

# The Honduran Question: The U.S. Answer to Latin America

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## ABSTRACT

Honduras grabbed international headlines when the Honduran Military removed José Manuel Zelaya Rosales from power on June 28, 2009. This paper uses the instability in Honduras as a case study of how the United States should respond to threats to democracy, and approach questions of democratic legitimacy in Latin America. It will first evaluate democratic contentions to put the Honduran crisis into a broader historical context. Next, it will examine the legality of the actions that triggered the democratic crisis because, though legality is not sufficient for legitimacy, it should be an important consideration in determining foreign policy responses. It will discuss the choices that the United States had between the removal of President Zelaya and the election of his successor, and analyze the path that the United States ultimately chose by supporting the reinstatement of President Zelaya, until it was clear that the reinstatement would not occur, at which point it decided to support the November election.

## I. INTRODUCTION

Latin America presents a distinct challenge to U.S. foreign policy. The region is highly democratic, but many of the countries have not consolidated their democracies. In the fall of 2009, the turmoil in Honduras was President Obama's first test on how to approach the development of democracy in Latin America and illustrates the concerns regarding the internal struggles of democracy and the limited options that the U.S. has in another country's internal affairs. This paper uses the instability in Honduras as a case study of how the United States should respond to threats to democracy in Latin America and approach the question of democratic legitimacy in Latin America.

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The Honduran military removed President Zelaya from power on June 28, 2009 because of President Zelaya's attempts to pursue a national referendum that would allow presidential reelection. The Honduran Constitution allows for a presidential veto or decree to alter the Honduran Constitution except in cases that relate to the "conduct of the executive branch." A national vote initiated by the president may sound democratic, but the single term provision in the constitution remedied the political structure that had led to years of military dictatorship.

The legislative and the judicial branches of Honduras see President Zelaya's dismissal as an act to safeguard democracy because Article 239 of the Honduran Constitution states that if someone tries to extend term limits, that person is to be immediately removed and disqualified from holding executive office for ten years.<sup>1</sup> President Zelaya tried to work around this restriction by framing his referendum in terms of a broad constitutional reform, but his policies limited democracy by expanding the power of the executive, and ultimately followed the trajectory of Hugo Chávez.<sup>2</sup>

After President Zelaya's seizure and deportation, Honduras scheduled an emergency election for November 29, 2009, and the opposition candidate, Porfirio Lobo, won the election. Prior to the election, the U.S. did not support President Zelaya's removal, but the U.S. is now supporting the 2009 election in an effort to promote national reconciliation and democracy.<sup>3</sup> President Zelaya is still living in exile as a civilian in the Dominican Republic.<sup>4</sup> The U.S. is suffering moderate political backlash because not all countries are recognizing the election as legitimate.<sup>5</sup> For example, countries such as Brazil are considering this move tantamount to supporting a coup.<sup>6</sup> In addition, Freedom House, a non-governmental organization that publishes an annual ranking of countries based on their relative levels of democratic freedom, has relegated Honduras's status and no longer classifies Honduras as an electoral democracy.<sup>7</sup>

The U.S. response to the removal of President Zelaya sets a precedent for democracy and stability in the region. With this in mind, the U.S. had to evaluate its options and ascertain which choice will best promote democracy and stability, and minimize the political consequences to the U.S. In the case of Honduras, the U.S. could have supported, ignored, or denounced the removal of President Zelaya, since the use of force would have been inappropriate. The U.S. made the right choice by moderately supporting President Zelaya's reinstatement, and then accepting the results of the next election as legitimate.<sup>8</sup> Ultimately, the U.S. should choose to recognize free and fair elections in the case of Honduras or any Latin American country that might be in a similar situation in the future because the U.S. must demonstrate strong support for democracy to assist in Latin America's struggle to overcome history.

## II. HISTORICAL BACKGROUND

The first step to evaluating the U.S.'s policy response in Honduras is to put the crisis into a broader historical context. In the case of Honduras, it declared independence from Spain on September 15, 1821.<sup>9</sup> The government began as a series of caudillos, political factions, and the military evolved from arming these political factions.<sup>10</sup> Tiburcio Carías Andino, who ruled from 1933 to 1948, created the first professionalized army, but it was not until 1954, that Juan Manuel Galvez strengthened the military relationship between the U.S. and Honduras.<sup>11</sup> In 1954, the Honduran Congress prevented the democratically elected president from assuming power and Vice-President Julio Lozano took control.<sup>12</sup>

When the civilian government tried to limit the power of the military that had been entrenched in Honduran institutions by earlier military control, there was a military coup.<sup>13</sup> From 1963–1971, General Oswaldo López Arellano ruled Honduras, however, his government's credibility diminished when it lost a border dispute with El Salvador.<sup>14</sup> Consequently, a weak civilian government briefly took control before López seized power again.<sup>15</sup>

In 1975 the military seized power from Lopez and gave control to the more militaristic control by Colonel Juan Melgar.<sup>16</sup> Colonel Policarpo Paz García then deposed Melgar in 1978. Paz Garcia promised to return the country to civilian rule, though he remained as president of the interim government created following the election of a new assembly government.<sup>17</sup> The military retained considerable control over civilian government until 1982, when democracy was restored under Roberto Suazo Córdova.<sup>18</sup> Under the "protected democracy" of the 1980s, the military retained considerable power and benefited from U.S. military aid in response to the Contras of El Salvador.<sup>19</sup> The U.S. established bases to train and deploy Contras against the Sandinista government.<sup>20</sup>

Following the Cold War, the U.S. became critical of the Honduran military and cut military aid and Honduras now ranks 154<sup>th</sup> in percent of GDP used for military forces.<sup>21</sup> In addition, the International Court of Justice ended the border dispute between Honduras and El Salvador.<sup>22</sup> The Honduran people, sick of corruption and the economic burden of the military, created a movement to demilitarize the government and society through major military cutbacks.<sup>23</sup> Civilian leaders have greater control of the government, but it is nevertheless still important to consider how frequently military control has usurped civilian control in recent history. Understanding the repeated intervention of the military and the U.S. support for Honduras' military dictatorships of the past brings to light why the U.S. response to military involvement in President Zelaya's removal is important.

### III. LEGAL BACKGROUND

Interpreting the legality of any democratic crisis can provide insight in to what kind of predicament the country is in. If those in power have clearly acted illegally, it would be hard to imagine a scenario where these actors acted in the interest of democracy. On the other hand, there may be legal ways to subjugate democracy and such actions should not be encouraged. Legality is not sufficient for legitimacy, but it should be an important consideration in determining which actions the U.S. should support, ignore, or sanction.

The Honduran Constitution, which has been continuously revised, is the source of confusion in defining the legality of the Honduran action to remove President Zelaya. The Honduran Constitution's impeachment clause was removed by decree.<sup>24</sup> In addition, while the Honduran Constitution allows for charges to be filed against high officials, it lacks a provision explaining the procedure of removal.<sup>25</sup> Even when there are relevant provisions, there are disagreements about their interpretation.<sup>26</sup> The main points of contention are whether the Honduran government could still pursue impeachment after the clause had been taken out by decree, whether the Supreme Court has the authority to try the President's removal, whether the Supreme Court could use the military to remove President Zelaya, whether the military acted in accordance with the warrant issued by the Supreme Court under the Honduran Constitution, and whether such violations would make the entire action unconstitutional.<sup>27</sup>

Because the impeachment clause, Article 205, Section 15, was repealed in 2003 by Decree 157/2003, the procedure of impeachment by the legislature was also repealed.<sup>28</sup> President Zelaya's removal was based on the Supreme Court's ability to try high officials in Article 313, Section 2, which was established in the same year in Decree 175/2003.<sup>29</sup> Because both provisions were decreed in the same year, one can conclude the intent of the decrees was to replace the legislative impeachment clause with judicial action. Therefore, the Supreme Court's trial of President Zelaya seems to comply with constitutional requirements. In rulings made on May 27, 2009 and May 29, 2009, the Supreme Court declared that the president could not change the constitutional provision against reelection by a referendum, a poll, or any other method that violates the clauses prohibiting reelection in Article 218, Section 9.<sup>30</sup> Therefore, President Zelaya's trial produced a clear prohibition against the President's actions to alter the Honduran Constitution to make him eligible for reelection.

However, the trial presents complications because there is no provision in the constitution explaining how the trial procedure works and specifically, there are no provisions that outline the role of the military or police forces in enforcing the court's ruling. It was not the decision to remove President

Zelaya that caused the most uproar but rather, the means of removal that garnered the greatest objections. The involvement of armed forces in President Zelaya's removal caused the most controversy, second only to the outcry against President Roberto Micheletti's decree that suspended human rights.<sup>31</sup> The Supreme Court holds the authority to apply and enforce laws under Article 304 of the Honduran Constitution and furthermore, the Supreme Court has the authority to request the public forces to enforce rulings as listed in Article 306.<sup>32</sup> For this reason, the Supreme Court appears to have acted constitutionally when it issued the warrant compelling the armed forces to remove President Zelaya.

After President Zelaya's removal, the Honduran Congress followed proper procedure in presidential succession because the Vice President had already resigned.<sup>33</sup> Therefore, the removal of President Zelaya from office and the appointment of his replacement, President Micheletti, seem to be within constitutional bounds. The first clear constitutional violation occurred when the military deported President Zelaya from Honduras. This violated the ban on extraditing Hondurans to foreign states, which is in Article 102 of the Honduran Constitution.<sup>34</sup> While that action may be illegal, the powers of constitutional interpretation lie with the Supreme Court and perhaps, the Legislature.<sup>35</sup> Neither branch would declare that the action of the military tainted the removal process, and the Supreme Court tried and acquitted six generals.<sup>36</sup>

There are critics that contend that the legislature does not have the right to interpret the Honduran Constitution and that the forged resignation letter produced in the legislature is proof of greater wrongdoing by Congress. However, the Supreme Court has the ability to rule on constitutional issues and enforce its decisions. Understanding the legal analysis of the situation is important because it helps uncover the dynamics of the situation. In this case, the legality of the President's removal is questionable, but not flagrantly illegal. Therefore, the U.S. could support the presidential trial, but only tenuously.

#### IV. U.S. POLICY OPTIONS

Immediately following the removal of President Zelaya, the U.S. needed to decide if it would support, denounce, or ignore the removal of President Zelaya. Any course of action must encourage stability and promote democracy in Latin America with the least political cost to the United States. Stability and democracy are factors that contribute to peace and consistency in government and therefore, can encourage future prosperity. To achieve these goals, the U.S. could have used force to denounce the military's

actions, diplomatically denounced the military's actions, moderately supported the removal, ignored the situation until the next election, or supported the reinstatement of Zelaya. There will never be a perfect solution, but projecting the costs and rewards of possible actions can help produce the best available policy in any scenario.

One of the boldest moves would have been to use military actions covertly or openly. This was not a viable option because the history of U.S. intervention in Latin America has left much to be desired. The covert actions during the Cold War caused chaos, bloodshed, torture, and damaged the credibility of the United States in Latin America.<sup>37</sup> Moreover, it would be illogical to forcibly reinstate a less than democratic leader with anti-U.S. tendencies. Military intervention would be exceedingly unpopular in U.S. domestic politics and would promote instability in the region with great political costs to the U.S. Therefore, this choice was not considered.

The use of policy levers, such as pressure from the international community, is more efficient and bears less political and financial costs. With a relatively small investment, trade and aid incentives can also influence the behavior of sovereign nations. If the U.S. wants to influence the outcome in Honduras, a measured approach of these moderate policy tools would be most appropriate. The main issue is whether the U.S. should apply such pressures, and if so, toward what purpose they should be applied.

It may have been justifiable to use policy tools to back the Honduran government's exile of President Zelaya because he was engaging in activity, the Honduran Supreme Court deemed unconstitutional, to further his ambitions of a prolonged tenure in office. The government attempted to follow the proper procedures in addressing President Zelaya's abuses, but President Zelaya's ousting posed the main problem. Layers of decrees changed the Honduran Constitution and muddled the removal process. Decrees removed the institutional framework for punishing the misbehavior of officials and replaced it with vague oversight from the legislature and the Supreme Court. It can be argued that the removal was constitutional considering Article 239 says that if an executive official proposes extension of the presidential term, that act disqualifies the person from presidential service for ten years.<sup>38</sup>

Taking into account the historical context, the support of what many consider a coup would be a difficult political position to defend because "many in Latin America saw Mr. Zelaya's arrest in his pajamas as an unacceptable throwback to the region's dark past."<sup>39</sup> The U.S. has decades of experience backing military dictators and propping up oppressive leaders with military aid, but siding with the leaders that ousted a democratically elected president is typically an antidemocratic act. In the future, the U.S. may lose credibility when it professes to support democracies because supporting the removal of a president could encourage other governments to

remove their presidents instead of working within the normal democratic processes. In addition, support of President Zelaya's removal would have signaled a U.S. tolerance for coups that could embolden those planning future coups and the U.S. did not want to encourage instability that might spill over into neighboring countries. The U.S. also benefits from having a consistent pro-democratic policy because a consistent policy helps to achieve long-term stability. Unfortunately, there was no clear consensus about which policy choice was the most pro-democratic and the U.S. could have incurred great political costs. In addition, supporting President Zelaya's removal could have had a destabilizing effect without clear gains for democracy.

Another possible option would have been for the U.S. to ignore President Zelaya's removal and wait for the event to run its course. The next presidential election was scheduled for November 29, 2009. If no action takes place, the most likely result would be that citizens would elect a new president and democracy would resume in the country. This seems to be what happened. Not reinstating President Zelaya had distinct advantages for Honduras and the U.S. If President Zelaya remained out of office, he did not have the opportunity to engage in acts reminiscent of Hugo Chávez that may have undermined democracy. Reinstating President Zelaya might have encouraged him and given him the opportunity to increase his power and entrench his position. This would have had negative consequences for democracy in Honduras. In addition, his anti-American perspective could have caused the U.S. more difficulty in foreign relations. Therefore, not taking a position concerning President Zelaya's removal might have had fewer political costs for the United States than taking a stand against his reinstatement.

Remaining neutral on the issue benefited the current Honduran government and the U.S. could have used this as a bargaining chip to encourage constitutional reform. Although, a U.S. push for constitutional reform may have been problematic and perceived as meddling. Nevertheless, the constitutional ambiguity leads to problems. This ambiguity has been exacerbated by the fact that the use of decrees has resulted in 130 changes to the Honduran Constitution since 1982.<sup>40</sup> In addition, much of the Honduran Constitution contains what would be statutory law in the U.S. because it outlines numerous rights, including labor and children's rights.<sup>41</sup> The large number of decrees, altering the Honduran Constitution, caused the current chaos surrounding President Zelaya's removal because one of the decrees altered the impeachment process, which removed procedural certainty.

Restoring impeachment proceedings and reducing the number of decrees that change the Honduran Constitution could have a long-term benefit by addressing the root cause of the problem. While some flexibility is necessary, Honduras may benefit from the stability of a constitution that is harder to change. The unicameral legislature requires a higher vote threshold to prevent repeated constitutional change because getting one legislative body to agree is often easier than convincing two legislative bodies that constitutional change is necessary. A three-fourths vote to pass a referendum to change the constitution would be harder to achieve than the two-thirds vote that is currently required under Article 5 of the Honduran Constitution.<sup>42</sup>

The U.S. cannot directly control this domestic issue, but it can use indirect means to suggest changes that may help Honduras, or other countries in similar circumstances, consolidate its democracy. Incentives such as not putting pressure on talks to reinstate President Zelaya could persuade the legislators to consider reform. However, such a large change may not be possible while the country is under stress and the fix would have to come from a negotiated political process. In a political arena with many actors, it would be harder for the U.S. to suggest reforms that the legislature could implement in a timely manner. In addition, this policy has the least certain effects because the adoption of reforms will ultimately be out of the U.S.'s hands, and therefore, the prospect of democracy under this plan would have been questionable. There also could have been some negative effects to the region's stability because other potential coup leaders may have become emboldened and the U.S. may have lost credibility for contradicting President Obama's support for democracy, since because both sides in Honduras see their cause as democratic.

The initial U.S. policy was to promote the reinstatement of President Zelaya. One of the first moves by the U.S. State Department was to cutoff assistance to the Honduran government and define the removal of President Zelaya as a coup.<sup>43</sup> The U.S. State Department looked to President Arias of Costa Rica to mediate the dispute within Honduras.<sup>44</sup> The goal was to restore President Zelaya until the end of his term, and then he would not be eligible for reelection under the Honduran Constitution.<sup>45</sup> President Arias warned that the international community would not recognize the November 2009 election if President Zelaya was not restored before the election. President Arias explains that reinstating President Zelaya, even with limited powers, will provide "assurance of the continuity of democracy in Latin America [and that t]he cost of failure of leaving a coup d'état unpunished is setting up a bad precedent for the region."<sup>46</sup> When taking Honduras' militaristic past into account, one can see how restoring the democratically elected president could foster faith in democracy. Yet, there is a small chance that if President Zelaya was reinstated he could have commandeered

the government, and then democracy and stability would have been in a much worse situation. The Arias Plan tried to prevent this worse case scenario by restoring President Zelaya with limited powers.

If the U.S. had supported the Arias Plan, it would have shown that the U.S. had a sincere commitment to the restoration of President Zelaya, and that the U.S. was not pretending to admonish President Micheletti, while benefitting from ignoring the situation. The most problematic part of the Arias Plan is that it recommended not accepting the results of the November 2009 election without reinstating President Zelaya. This would have put considerable pressure on the Honduran government to reinstate President Zelaya. The Arias Plan had a potential risk because if negotiations did not lead to the reinstatement of President Zelaya, the consequences of not recognizing the election could have led to a longer period of instability. Over the next presidential term, the democratic process could have lost legitimacy, even though a fair and free election took place, and therefore this provision of the plan could have damaged democracy and stability in the region.

The leaders of Latin America may be better judges of what promotes stability for their countries. The current Costa Rican President promoted the return of President Zelaya, and Brazil supported President Zelaya by taking him in to its embassy.<sup>47</sup> Furthermore, Latin America saw the reinstatement of President Zelaya as fulfilling its own interests of stability and democracy. Overall, recommending the reinstatement of President Zelaya would have had a relatively small political cost to the U.S. because of the support for this policy from Latin American countries. The countries in the region promoted reinstatement as the most stable choice because it might have prevented future coups. There would also have been some democratic gains by minimizing the role of the military in civilian government operations, even if it is at the bequest of the Supreme Court.

## V. CONCLUSION

After exploring the various policy options, it is clear that if the U.S. had supported the removal of the Honduran President, it would have been politically costly, may have had negative effects on democracy in Latin America, and may have reduced stability in the region by encouraging future coups. Remaining neutral to the situation would have cost the U.S. political credibility, and have the same ill effects on stability and democracy as supporting the removal of the president. Supporting the reinstatement of President Zelaya could have moderate gains for democracy, increased regional stability by discouraging coups, and had the least political costs.

Yet, the Arias Plan did the entail risk that may have resulted in the worst possible scenario, the unlawful seizure of the government by President Zelaya, especially if concrete limits were not placed on President Zelaya.

Out of these possible options, the U.S. chose not to recognize the removal of the President Zelaya, in order to deter future coup leaders. However, after the election, the U.S. recognized the new democratically elected president. The U.S. made the right choice supporting the Arias Plan with the proviso that if the elections were free and fair the U.S. would recognize their results. This policy has avoided the long-term risks of the Arias Plan and it has the greatest potential to produce the most gains for regional democracy and stability with tolerable political costs to the U.S. In addition, the recognition of free and fair elections makes sense and sends a consistent pro-democratic message.

While the U.S. may have taken the most attractive option, there are still serious implications. Opposition candidate, Porfirio Lobo, won the election on November 27, 2009 and the U.S. supported the results in an effort to promote national reconciliation.<sup>48</sup> But, not all states are recognizing the election as legitimate, and some countries, such as Brazil, are considering this move tantamount to supporting the coup.<sup>49</sup> In addition, Freedom House has relegated Honduras's status and no longer classifies Honduras as an electoral democracy.<sup>50</sup> As a result the U.S. has suffered moderate political backlash. Although these political costs have been mitigated since other Latin American countries, such as Colombia, Peru and Costa Rica, have decided to accept the election results.<sup>51</sup>

The institutions in Honduras have survived and it may be possible to repair the damage to democracy caused by the removal of Zelaya. The Lobo administration has a significant challenge ahead. Honduras must act with clearly defined and democratic actions to regain international legitimacy. The best way to accomplish this is for the executive, legislature, and the people to reexamine their constitution. Much could be gained from clarifying the duties of the different branches of government, the enforcement powers, and most importantly, the constitutional procedures.

The goal of the U.S. foreign policy towards Honduras, and other Latin American countries, should be to foster democracy and stability while avoiding political costs that would erode the U.S.'s soft power in the region. The U.S. made the right choice in Honduras by trying to reconcile factions, while ultimately showing support for the result of the next election. Military actions would be counterproductive in almost any Latin American country because of the region's history with military oppression. The United States must demonstrate strong support to democracy to assist in Latin America's struggle to overcome history. Ultimately, the instability in Honduras sets a precedent that shows the most beneficial U.S. response to questions of

democratic legitimacy in Latin American countries is the consistent recognition of free and fair elections.

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