS). Pg. 76.

rights violations during the armed confrontation.<sup>22</sup> These counter insurgency techniques may have included the use of sexual violence, which was found to be an explicit tool of repression, employed indiscriminately against the indigenous peasantry to spread fear and terror throughout entire “communities of interest.”<sup>23</sup>

The State’s idea of the “internal enemy”, explicit to the National Security Doctrine, became increasingly inclusive and was implemented by the Army and State policies for several decades. The CEH confirmed that the militarization of the State and society was a strategic objective which was defined, planned and executed institutionally by the Guatemalan Army, based on the National Security Doctrine.<sup>24</sup> Similar to the Colombian case, but undoubtedly more extreme, US interests executed through military training and support, has attributed to massive state violence and subsequently genocide of the Maya.

### *Including Human Rights in US Foreign Policy in Latin America*

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<sup>22</sup> Commission for Historical Clarification 1999, *Guatemala: Memory of Silence Tz’inil na ‘Tab’al*, (online at: <http://shr.aaas.org/guatemala/ceh/report/english/toc.html>).

<sup>23</sup> Michele Leiby 2009, “Wartime Sexual Violence in Guatemala and Peru,” *International Studies Quarterly* 53, 445-468.

<sup>24</sup> Commission for Historical Clarification 1999, *Guatemala: Memory of Silence Tz’inil na ‘Tab’al*, (online at: <http://shr.aaas.org/guatemala/ceh/report/english/toc.html>).

This plague like movement of state repression seen from the 1960s up until the turn of the century has been contingent with the United States limited policy toward human rights in Latin America. US interests rather than personal rights often prevail.<sup>25</sup> This bipolarity in US policy has undoubtedly been problematic for the future of human rights progression in the region because it creates an imbalance and a lack of hegemonic leadership in this realm of human rights in the inter-American system. With the exception of the US, by 2000, all the countries of the Americas with civil-law systems had ratified the American Convention on Human Rights and had accepted the compulsory jurisdiction of the Inter-American Court. This “human rights norms cascade” in Latin America is seen as a pivotal junction in the regional progression of human rights.<sup>26</sup> This is an undeniable failure in terms of US participation in the inter-American human rights regime.

The US had an opportunity to lead the way in addressing the gross human rights violations within the last fifty years but foreign policy initiatives were not in accordance with human rights initiatives. By adhering to the bilateral human rights policy, and then not ratifying the American Convention of Human Rights, the US government has demonstrated that is not willing to submit their integral human rights practices to external scrutiny.<sup>27</sup> This current administration has an opportunity to change this

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<sup>25</sup> Forysthe, David P. *Human Rights in International Relations*. Cambridge University Press. 2006. Pg. 251.

<sup>26</sup> Reference to the notion of a “norms cascade” can be found in Finnemore and Sikkink (1998) and Sikkink (2004).

<sup>27</sup> According to Sikkink (2004), the US is the only country in Europe and the Americas to have a bilateral policy but no multilateral policy on human rights. Most Latin American countries have accepted the compulsory jurisdiction of the Inter-American Court of Human Rights and or have ratified the statute of International Criminal Court, and thus have multilateral policies, but many do not yet have explicit bilateral human rights policies like that of the US.

stance. It is in the best interest of this administration to ratify the American Convention of Human Rights and instill a hegemonic presence that urges other nations in the region to comply with human rights norms and practices. This elicits that the administration has to engage fully in the inter-American human rights regime. The capacity of the inter-American human rights regime to operate effectively has everything to do with intergovernmental cooperation and hegemonic support of the human rights regime itself. The US must adhere to human rights mechanisms, like that of the Inter-American Committee of Human Rights or the International Criminal Court.

These International Governmental Organizations (IGOs) are inhibited by the power politics that reign supreme in the region. This can be illustrated by the unwillingness of the United States to recognize the International Criminal Court.<sup>28</sup> Politically powerful countries in the hemisphere, like Brazil and Chile, who have accepted the jurisdiction of the Inter-American Court, have demonstrated a willingness to comply with its decisions, when historically they have ignored the decisions of the Commission.<sup>29</sup> This administration should pursue this same direction. While Latin American states have accepted the authority of the Court and Commission, the English speaking states of the inter-American system have only partially embraced the workings of the human rights regime.<sup>30</sup> This administration should recognize the Inter-American Court in order to fully participate and lead the human rights regime in this hemisphere. The capacity of this regional human rights regime to function optimally in the future, resides in the total cooperation of states within the Intergovernmental Organizations that

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<sup>28</sup> Ishay (2004). Pg. 347.

<sup>29</sup> Forsythe, David P. *Human Rights in International Relations*. Cambridge University Press. 2006. Pg. 145.

<sup>30</sup> Forsythe (2006).

makeup the regime itself; primarily the cooperation by the most important actor in the hemisphere, the United States of America.

This administration should take an active role in supporting various forms of transitional justice following periods of gross human rights violations within the inter-American system.<sup>31</sup> Emphasizing truth commissions in places like El Salvador during the gross violations of human rights under military rule, or holding despots like Pinochet legally accountable from crimes against humanity. Countries with military regimes have tried to keep contentious issues of truth and reconciliation of human rights abuses out of the public sphere in order to protect the fragile political systems from polarizing debate and to avoid provoking authoritarian reversals. It is known however that democracies such as Argentina, Brazil and Chile have survived and flourished even after bringing this dialogue to the public level.<sup>32</sup> Studies show that in Latin America, there is not a single case of a country where democracy has been undermined because of the choice to use trials. Nor is there evidence that trials lead to worsening human rights situations. In the majority of countries in Latin America human rights seem to have improved by this form of transitional justice.<sup>33</sup> Truth commissions, reconciliation, and overall justice should be supported by this administration in order to curtail human rights violations in the future.

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<sup>31</sup> In Fletcher, Laurel E., Harvey M. Weinstein, with Jamie Rowen. "Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective," *Human Rights Quarterly* 31. 2009. They explain that "effective transitional justice is not solely a question of whether there should be a domestic or international trial, or a truth commission versus an international trial, or a cultural alternative as opposed to a traditional trial. The question is: what is most beneficial to the people whose lives have been disrupted or even destroyed by the perpetrators of violence?"

<sup>32</sup> Leigh Payne, *Unsettling Account: Neither Truth nor Reconciliation in Confessions of State Violence*, Duke University Press, 2007. Pg. 279.

<sup>33</sup> Findings from this study can be seen in Kathryn Sikkink and Carrie Booth Walling, "The Impact of Human Rights Trials in Latin America" *Journal of Peace Research*, Vol. 44, No. 4, 427-445 (2007).

The US should financially aid in promoting democratic state structures that guarantee the rule of law and accountability for public authorities. If not, civil society will continue to be vulnerable to the kind of state practices that had such devastating consequences for democracy and human rights like in Fujimori's Peru.<sup>34</sup> In the case of El Salvador, the government became a relatively peaceful and stable democratic regime when international actors, like the US and UN, embraced policies focused on conflict resolution and peace building rather than on achieving victory in a counterinsurgency war.<sup>35</sup> Foreign aid should then be distributed according to those states that comply with democratic practices but are also in need of support in constructing institutions that will promote human rights norms. This foreign aid should also be used to increase economic well being of those nations struggling with democratic stability in the region. Countries that enjoy higher levels of economic well being have somewhat consistently-modestly, better human rights records than those that do not.<sup>36</sup>

Part of improving human rights in afflicted regions is through ensuring access to the justice system for people from lower socio-economic strata; and in the case of Guatemala, particularly for indigenous peoples.<sup>37</sup> This administration should therefore continue with financial support of the United Nations in order to implement campaigns

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<sup>34</sup> Jo-Marie Burt 2006, "Quien Habla es Terrorista: The Political Use of Fear in Fujimori's Peru," *Latin American Research Review* 41, No. 3, 32-61. According to Burt, "The opposition movement did not prevent Fujimori from being sworn in as president for a third term. However, the resurgence of civil society played a very dynamic role in denying the regime the legitimacy it sought to ensure through fraud and violence."

<sup>35</sup> This observation is found in Mark Peceny and William Stanley 2009, "Counterinsurgency in El Salvador," *Politics and Society* (XX)X, 1-28.

<sup>36</sup> See findings in Neil J. Mitchell and James M. McCormick 1988, "Economic and Political Explanations of Human Rights Violations," *World Politics* 40(4), 476-498.

<sup>37</sup> See institutional strengthening in William D. Stanley, "Defending Human Rights and Fighting Impunity 1994-1996: Director of Mission Leonardo Franco"

that build peace or monitor human rights compliance; similarly to the United Nations Mission for the Verification of Human Rights and of Compliance with the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA).

When providing military assistance, this administration must ensure that resources are not being used to suppress the democratic rights and development needs of citizens.<sup>38</sup> This can be seen in the case of Colombia where the US involvement in drug eradication and enforcement programs infringe upon the human rights of indigenous peoples.<sup>39</sup> This has occurred by means of military aid to Colombian armed forces in combating civil unrest and fighting the War on Drugs. The United States' initiative of subduing drugs from entering US soil from Colombia or other parts of Latin America is of major concern. Foreign policy however cannot hold to a link between coca cultivation and guerrilla violence. US policy should shift in this regard because it is counterproductive to eliminating the human rights abuses or violence.

Most importantly, US foreign policy initiatives in the region should refrain from Cold War practices of the past. This includes reforming "security" policy which required overthrowing democratically elected regimes, suppressing mass social movements, and supporting despotic elites throughout the region. Learning from past mistakes in Chile, Colombia, and Guatemala, a new direction should be taken to curtail a security threat in this hemisphere. Investing economic support into opposition groups to unfavorable regimes would most likely produce a less violent and more democratic outcome.

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<sup>38</sup> Alison Brysk, *From Tribal Village to Global Village: Indian Rights and International Relations in Latin America*. Stanford University Press, 2000. Pg. 293

<sup>39</sup>Ibid., Pg. 289.

In a post 9/11 world, the narrow national security agenda of the US can conflict with civil and human rights in combating terrorism or security issues. To advance US geostrategic stability, this administration must collaborate with member states of the OAS to enhance democratic stability within the region but also subject itself to oversight and accountability, as advocated by human rights nongovernmental organizations.<sup>40</sup> This more pronounced yet collaborative role within the OAS, and the oversight mentioned above, will allow the US greater access to regional markets, more easily enforce drug policy, and make this administration successful in advocating for human rights.

In addressing domestic political considerations in this new foreign policy doctrine for Latin America, this administration may be criticized by the right as naïve, idealistic, or traitorous in policy. However, US interests in the region will not be diminished by the collaborative effort with this regional human rights regime and the OAS. It will work to the advantage of this administration to reform policy as stated above and allocate foreign and military aid in a manner that doesn't infringe upon human rights in Latin America; but rather promotes democracy and a strong civil society.

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<sup>40</sup> Ishay (2004). Pg. 289.