

**THE POLITICS OF UNITED STATES POLICY TOWARD HUMAN
RIGHTS**

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Muy buenos días y muchísimas gracias, Dr. Lagos. Reconozco la presencia de los distinguidos miembros del Comité Jurídico Interamericano en su Presidente y de mi gran amigo João Clemente Baena Soares.

When we get to discussion, I will be glad to take questions in whatever language each of you feels most comfortable. But I thought that I would speak in English now because I am going to speak about things I lived in English. I am not going to speak as the Assistant Secretary General of the OAS. Nor am I going to speak as somebody trained in the law. Indeed, my training even tended to question whether international law exists. At Harvard, Professor Stanley Hoffman, who taught international relations, denied that international law existed. He would have sided with Ambassador Baena yesterday in saying that power has a tendency to destroy law.

I found Baena's talk yesterday extremely stimulating. I agree with him absolutely that it is important to preserve utopia in one's thinking. I would even say that, for me, the struggle to do so has kept me intellectually alive. It is very hard, because as Baena said, utopia refers to the future. And it is hard because existence constantly contradicts utopia. Anyone who works in a government, as many of you do or will, will continually have to undertake or accept actions that contradict utopia. And that is why utopia is so important, because sometimes the only place you can keep it alive is within your own being. It is, of course, also important to keep it alive with the people with whom you work. If you cannot do that, then you really cannot inspire teamwork and movement, and jointness, because cooperation requires a common goal toward which to work.

When at the beginning I recognized some of the powerful people here today, I did not recognize them all. I did not recognize you, the participants. But I learned a long time ago that in any class, particularly any group that lasts for a while, it is the members of that group that count, not the professors. You will learn from each other and with each other in the years ahead, in ways that will be far more important than anything that we the professors can say or can try to teach you. I know one of you reasonably well, I had the pleasure of working for some years with Marcelo Biato, of Brazil. I have run into a few of you in other places and I hope I will do so again in the future. And I hope very much that you will all continue to stay in touch with each other and with the utopia of the OAS.

I liked two other things that Ambassador Baena said. One was the very specific point he made about translation and about how the word *liability* does not have, to his knowledge, an effective translation in Spanish or Portuguese, because it tends to be translated as *responsibility*. All of us with even the most minimal power to make distinctions understand that *liability* is a much more specific and narrow concept than *responsibility*, even if sometimes it is translated that way. While I am not a lawyer, my wife combines the law with prior scientific training and is a specialist in intellectual property. She observes that on commercial

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matters international law has progressed much further than in some of the more political fields in which I work. And I was interested that Baena yesterday commented that one of the problems that we face is the fragmentation of the sources of law. He too recognized the importance that international corporations have on the forging of law. The importance of this course and the importance of your future work are increased by the fact that, without doubt, we are dealing with a period in which we are seeing a progressive development of law. Those of us who deal with politics and diplomacy cannot afford to be left behind.

I do have one disagreement with Ambassador Baena: he spoke to you of the conflict between power and the law. I would prefer, particularly given what I have just said about my belief in the progressive development of the law, to think of conflict as being between power and utopia, or between power and the ideal, rather than between power and the law. Certainly, out of conflict gradually can begin to emerge elements of consensus of law, grounded sometimes, as Baena said, in international opinion.

My main subject today is the politics of United States policy on human rights. I am speaking on the understanding that this is a totally academic setting. I do not expect any of you, even if you have journalistic ties, to turn back into journalists and start quoting any of it. What I will say is very personal. But I am doing it because I thought that it would tell you something about the United States. When I was elected Assistant Secretary General of the OAS, I took great pride in telling my fellow United States citizens that I no longer worked just for them, that I only worked 1/34th of my time for them, and 1/34th of my time for every single other member State of the OAS. Even so, the United States carries enormous weight in the hemisphere. And one of the things I have learned is that many outsiders have difficulty understanding the internal tensions that often arise within the United State government.

My starting point is that there is no such thing as “the Americans”. There are many Americans, many views, many different groups, and many different processes at work on any given issue. So today I will draw on my memory about how the human rights policies of the United States developed from the standpoint of somebody who worked inside the government throughout the past quarter of a century. Changes of government and of political party in the United States as elsewhere have always led to changes of political leaders. And unfortunately also sometimes to purges of senior career officials. For a variety of reasons, I was lucky - in politics luck is often more important than skill - I was lucky enough to be able to survive all of these changes from 1973 until my voluntary retirement in 1998. Only once was I asked to turn in my resignation. I did so and six months later they came to me embarrassed and told me that they had lost it, and that, please, I shouldn't write a new one. This proved to be the strangest way of saying “we've decided to keep you”.

As Dr. Lagos said, I spent eight years on the policy planning staff of the Secretary of State, first with Henry Kissinger and then, at the end of my time in the Department, with Warren Christopher. The first was a Republican, the second a Democrat. In between I spent, in addition to my period as Ambassador to the OAS, twelve years as the Director of Policy Planning for Latin America.

I came to Washington in December of 1973. My wife and I drove across the country from Los Angeles with two of our four children. It was a few months after Kissinger had moved from the White House to the State Department as Secretary of State. It was a very difficult time, because in Nixon we had a wounded President in the White House and in Vietnam we had a bloody and hard to explain war. The self-confidence of the United States as a nation was eroding. In California, I had worked in Santa Monica at The RAND Corporation, which had been one of the creators of the computer world. On the other side of Los Angeles, in Anaheim, one of the early applications of computerization, Disneyland, was just beginning to carry animation to previously unimaginable heights. Yet at the same time that our civilization was producing Disneyland, it was killing its young in the fields of Vietnam. The basic psychological contradiction created the sense that we were becoming dehumanized by technology. Not too many people spoke about it quite that directly, but that was an important concern in the world into which I moved when I went to Washington. A government under siege from a people that did not understand why it was behaving the way it was behaving.

When I say a government under siege, I recall a small taste of the times. When Kissinger became Secretary of State, many around him felt that somehow it was up to them to save the Republic. We had a weakened Presidency and such internal confusion that the country somehow needed to find stability and direction.

Into that United States equation the 1973 *coup* in Chile and its bloody sequel produced an extraordinary marriage of events affecting the center of political consciousness in both Latin America and the United States. Contrary to much of the talk of the time, what happened in September of 1973 in Chile came as a complete surprise to most of Washington. The United States government had had some involvements, some very unfortunate and repugnant involvements, in Chilean internal politics in 1970, attempting to block the accession to power of Salvador Allende. But they had failed, and by the time 1973 came along, Chile was not a big problem for Washington anymore. Of course when evidence of repression emerged for all to see, the Pinochet coup suddenly fitted exactly into what I just described to you as the Vietnam-Disneyland syndrome. Somehow United States politics and United States policies had become dehumanized. They had become computerized and the human being had been left out.

The public reaction came, as it often does in the United States, through Congress. Until Nixon left office, the Kissinger team had managed to be somewhat above the immediate partisan battle. But under Ford suddenly Kissinger became known as the President for Foreign Affairs, and it hurt both of them. It was one of the reasons why Jimmy Carter won; there was a sense in the country that it was time to make a clean break.

For those of us in government, these were very difficult years. We were constantly fighting a rearguard battle against rising pressures in Congress against our various policies. The rebellion of Congress against the Executive branch is not easily understood in Latin America, where Congresses generally do not have the power that they do in the United States. In the mid-seventies under Ford and by the time Carter came to power, Congressional committees had hired so much staff that it sometimes seemed they had as many staff members as the Executive did. The State Department would go and they would find themselves confronted by Congressional staff working for the Foreign Relations Committees in the House and Senate who knew as much about foreign policy problems and foreign conditions as did the experts from the Executive Branch. Frequently the competition led to distrust. This breakdown of trust is very important not just on human rights, it has been important across the board. I used to tell my American colleagues who had chosen diplomacy as their life work, that they had chosen the most difficult of professions. They would be ground down between American nationalism and the foreign nationalisms with which they would come into contact. Because every time they would attempt to defend foreign realities in the American reality, they would not be believed, they would lose their credibility. By the late 1970s, there were probably about 100 reports which the Executive Branch was required to present to the Congress to explain and justify its policies. And the underlying premise behind all these reports was “you people in government are not to be trusted, you people in government are liars, you people in government are traitors to the national interest”. The Hickenlooper amendment assumed that the State Department would not defend the rights of American corporations when they were expropriated abroad, and therefore mandated cutting off economic assistance unless satisfactory compensation was paid. The Pelly amendment did the same on fishing disputes. More recently, the same dynamic of distrust in the Congress toward the United State Executive Branch, produced the law requiring certification of countries for cooperation in anti-narcotics activity. In each of these examples and many more, the common if implicit assumption was that the Executive had to be kept honest through pressure from Congress.

In 1976, as President Ford was ending his term, the Congress adopted the first reporting requirements on human rights. The Department of State was to prepare reports on human rights conditions in all countries receiving United States assistance. The United States labels most normal international intercourse among States to which the United States makes a financial contribution as “foreign aid”. This is true even when the activity is clearly assisting the United States as much as the foreign recipient. I have been arguing against this practice for 30 years without success. Many types of cooperation are required for reasonable relations among States, and if you do not have them, or if you suspend them, you create distrust, disappointment, even havoc. However, under the normal definition of aid, everybody received aid, and therefore everybody was subject to a human rights report. I had the dubious honor of actually losing my Christmas and New Year's holidays of 1976-77 to supervise and in some cases personally write the entire first series of reports on Latin American countries. I did this because I believed in

utopia. I believed in human rights defined as the rights of individuals and private citizens. At the same time, I believed in the State system, in sovereignty, in attacking problems in their different national settings. That first set of human rights reports, sent to Congress in early 1977 by Jimmy Carter, had actually been written under Gerald Ford by career people, and reflected a conscious attempt to report on human rights conditions in the context of the State in question -- its jurisprudence, its sovereignty, its development.

Many of you will remember the shock waves that followed after the Carter Administration assumed office and placed human rights at the center of United States policy. Carter implemented what previous administrations had talked about, but without much political will, that is, human rights, a new treaty for the Panama Canal, etc. The immediate shock of the Carter presidency was the cut-off of all aid to Argentina, Brazil, Uruguay. Then-Vice President Mondale criticized Brazil's nuclear program and threatened retaliation. These acts resulted directly from the change of government. They were not consulted within the permanent bureaucracy. In fact, one of the first reforms at the State Department was the creation of a new Bureau dedicated to Human Rights Affairs, which came to be known as HA. To head it was appointed a very bright and very single-minded lady named Pat Derian. Under Derian, HA suddenly became the center for United State policy towards Latin America, virtually displacing the Bureau of Inter-American Affairs, known as ARA in those days. In recent years we have seen a similar development in the rise of counter-narcotics as a central concern, with the accompanying tension between the Inter-American Bureau and the Bureau of Anti-Narcotics Affairs.

In their first flush of victory, the Carter people saw themselves as re-humanizing American policy, they were going to end all of this Kissinger right wing military fascist business and they were going to do things right. In an act that is still unique to this day, no other American administration since has ever dared do it - the Carter Administration sent the American Convention on Human Rights to the Senate for ratification. The Carter people were doing something fundamental to regional relations. They were saying that the United States would bind itself to the rules of regional international law on human rights. The Senate refused to ratify. No other American administration has proposed ratification since then. But during the Carter Administration, when the United States realized that there were a number of countries that had not yet acted on the convention, particularly in the English speaking Caribbean, Andrew Young, at the time the United State Ambassador to the United Nations, was even dispatched to seek Caribbean ratification.

The emergence of revolution and counterrevolution in Central America provoked sharp polarizations over human rights. On one occasion the military regime in El Salvador headed by General Romero asked for assistance on human rights. The HA reaction was straightforward. "These people are a bunch of criminals", and you do not advise criminals. The view left little room for compromise. Over time, it created a substantial backlash. Kissinger was one of

the first to denounce this approach to human rights. He said simply that this was the unleashing of a principle that would have unforeseen consequences and create instability. A great many American conservatives agreed. At the Republican Presidential Convention, one of the most famous speeches in American political history was made by Jeanne Kirkpatrick on the theme of "Blame America First." Her contention was that the Carter people behaved as if human rights violations were always the fault of the United States and its activities abroad.

The mounting conservative criticisms of the new United States approach to human rights worried me. Serving as something of an intermediary between the political level and the bureaucracy, I found myself spending more time serving as an interpreter within the American government, unable to meet the even greater need for interpretation between the American government and foreign governments. I saw the Reagan counterreaction coming. A bureaucrat normally has to stay within channels, and not appear publicly. I was given a chance to give a speech by one of the international political party organizations supported by the Konrad Adenauer Stiftung. In that speech I argued that the traditional order in Central America was breaking down because it had proved too rigid to withstand economic growth and the accompanying demands for political participation. The issue was not whether to change or not to change, but how to change. Without change, the result would be chaos, explosion, anarchy. Change was inevitable. Let us accept, I argued, that human rights are not an aberration in the minds of crazy left-wing idealists, but fundamental social rule of general utility, no more radical than the predictability in law that corporations demand and that most conservative thinkers accept as being the basis of progress.

The first people to attack me were the Sandinistas. One of the Nine explained that I had revealed that the United States would never be a revolutionary power. Well, that did not surprise me very much, but certainly I fared little better with the Conservatives. By the time Reagan won election, American conservatives felt that it was time to really completely clean house and reverse course. I was not present at the meeting, but I was told that at the highest levels of the White House, the instruction was given to the State Department to "reverse" policy in Central America. You will remember Kirkpatrick had articulated the intellectual justification: her distinction between totalitarian and dictatorial regimes. Totalitarian regimes were seen as permanent and therefore evil to be fought at all costs. Dictatorships were seen as transitory and therefore acceptable in certain circumstances.

This period was an extraordinarily difficult one. In the Carter years, it was difficult to keep alive the idea of the State as distinct from the people, the idea that the right need not always be condemned or that as I said to my detriment at the time to a New York Times correspondent, even right wingers have rights. In the Reagan years, it was just as difficult to keep a balance in the other direction, to argue for example that the left had its rights. Arguments became so heated that gradually the internal planning mechanism within the foreign affairs community,

the NSC inter-agency system, was affected. Meetings became less frequent and coherent, because people would fight. The regular Inter-Agency Group, which had functioned well under Nixon, was under Reagan often replaced by the RIG, the Restricted Inter-Agency Group, where only three or four officials would meet to decide policy.

But policy is not something that can be set on specific cases alone. Policy, if it is to work, has to follow principles and be communicable as rules to those affected by it. Again, the importance of utopia. There has to be some guideline, some direction. Given the intensity of the battle between left and right, in Washington and in the field, it is remarkable that human rights concerns survived to become a permanent component of United States policy. A number of individuals made critical contributions.

One of the most important was Jimmy Carter's first Assistant Secretary for Inter-American Affairs, Terence A. Todman. Todman was a career diplomat from the U.S. Virgin Islands who served with distinction as US Ambassador on three continents through more than two decades. Todman carried in his very being the righteous knowledge that as a black man in America, his whole life had been a battle for dignity and human rights. As head of ARA, he came under constant pressure from Pat Derian in HA, who was frequently supported by Bob Pastor at the NSC. Caught up between their liberal political correctness and his own sense of gradualism, Todman did not last one year. But he decided to resign in flames, and it was really very interesting. He and I fought like cats and dogs. My job was to be the writer. He, of course, was the boss. He was saying everything that was wrong with the Carter Administration's approach to human rights. "They shall not condemn an entire nation for the behaviour of one of its officials" he would thunder. I kept saying "Look, you may be gone but I will survive and I want to make this policy last and you therefore have to formulate a sensible set of objections and provide alternatives that will work". "No, I do not want to say this!" We fought through a dozen drafts and finally laughed and ended it. We had come up with a list of negative rules. We had fought so much we both forgot to count how many rules there were. It turned out there were ten. Todman's 10 no's: they shall not do this. Todman's Ten Commandments. The speech immediately became a "*cause célèbre*" and forced Todman's replacement and transfer to Spain as Ambassador. But it left a legacy of necessary restraint on the liberal approach to human rights.

An equivalent restraint on the conservative approach was provided by a subsequent Assistant Secretary, this one under Ronald Reagan. Thomas Ostrom Enders was, like Todman, a career diplomat. We used to call him "too tall Tom" because of his size. Enders was as intelligent as he was tall. Enders took orders from no one. In El Salvador where Soviet bloc support was flowing to rebel forces, there was a war to fight. When you fight a war it is easy to forget about rules. First you fight then after you have won you clean up. That was known in Washington as the Argentine solution and some argued internally that we should simply ignore democracy building in El Salvador. That is where Enders fought his

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battle. He said “No, we are going to continue to support elections in El Salvador”, “no, we are not going to reverse the agrarian reform.” Conservatives had strongly criticized the Carter Administration for “betrayal of alliances.” The Republican utopia was “You shall be loyal, you shall be consistent, you shall not abandon your friends”. So we argued with the White House that having begun to forge new democratic alliances, we should be loyal and consistent. We succeeded and were able to continue to work to build a political center that could reach beyond the violence.

Henry Kissinger, who had earlier led the criticism of the human rights policy, ultimately became an instrument for saving it. By the mid-1980s, the war in Central America had become increasingly partisan and bitter. The Administration did what often is done under such circumstances, it created a bi-partisan commission to define a more acceptable course for policy on Central America. Kissinger was named chairman. Many practical issues had to be fought over: economic versus amount of military aid, use of U.S. forces, negotiations, government organization, practical day-to-day governance matters. In the end, the Kissinger report also addressed a matter of principle, asserting that the days when dictatorships could be guarantors of stability in Latin America are gone and that democracy is the only viable path to stability. Thus was the Enders contribution confirmed. The fighting continued, and with it some activities that were not conducive to progress on human rights, but the foundations of policy were set.

When George H.W. Bush came to office the operating tensions were still there. Their resolution was due as much to United States domestic concerns as to events in Central America. If it could be said that the Reagan administration destroyed the Soviet empire by making it spend more than it could afford, it could also be argued that U.S. policy in Central America was affected by U.S. taxpayers who no longer believed that it was worth raising money for Central America in the name of anti-communism. Moreover, the internal struggles in Central America were beginning to affect the United States. In the barrios of Los Angeles, Nicaraguans and other Central Americans were mobilizing to fight on both sides. Distrust was beginning to poison domestic politics beyond Central America.

It is to the eternal credits of George Bush Sr. that he was smart enough to choose Jim Baker as the Secretary of State and Jim Baker was smart enough to go look for a Democrat, (a real one, with good Democratic Party credentials, not a fake Democrat) in Bernard Aronson to be the Assistant Secretary for Latin America. Baker and Aronson injected a multilateral and democratic commitment into the strategy that was ultimately the basis of the end of the strife. Human rights were no longer a divisive issue. Support for human rights had become as acceptable on the right as it was on the left.

The United States, however, still lacked a coherent policy with regard to the inter-American system of human rights. When I became Ambassador to the

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OAS, one of my priorities was to make the United States part of the general system of legal obligation that is the core of the Inter-American System. In 1992, I succeeded in negotiating the “Acuerdo Sede”, the Headquarters Agreement for the OAS, so that the OAS was actually legally recognized as existing and with privileges in Washington, D.C. When the Senate ratified the Agreement in 1994, It was the first time since the 1950s that the United States had ratified a Headquarters Agreement for an international organization.

But I failed on the American Convention on Human Rights. Provisions concerning the death penalty, the inception of life, and federalism, among others, created an impassable barrier. But so did an unwillingness to engage seriously. A State Department lawyer once said to me “the American Convention was meant to apply to South American Indians, not to American Eskimos”. I find that an extraordinary expression, and one of the crudest forms I have ever heard of American exceptionalism. To understand the United States, it is important to keep in mind that the feeling that the United States is unique, incomparable, and thus not subject to the same rules as others can emerge at the most unexpected moments .

When Clinton came to office, I thought that perhaps we would be able to push for Senate ratification of the Convention. I even put it in my farewell to the OAS Permanent Council, because I had by then had positive contacts about it with the Clinton transition team and with my successor, Ambassador Babbitt. Nothing happened.

American exceptionalism is a very important concern. As a United State citizen in dealing with my own country, I see it as my most difficult problem. The engagement of the United States on human rights and democracy in the hemisphere suffers from exceptionalism and the refusal to ratify the American Convention. By not accepting multilateral jurisdiction on human rights matters, the United States weakens its own example, and that is most unfortunate for the country most others take as their example on human rights and democracy.

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