

## **Panel Four: Latin America: Trade Plus Democracy Equals Security and Human Rights?**

Mr. Graham. Good morning. I welcome the brave souls who came out today given what is happening in the Federal Government today. The weather is a perfect metaphor for how badly things are going. It is a pleasure to be a part of this program, the panel discussion today on what lessons the Helsinki Commission experience might make available to Latin America.

I am pleased, as a person who comes from a state whose name is Hispanic and where a substantial amount of our history and current population have strong Hispanic roots, that at this period at the end of the 20th Century the United States is almost, for the first time in its history, starting to focus sustained, systemic attention on our hemispheric relationships.

For most of the history since Christopher Columbus, both North America and South America have looked more to Europe than they have to each other as a source of relevance and inspiration and political and economic connections. We are beginning to learn not only how important in a defensive way, but also how many affirmative opportunities are going to be available to us through enhanced relations within our hemisphere.

I have had the privilege of serving as a congressional member of the Helsinki Commission. I've been impressed with the contributions that the Helsinki Commission process has made within Europe, particularly in terms of easing a peaceful transition to democracy in Central Europe. To me, there are several ideas behind the 20-year history of the Helsinki process which are relevant to Latin America and which raise the question whether a similar process could be beneficial within this hemisphere.

Three of those concepts are, one, the fact that it is not totally governmentally focused. It recognizes the influence and the opportunity of the civic sector, all of those aspects of society which are beyond governmental. I remember personally visiting in Prague in 1989 prior to the fall of the Berlin Wall with a group of civic activists from Czechoslovakia who held firmly to the belief that the day of democracy was about to dawn. They didn't realize that it was as close as it turned out to be, but it was their energy and their commitment that sustained a significant amount of the population of Czechoslovakia during its darkest days to maintain the commitment to democracy.

A second concept behind the Helsinki process is its interrelatedness: issues of human rights and security are not separate boxes, but part of a larger circle of activity, and that they influence each other and can be organized in creative ways to be mutually reinforcing.

Finally, the multinational aspects of the Helsinki process. It was intended, quite overtly, to bring international attention to those countries that were not abiding by acceptable standards of human rights, and by giving to other countries the information and access to determine what was occurring in civil rights in other countries, it built up an effective international pressure for reform.

Within Latin America, while great progress has been made, there is no region of the world which has democratized as rapidly as has Latin America in the last 20 years. There are still problems. One problem is, this is not the first time that Latin America has been through a period of significant democratization.

In previous periods of that wave of popular control of government, the wave was cut short by a variety of events, some of which were peculiar to individual countries, some

of which had broader regional impetus and a reversion back to authoritarian rule. So while we can celebrate the successes of the recent past, they are by no means assured for the future.

There continue to be threats to democratic government which include the huge income disparities between both the rich and the poor within nations and between the rich and the poor nations of the hemisphere: the population explosion which continues to outpace resources, the rampant drug trafficking which has the potential to corrupt government, the destruction of much of the environment in countries which is going to be a critical element in sustainable growth, the question of effective civilian control over important institutions such as the military and intelligence operation, the suppression of religious and human rights by governments and opposition groups throughout the hemisphere.

Those are some of the challenges to the growth of democracy, challenges which I believe a process analogous to the Helsinki process could play a positive anecdote.

We are fortunate today to have a panel of persons who have spent substantial amount of their professional lives thinking about and acting upon the issues of enhanced human rights within the hemisphere. Our panel will be moderated today by Professor Thomas Buergenthal. Dr. Buergenthal is currently the director of the George Washington University Law Center International Rule of Law Center and International Legal Studies program.

Throughout his career, he has served as a judge, as vice president and president of the Inter-American Court of Human Rights and the Administrative Tribunal of the Inter-American Development Bank. He has served as professor at several universities, including American University School of Law, University of Texas, Emory University, and the State University of New York.

He is president of the Costa Rican-based Inter-American Institute of Human Rights and now serves as its honorary president. Dr. Buergenthal will serve as moderator and will introduce the other members of the panel. Thank you.

**Mr. Buergenthal.** Thank you very much, Senator. It is a great pleasure for me to be here on this occasion and to see the emphasis you are placing on the importance of Latin America to the United States. I am also pleased that the Helsinki Commission is paying attention to and is interested in improving the situation in this region of the world.

Let me note too that the Helsinki Commission has had much more of an impact on the political and legal developments in Europe, particularly in the human rights area, that most people realize. The congressional push, the ability of Congress to involve NGOs in the process of *de-governmentalizing the concern for human rights has been unique and* needs to be emulated in other regions of the world. I am therefore delighted that your commission has taken the initiative to do just that.

I should also say that it is good to see that during these 2 days of meetings you are planning to have a panel on the Inter-American system. In this city we have the headquarters of the Organization of American States, Inter-American Development Bank, the Pan American Health Organization and various other inter-American agencies. Yet, I would guess that these organizations are among the least known in the United States.

Latin America has not really entered our consciousness, and this despite the fact that it is really our natural market; it is among the few places in the world where the U.S. dollar is still king. It is not only an economic market for us but a cultural market as well. More than anything else, it is our neighborhood.

It is therefore very much in our interest to strengthen the norms, institutions, and mechanisms in the region that contribute to the development and evolution of human rights, the rule of law, and democracy, and to do so with the support of and in cooperation with the Congress. The role of the Congress in this endeavor is very important. So, Senator, as one who has worked both with the CSCE process and in the inter-American system, I want to say that this is a great day. I am sure I speak for the rest of the panel members when I say that.

With your permission, we shall proceed a little differently from the way our program is arranged. I would like to start with existing structures, continue with a discussion of development of human rights and the role of NGOs, and then more security issues. Before continuing in this fashion, let me introduce the panelists. I will introduce them all at once but want to note first that this panel has, I think, the catchiest title of all: "Latin America: Democracy Plus Trade Equals Security and Human Rights."

My hunch is that it is probably true in theory to say that "democracy plus trade equals security and human rights." I would hope therefore that at some point during their presentations the panelists would address the question whether the next equation reflects the reality of Latin America, whether it is true today or whether it might someday be true.

Let me now start by introducing Ambassador Sonia Picado. I know her well because we served together as judges on the Inter-American Court of Human Rights. Ambassador Picado is the Costa Rican ambassador to Washington. When the President of Costa Rica announced her appointment, it was hailed as the wisest decision his government had made. This is still true today.

It is appropriate that she should be the Ambassador from Costa Rica, which is a small country with a great human rights reputation. She was vice president of the Inter-American Court of Human Rights, and the executive director of the Inter-American Institute of Human Rights. She developed the institute into a major force for human rights in the region. I could go on, but let me here say only that she is one of the great personalities of Latin America and that it is a great pleasure for me to be sitting on the same panel with you, Sonia.

Let me move next to General John C. Ellerson. He is the chairman of the Inter-American Defense Board and the director of the Inter-American Defense College. Gen. Ellerson served with the United States Defense Attache's Office in Mexico City, Mexico, and then as an advisor to the United Military Group in Bolivia. He also served as military group commander in El Salvador and in Panama. Gen. Ellerson is a person who knows the region and its problems extremely well.

Ms. McBride is a special advisor for human rights to the Secretary General of the Organization of American States. While that is all she says about her position, we should emphasize that this is a new, important, and difficult position.

Ms. Kristicevic is the director of the Center for Justice and International Law which was established in 1991. The center has brought many cases to the Inter-American Commission and Court on Human Rights. It is an NGO that had focused on the judicial and quasi-judicial for the protection of human rights in the region; it is, moreover, an organization that is doing a very fine job.

So without more, if I may, I'd like to turn the microphone over to Ambassador Picado. Since this is a small group, I would suggest to the panelists that each speak for a few minutes only to permit us to take more questions. Thank you.

Amb. **Picado**. Thank you, Tom. I said that we have a mutual agreement that we will speak well of each other whenever we are on a panel, but the interesting part of it is that we believe it, and I have great respect for Tom. Actually I wouldn't have been in human rights if it hadn't been for him, and it's certainly the most rewarding and the most important issue in my life.

I mean, I am an ambassador of Costa Rica because the president said that Costa Rican human rights have always been compatible. There's no way that we can go one against the other. So I feel very comfortable speaking in this audience, and I don't consider myself an ambassador in the strict sense, but more of a human rights activist that is now working as a diplomat.

Having said that, I was very impressed with your introduction, Senator, because one problem I find whenever we talk about human rights in Latin America is that people tend to believe that because we have had elections, democracy is now stable and that all of our countries are democratic and we don't have to worry about it.

Actually, I think the main question that we have is whether democracy can survive in Latin America when our countries are getting poorer, when the gap between rich and poor is wider, when we have to go through structural adjustments that are hitting the poorest because they're being hit in every country. In that respect, I think the problems that are of main interest to the United States regarding Latin America like immigration, like drugs, environment, I mean, you cannot really address them if you don't address poverty.

I think the title of this panel is very interesting, "Trade Plus Democracy Equals Security and Human Rights," and I hope that during this meeting, we will have a chance to discuss whether this is feasible, whether this is possible because I do agree that unless we help our countries develop and we really become trade partners, otherwise it will be very difficult to think that human rights can have a true existence in our society.

Also, I would like to start by asking you to think for a moment what you think human rights are, because we don't agree on the definition of human rights. I mean, for many, many years, especially in the United States, human rights have been civil liberties, civil and political liberty, and economic, social and cultural rights were very difficult to assess and, of course, even more difficult to assess the rights of the people like the right to development, the right to peace, the right to environment.

So how do we think about human rights? I would say that in the difficult years in Latin America, there was controversy as a theory and as a political practice. If you think, for many years it was divided because of political reasons. The West was promoting in civil liberties while the Eastern democracies were promoting social and economic rights.

This polarized the concept of human rights, and in many ways it made it much more relative, and one of the main fights we have to have is how human rights can really be universal and how we can work about these universal concepts that human rights should be the same even if they are regional differences, religion differences. We have to come together into that concept.

When we talk about the inter-American system, and I'm going to be rather brief on this because I think this is a knowledgeable audience, but I'd be happy to go any deeper

and, of course, the expert on the inter-American system is right here next to me. So we'll both answer your questions happily. We had agreed at some point he would come in and join me in mentioning some interesting things that have happened in our system.

The inter-American system draws from two legal sources. The first one would be the charter of the OAS and the American Declaration of the Rights and Duties of Men, both in 1948 signed in Bogota. Actually, the American Declaration was signed before the Universal Declaration, which shows the worries that the Latin Americans have had regarding human rights.

Again, another big gap that we have is what the formal legislation says. We have beautiful constitutions inherited from the Spaniards, from the French to the Spaniards to the Latin Americans, but they really have nothing to do with the reality of, let's say, our indigenous populations.

Based on this first legal system, I would like to mention the Inter-American Commission because the Inter-American Commission was first created in 1959 as an autonomous agency of the OAS. The Inter-American Commission, from the beginning, played a very active role in the defense of human rights, making reports, visiting countries, taking individual cases, actually even went beyond what people that created the commission believed it would go to.

So in Buenos Aires in 1967, the Protocol of Buenos Aires makes it an organ of the OAS. Of course, it is afterwards the convention, the Human Rights Convention that was adopted in—sorry, the Protocol of San Jose was signed in San Jose, Costa Rica, in 1969, and it is the convention that now it is the most important instrument and the most important legal basis for human rights system in Latin America.

Let me say that the American Declaration in many ways has been accepted as an authoritative interpretation of the fundamental rights of the individual, but it's not binding or is not a covenant as the convention is. I think the convention in many ways also strengthens the role of the commission, and when we think of the years of the late '60's, '70's, when the commission did some of the most important work, the political role that the commission played, I think, has been sometimes underestimated.

I'm going to mention two cases, the case of Argentina, in which the military had to give up power, especially after very hard critics by the commission. The commission can work in what's called visits en loco. That means that if authorized, they go into a country, they interview individuals, they visit jails, they visit with the judiciary, and they have a very wide spectrum of possibilities for acting within a country.

So a visit from the commission to a country gives the possibility of really making an analysis of how the situation in human rights is. This is published in reports, and the commission also has an annual report in which it states the situation of the different countries that have been under analysis.

I will go back later to how I see the commission now and how important the commission has been working, but certainly, when the convention that was approved in 1969 it made a much more stronger inter-American system, and especially, I think it is important to notice that it was the convention that created the Inter-American Court of Human Rights.

The Inter-American Court of Human Rights has really made, in my opinion, a difference in what means the protection of human rights. In establishing the Inter-American Court, the convention gives the court two different jurisdictions. One is a contentious

jurisdiction and the other is an advisory jurisdiction. Maybe, I would talk first with the advisory opinions. Why? Because for many years, I wanted to point out that there's a disparity in both organs. The commission was created in '59. The court does not start to work until '79. So, of course, it is this gap in which the commission was at the same time a quasi-judiciary and a political organ. So it had a monopoly on everything that has to do with human rights.

There was a resentment when the court started to work, and Tom Buergenthal worked 12 years, 12½ years actually. Nobody has been at the court, and nobody will be at the court, that long because he was from the beginning, he was re-elected. So he has all the knowledge of those previous years, but those previous years the court had to go through a tremendous amount of effort to really come up with consultative opinions with governments raising questions about human rights, and through the opinions, I think the court made some very important decisions that are, if not binding, in many ways people regard them as binding.

I would like to say that when the first contentious cases came, were the cases from Honduras, the cases of Honduras have been by far the most controversial, the most difficult cases, and especially they were the first cases that came into the court. I think Professor Buergenthal has agreed to talk a little bit about the Honduras cases.

I think the contentious cases become now more important. While I was at the court, we were able to get more cases from the Inter-American Commission, but let me tell you that in my experience as a judge, in many ways, had many rewarding things, but it had many frustrating things because the court and the commission still are not working in a very efficient manner.

I mean, as a matter of fact, even as independent organs, they don't work very efficiently. Why? They don't have enough staff. I mean, the court has two lawyers, the judges meet twice a year, and I think a court that meets twice a year with all the problems that are in human rights, I mean, really cannot address these issues the way they should be in a much faster way.

I cannot talk for the last year, here, but I can say that before, many of the cases that came to the court were not well-prepared and in many ways, we had, at one point, one of the cases, Callada, which was a very delicate human rights case of gross violations of human rights, had to be rejected because of procedural measures. I think in human rights court, where we try to be very broad and very broad-minded about procedures, you really have to have very serious mistakes to really prevent that.

Let me say that also, I find that the court now is beginning to have more space to work with different countries that are beginning to accept the jurisdiction of the court, because part of the problem at the beginning, also, was that so very few countries were willing to accept the jurisdiction of the court.

Nowadays, with the transition to democracy, many presidents, like Alfonsine and Sanguinetti, the first decision they took as they came into power was to accept the jurisdiction of the court. I would like to mention a particular case that I was able to sit in and this is one case of Suriname. There were two cases regarding Suriname. The reason I like to mention this one is because the police killed seven people on the 31st of December in a very nasty act and the victims were not found until about 8 days later. It was a very tragic case.

However, the main reason I'm mentioning this is that Suriname recognized that its police had taken the lives of these people and not only recognized it, but was willing to give an indemnization and to put these people on trial. This to me was a very important step within the judiciary system, Inter-American system, because countries most of the time, because they need to protect the military, and that's the only reason.

Because you don't understand how a government like Honduras or Peru comes to the court to fight for cases that were gross violations of the human rights done in previous governments. So you feel, why can't this president say, "Yes, we did it"? Well, the reason they can't say it is that the army is permanent. The army is still there, and often the lawyers and the people that come to the court are army representatives or navy or whatever.

I think this is going to be discussed later, so I shouldn't go into this any further. However, I would also like to mention that for Suriname, since the court had to give an estimate of the damages to the victims, we went through much trouble to really look at the customary law. One of my complaints sitting at the court was that we were so formal, especially Latin American judges, and Tom and I have discussed that it's too bad that at this point there's not one common law—well, now, I'm sorry, Oliver Chapman was just elected.

I think it's important that there is a common law judge that gives a different perspective because Latin American lawyers tend to be extremely formal. In the case of Suriname, we went through a lot of trouble to understand what the customary law was, how these people that were killed had not one wife, but many wives, a lot of mothers that were dependent, a lot of children that depended. It was more a concept of a communal family than the type family that we are used to talk about in our Western hemisphere.

Let me also say that only the commission or the states can bring cases to the court. The commission can take individual complaints, NGO complaints, so the commission has a very broad range of activities that can take place in the human rights world. Then the court has the restrictions that it has to be either the commission or the states that bring the cases to the court.

Also, I would like to mention something that I think has been very useful in the work of the court, and it's actually a very new pattern, and this is the interim measures that the court can take to protect the lives of people that are in danger.

This has been used lately a lot more by the commission and they have been 10 decisions on this matter. It's very important because the court has the possibility, and let me give you an example. They threatened human rights activists with death in Guatemala—one of them was Amilcar Mendez, whom you probably know has worked for a long time with the indigenous population. So the court was asked to protect the lives of the activists threatened after a lot of the people that had been in a meeting regarding indigenous population had been killed.

The president of the court can take preventive measures, and in those cases afterwards, the court doesn't have to, but it has been interpreted, and I think it's the correct thing to do, that it should be the court that makes the decision and holds the public audience in which the government comes and really commits itself to protecting the lives of these people.

In the case of Guatemala, the government came. They took a lot of preventive measures. There were some criticisms that the court had not done enough. Let me tell you that

it is not easy for the court to go over to Guatemala and keep track of every movement that the government is doing, but none of the people that the court protected got killed.

In a case in Peru where a journalist and the witness had been killed and the other witness and the widow had been threatened to die, I mean, once the court came up with the preventive measure, the government complied. The people are alive. In every case that the court has come up with some interim measure, the countries have responded and to me, it's one case in which I felt I was doing something right then, because the other problem that the court has had, and I think I'm talking too much about the court, is that it takes so long for the court to come to decisions because it takes a long time to exhaust internal remedies.

It takes a long time to come to the commission. By the time cases come to the court, very often it's 5 years, 6 years, 7 years. It will be another year, at least, or 2 more years at the court because of the very few sessions we have, and often, it's because of also economic reasons, and it's a very interesting question for the panelists, which I would hope I would have the chance to answer in a certain point, I do believe that both the commission and the court can be effective if they are given the political support in the first place, of course.

Countries are still very reluctant to give out their sovereignty. I think nationalism is taking over in many countries, including in the United States and this, of course, prevents international human rights courts from really having a more active role. But also, the court and the commission get more staff support more lawyers to work there, more efficiency, more economic support, I think it's impossible to really think that a court and a commission that hears the cases every 6 months can really play an important role within the hemisphere.

Is the OAS capable of doing this? Well, we have a representative of the OAS and I think it should be her turn to talk about this. However, overall, I feel worried that the democracy in our country is being hit especially by the problems of the poverty, especially by problems of the military still not understanding their role.

I think there are many issues in which we should be addressing human rights in a holistic approach, and the Vienna meeting which didn't bring one head of state, at the summit of the environmental issues in the United Nations, all heads of states were there. When in the human rights, all states talk about human rights, but when the human rights meeting of the United Nations was held in Vienna, not a single head of state was there.

I think this shows that though governments are willing to talk about human rights, they don't have really the commitment to comply by the system that is protecting those human rights. I will leave it there.

**Mr. Buergethal.** Thank you, Ambassador Picado.

Ms. McBride?

**Ms. McBride.** Thank you very much. I'd first like to thank the Helsinki Commission for inviting me to speak about OAS mechanisms for the promotion of human rights and democracy. It's an honor for me to participate in a panel with distinguished human rights experts, and I feel very humbled in what I could possibly say in response.

I've actually been asked to talk more about democracy and what the OAS is doing on behalf of democracy in the hemisphere, but at the end of my comments, I would like to respond to some issues raised by Ambassador Picado specifically.



At the risk of being boring, I think that it's important to give a little historical context to the Organization of American States, which happens to be the oldest regional organization in the world. It dates back from 1890, not as the Organization for American States, but as the first International Conference on American States.

From about 1890 until 1920, a number of inter-American structures and specialized agencies were established that gave the legal framework and some doctrinaire frameworks to the inter-American system as it is today. One of these specialized agencies formed, in fact, was very progressive for the time, which was the Inter-American Commission on Women, which is the first and the oldest regional organization on women's rights as well.

The OAS in its present form when it became known as the Organization of American States, dates back from 1948 when the charter was adopted and the OAS was formally established. It was established in the context of experiences from the Depression and from World War II and concerns about peace and security in the Americas.

Although it had the mechanisms and the institutions to promote human rights, democracy and security in the region, for quite a long time, the OAS was hampered by cold war realities and some of its internal contradictions. It went through a period where, frankly, it was rather irrelevant for solving the major problems of our hemisphere.

I would like to point out and second what Ambassador Picado says, that the most dynamic part of the OAS for many years in my mind in the 1970's and the 1980's was the Inter-American Human Rights Commission, which was an incredibly strong force for opening up space for political discussions in the countries and providing some protection of human rights and putting human rights at the forefront of discussions in the Americas.

In the early 1980's, the OAS, for a variety of reasons—the end of the cold war, the establishment of democratic governments in all of Latin America except for one country—helped the OAS start to snap out of its slumber, and there were certain steps taken by the member states in response to crisis in the region, threats to democratic government, that helped bring the OAS into a more relevant situation, make it more of a relevant actor in the region.

The first that I would like to point out of these mechanisms which were established was a revolution called the Santiago Commitment on Representative Democracy from 1991. This was the start of a series of mechanisms which political mechanisms and operational mechanisms which have been called a dissent of democracy regimes for the Americas.

The Santiago Commitment on Representative Democracy calls for collective actions to protect democracy in the hemisphere when it is threatened. It makes provision for the secretary-general to call a special meeting of the permanent council—there is no security council in the Organization for American States—and to call for ad hoc meeting of foreign ministers to decide upon collective action in case democracy is threatened in the hemisphere.

This has been used successfully, more or less, in some countries than others, in Haiti in 1991, in Peru in 1992, and in Guatemala in 1993. I don't mean to argue here that the OAS was crucial in the restoration of democracy in these countries, but in fact, played a very supportive and active role in a way that had not previously been done, and what I think is even more important is that the countries of the hemisphere collectively decide to take action on behalf of democracy.

The Santiago Commitment was furthered by the Washington Protocol of 1992, which allows for the suspension of a member state where a democratic-elected government has been overthrown by the use of force, and allows for the application of economic and diplomatic sanctions.

Parallel to this, the secretary-general of the OAS, who was Baena Soares from Brazil, supported by all of the countries, several countries in particular, decided the OAS needed to formalize an operational mechanism for supporting democracy. There are already mechanisms and institutions for supporting human rights—the Inter-American Human Rights Commission, the Inter-American Court—but there was really no institution or office to do work on behalf of democracy and democratic consolidation.

As a result, in 1990, the Unit for the Promotion of Democracy was established by executive order. From 1990, I would say, until the end of 1994, 1995, the Unit for the Promotion of Democracy, as well as the OAS's activities in the defense of democracy have been a combination of unarmed peacekeeping and demobilization activities, which would be the case of Nicaragua and Suriname; human rights monitoring separate from what the commission has done, but certainly in collaboration in Haiti; work on behalf of democratic consolidation in Nicaragua, Ottawa and other countries; and several electoral missions. We have observed almost 20 different elections in this hemisphere since 1990.

In December 1994, the Summit of the Americas was held in Miami, which gave the OAS a clear compass about where to direct its activities. As a result of that and the new priorities established by the secretary-general of the OAS, Cesar Gaviria, who took office a year ago, the OAS has identified new priorities in which it is switching both material resources and political resources.

The new parties at the OAS, based on the Summit of the Americas, are strengthening the work in human rights, democracy, economic integration and environment. I will respond that in the last year since the Summit of the Americas and with the General Assembly in Haiti of last year new priorities for the OAS have been formally endorsed by the member states, but in a certain extent it depends on the member states really to implement this. The OAS is always constrained or in times supported by the political will of the member countries.

There has been, I think, over the past year, a very interesting opening up of the OAS to the whole issue of civil society that we haven't seen before. The member countries, the secretary-general, and individuals inside the OAS are very much interested in bringing actors whom they have excluded from the OAS system into the system—for example, indigenous people—to bring the role of women and their participation in economic and political life more into the OAS; to working more closely with civil society either organized or organized civil society in the Americas.

We still don't have the situation where civil society actors can actually formally be represented in the OAS. Nevertheless, they have, I think, very good access in the American human rights system, and through the Unit for the Promotion of Democracy, some of our projects that we're doing are very much civil society oriented in trying to open up the work that we do, open it up and make it more relevant to what is really going on in the hemisphere.

The secretary-general is working on a plan to strengthen Inter-American human rights systems, which is an extremely complex topic because it involves strengthening the commission, the court, working more closely with other actors who are involved in pro-

motion of defense of human rights, and bringing in the rights that haven't really been paid attention to in the hemisphere for such as indigenous people's rights and violence against women and some other issues.

As a first step, the budget of the commission was almost doubled in 1 year, which the court, unfortunately, hasn't had as much support as I personally would like to see, and still 80 or 90 percent of the population in the Americas has no access to the court because 4 very large countries—Brazil, the United States, Mexico and Canada—have not accepted obligatory jurisdiction of the court.

So there are still a lot of limitations that are on the system in regards to incorporating everyone into the protection. I think with that, I'd like to close and leave time for other people for questions.

Mr. **Buergenthal**. Thank you very much, Ms. McBride.

Let me then move on to you, Ms. Kristicevic.

Ms. **Kristicevic**. Thank you very much, Mr. Chairman. I would first like to thank the Commission on Security and Cooperation in Europe for inviting me to this meeting. It is a great honor for me to be sharing this panel with the distinguished panelists, some whom I've met, others whom I've heard so much about and read so much of their work.

I'm here today as director of the Center for Justice and International Law, CEJIL, which is an international organization that litigates using the mechanisms of human rights protection that Ambassador Picado has so very well described, the Inter-American Commission and the Inter-American Court, trying to establish state responsibility for human rights violations along the region.

When I started thinking about the topic of the conference, I tried to picture how the Helsinki agreement could apply to the Americas, and it is my belief that the best way of attaining a positive impact on the human rights situation for the Americas by using a multilateral agreement that is at hand, the OAS, will be achieved by strengthening the position of the NGOs within that framework, as well as strengthening the autonomy and efficiency of the bodies of human rights supervision within the organization. Those are, I think, the Inter-American Commission and the Inter-American Court.

To illustrate this point, I will first make some brief comments about the challenges faced by NGOs in the Americas. Second, I will try to list some reasons that make the NGOs so central to the work of the OAS and its human rights work. Third, I will give some practical suggestions on how the OAS framework can be more responsive to human rights.

The Americas, as it has been so well described by our panelists, are going through this crucial period where most of our countries have periodic democratic elections. However, as Guillermo O'Donnell has said, Latin America is also passing through an era of delayed activity democracies. We have many democratic governments that retain some semi-authoritarian character, and these vestiges of authoritarianism that remain in our countries have helped explain why human rights violations persist in the region.

The human rights violations of the '90's, of course, are not the same violations common during the dictatorships of the '70's and '80's when many governments promoted massive violations of rights as state policy. Nevertheless, human rights violations continue to be extremely serious.

Several countries have a high number of extrajudicial executions as well as cases of torture. Many countries permit military courts to try members of the armed forces who

commit human rights violations, a situation that contributes to a serious problem of impunity that is persistent and pervasive in the region and often results in the denial of due process for the victims of abuses.

In addition, streamlined procedures used to try suspected terrorists or drug traffickers in countries such as Bolivia, Colombia and Peru may also infringe upon or deny basic due process rights. Even those people living in countries that are models of human rights protection, such as Chile, Argentina, Costa Rica, suffer from discrimination and sometimes from grave violations of freedom of expression.

States of our region have often replaced many active human rights violations with passive violations or active omission. Besides the problem of impunity that I've talked about before, some states have failed to protect marginalized sectors of society such as street children, homeless people, or members of indigenous groups, despite ample knowledge of their plight. That was clear, for example, with extermination of Yanomani in Brazil or extermination squads that have executed street children in that country as well as in Colombia, Guatemala and Honduras.

States and multilateral institutions tend to believe that democracies—that is, democratically elected governments—do not commit human rights violations or, in a more skeptical view, that they should not be exposed or punished internationally while trying to consolidate their democratic system or while trying to solve serious domestic problems such as drug trafficking.

The Greek epic "The Odyssey" recounts that Odysseus had to be lashed to the mast of his ship to be able to listen to the song of the sirens without succumbing to their spell. In the same way, states have bound themselves domestically and internationally with bills of rights and human rights treaties. Like Odysseus, the statesmen who promulgated those legal instruments understood that there would always be multiple temptations to disregard human rights.

The idea of Ulysses foreseeing his lack of will that is also applicable to the states. They foresee that there might be many temptations to disregard human rights that make them bind themselves to those bills and treaties. By ratifying human rights conventions and guaranteeing fundamental rights in their national constitutions, states recognized history and decided to bind themselves as a way of guarding against their own mistakes.

As Kelly McBride said, the Organization of American States has provided a vast and useful framework for the protection and promotion of human rights. The OAS has developed one of the most progressive systems of human rights protections in the hemisphere. However, the OAS as a multilateral institution doesn't have a life beyond its components. Those components are states which are often tempted to violate human rights so that they either systematically or selectively violate human rights and are often reluctant to accept any supervision.

This universality of human rights encounters a stumbling block of an eroded, but still very much existent, state sovereignty and in this context what I want to suggest, without being naive, is that the NGOs often represent a balanced and principled voice in societies such as ours and are crucial to the protection and promotion of human rights.

NGOs work for accountability when a state violates basic rights, whether it's civil and political, economic or social. NGOs also play a vital role in promoting social changes by trying to engage the states in preventing human rights violations, in creating awareness, in educating and prompting states in addressing the violations they've committed.

At an international level as well, NGOs bring claims before the Inter-American commission, and additionally, they serve an important function as informal monitors of the OAS. I'll go quickly over a list of some reasons that make NGOs the centerpiece in the work of the OAS and its human rights protection mechanism.

The NGOs are a major player in identifying, documenting, and litigating cases of human rights violations in the hemisphere. They are also crucial in providing access to the judicial processes of human rights protection through education, litigation, and giving access to other NGOs and activities within the region to redress human rights violations by the states.

NGOs also have effectively used the inter-American system, having a very interesting impact in many ways. They've helped protect lives and the specific integrity of individuals. They've helped repeal laws and release persons illegally detained. They've pushed governments to change patterns of gross violations. This not only shows the impact that NGOs can have in using the system in the human rights of our hemisphere, but also shows the vast potential of the system itself.

NGOs are also crucial in helping the commission and the court identify procedural issues that have consequences in terms of access to the system, transparency and efficiency of the system, accountability of states, and those translated into technical terms as confidentiality of the procedure, how to deal with violations and visibility of petitions with which former members of the court are very familiar.

In their work at the OAS at large, NGOs furnish governments with information on candidates to these independent bodies, on the implications of seemingly harmless resolutions regarding human rights mechanisms, and NGOs also play a crucial role in the processes of standard setting at the regional level, and participating in the drafting of the inter-American convention of forced disappearances. Right now, CEJIL is participating in the draft declaration of indigenous people's rights and in the draft of an inter-American convention on the elimination of all forms of discrimination based on disability.

Now, to strengthen the OAS's ability, this framework's ability to effectively deal with human rights issues, there are some changes that are necessary. Many of them have been already described by the former panelists. They must occur at the level of the states, at the level of the OAS, and at the level of the Inter-American Commission on Courts.

A group of them have to do with increasing accountability, how to increase accountability. To make sure that the OAS system is itself accountable, it has to allow outside monitoring. In that regard, the OAS should institute a mechanism that will grant NGOs observer status to the organization. This is central to guaranteeing NGOs access and participation in some crucial discussions.

Right now, there is an initiative to give observer status to NGOs in the OAS, but the group that is working on that has had only two meetings in the last year and, paradoxically, NGOs have never been invited to participate paradoxically.

As Ambassador Picado said, and Kelly McBride confirmed, there is a need for more economic support for sessions of the Inter-American Commission and the Inter-American Court and to hire more staff. Some countries still need to ratify the American Convention such as the U.S. and Canada, and others such as Brazil and Mexico still need to accept the compulsory jurisdiction of the Inter-American Court.

There also needs to be a better system of enforcement of the judgments of the court as well as the recommendations of the Inter-American Commission.

The second point deals with the independence and autonomy of the human rights protection system. Some states have stopped the harassment and subtle or not-so-subtle attacks on the integrity and independence of the commission and the court. For example, a mild example I would say, states have tried to increase the number of members of the commission and the court in order to politicize those bodies.

The Inter-American Commission and the Inter-American Court also need to work in order to grant independent standing for the representatives of the victims before the court, and I'll let Professor Buergenthal talk about this because this is a very interesting procedural issue being discussed right now.

After the commission decides to take a case to the court, the commission, from being a judge or an arbitrator in the first stage of the proceedings, becomes an advocate for the victims with many contradictions about how the commission is perceived, and often with serious problems for the defense of the interests of the victims as it happened with the Gazarra case.

A third point which we think is crucial is to increase the efficiency and transparency of the work in the human rights protection system. The commission needs to increase the volume of cases it processes. Although the commission docket is more than 600, almost 700 cases last year, its final report came out with only seven final reports on individual cases, which is an *unprecedented failure*.

Moreover, proceedings must be streamlined. Many cases suffer an excessive delay. There's no consistent adjudication on some cases. Neither is there transparent criteria for determining which cases advance to the court. For victims, it's crucial that cases go to the court because the court is the only body that gives them an enforceable judgment. Currently, the docket of the court is merely 15 cases.

Many of these deficiencies reflect very poorly on the secretariat of the Inter-American Commission on Human Rights. There are serious problems. We know they have a lot of problems with staff and a considerable workload, but there's also a huge mismanagement which amounts to the most serious crisis of the secretariat in its history. Thus, Mr. Gaviria, Secretary General of the OAS, on whom the secretariat depends as the general manager of the OAS, needs to make some necessary changes in order to solve this management crisis.

To conclude, to make the regional framework more responsive and effective in promoting human rights, it is crucial that we strengthen these independent bodies, the Inter-American Commission and the Inter-American Court, and the position of the NGOs that monitor not only those bodies, but state compliance with their international obligations.

**Mr. Buergenthal.** Thank you very much.

**Ms. Kristicevic.** You're welcome.

**Mr. Buergenthal.** May I now turn to General Ellerson? General, you'll probably need the microphone.

**Gen. Ellerson.** My charter, I think, was to talk the inter-American security system, perhaps with an idea toward trying to gain some insights as to how the European experience might or might not impact on us in this hemisphere. I will try to do that very quickly by briefly doing a thumbnail sketch of the inter-American security system, talking about as much as anything what it is not relative to the frame of reference that I most often

hear it compared to, i.e., United Nations, OAS or the Inter-American Defense Board, vis-a-vis, NATO.

Then I'll just talk about how that system is changing along with the rest of the world; how, at least in my experience—and I've been at this now for just two or 3 months, so I'm really relatively new—I see the menu of security issues with which we're dealing changing; and how I see the way in which the militaries of the region are trying to come to grips with them.

So, with that by way of background, first the inter-American security system. Kelly really talked about that when she described the background of the OAS. Three months into the business, if you ask me what is the inter-American security system, I'd say, "Boy, beats the daylights out of me." It's very hard to get your arms around it. It's fuzzy.

What it boils down to is it is that series, that collection, of treaties and conventions and proclamations that extend all the way back or forward from 1816 to the present. So such things as the Jamaica Letter in 1816 or the Panama Congress of 182526, and the Washington Congress of 1890, all of those things in the aggregate grow up to constitute this thing called the inter-American security system. Nevertheless, to try and give it a little bone, to try and give it some feel or some substance organizationally, I think it's fair to say it's represented primarily by the Organization of American States and the Inter-American Defense Board.

We've talked about the Organization of American States, so a 2-minute paid commercial on the board, founded in 1942, as much as anything, to build the continental team in the face of the Axis threat of World War II. So a very traditional, collective security arrangement designed to meet a very traditional threat, and in the wake of World War II, and again as Kelly described the OAS, did not do a very good job of updating itself of accommodating those cold war years, and so really, to a large extent, fell into disuse.

It is, however, and continues to be, a sitting board here in Washington, DC, of senior military officers from 25 nation states from throughout the continent stretching from North America, from the United States, down to Chile and Argentina. The only members of the OAS who are missing are Canada, Belize, and then five or six of the Caribbean states. So that is the board. Meets every 2 weeks here to discuss many same sorts of issues that we've been talking about.

Now, what isn't it? Well, in this day and age, we're all taken up—I mean, we're talking about Bosnia-Herzegovina—will we, won't we—and in that conversation we've all been talking Chapter 6, Chapter 7, that degree of force which peacekeeping forces might or might not use, because under the U.N. charter the use of force in the interest of peace is authorized. In the OAS charter it's not.

We negotiate. We arbitrate. We may impose sanctions. But force has not been a part of the equation—a major distinction, a major point that you have to understand when you start talking about inter-American security. The same kinds of differences apply when you come to the board.

People try to compare the board, the other piece of your inter-American security system, to NATO, and I think it's like NATO in the sense that we both have military reps, we both have an international staff, we both have colleges. NATO has theirs in Rome. We have a college here in Washington at Fort McNair where we bring in future senior civilian and military leaders from around the hemisphere for a year of professional military education.

Where we differ, however, is that, as you know, NATO has standing forces, NATO has a command structure; we do not. What's more, we don't want one. Now, I'm using "we" liberally, but if you do a survey of, I think, most of the delegations to the Organization of American States and even within the board itself, you will find that within our hemisphere, with our emphasis on non-intervention, on self-determination, and the absolute integrity of national sovereignty, with our emphasis on peaceful resolution of conflict, there is an entirely different approach to security within this hemisphere. It's reflected in both those bodies—the Organization of American States and the Inter-American Defense Board—and the fact that they have consciously made that decision that we do not want to militarize or operationalize those organizations.

The board is a planning board. It's an advisory board to the OAS. It is, as much as anything, a forum of communication where you can bring together these senior military leaders from around the hemisphere to talk about this new world, this new agenda that we're talking about here, and over time, hopefully, develop a mutual understanding, build some consensus how do we now define security and what is the role of the armed forces with respect to support for democracy, support for human rights, et cetera.

OK. So that's the system; that's what it's not. What are we about? I said that the board had not done a very good job of updating itself, of keeping itself current and relevant during the cold war years, and I think that's probably a fair assessment. With the collapse of the Soviet Union, with the disappearance of or the concern for that monolithic imperialist communist threat, the Latin American military are, by and large, entering into the same debate that we've been talking about here.

I'm just back from the Conference of American Armies. That's something that's held every 2 years at different sites throughout the hemisphere, where you bring together the commanders of all of the armies from north to south. You sit down in a pile for four to 5 days and you have the opportunity to listen to these individuals talk about their vision of where they are as an institution and where they're going.

I will tell you, without exaggeration, that the single most striking conclusion from that conference was the degree of consensus among that group as to the new definition of security and security issues. In other words, whereas traditionally the Latin American military have been very inward looking, have maintained this very conventional concept of defense, defense that began and ended at the National frontier, there was within this group unanimous acceptance of this new, more broadly defined security that included terrorism, narco-trafficking, mass migration, the environment, poverty, the role of the armed forces in support of development, a general acceptance of democracy and human rights as fundamental to any construct for security.

So what? Well, I think the "so what" or the message that I'm trying to convey is—and I had the opportunity to sit in on this conference 2 years ago in Brasilia. The difference is striking. Not by any stretch of the imagination that we're there, that it's over, we've won, but there is honest-to-goodness movement, and it's movement in a direction that I think most of us would applaud.

Backing up just a little bit, not only has the board in the past been mired in the old cold war paradigm, but it also suffered, and now I'm talking about the board as one manifestation of our inter-American security system, it was very isolated. In other words, I talk about the relationship to the OAS, but there is no formal juridical link between the Inter-American Defense Board and the OAS.



We liked it that way. I mean, who are those guys to tell us anything anyway? The OAS was comfortable with it. The OAS was comfortable talking about the political, the social, the economic. They weren't quite as comfortable talking about the security thing. Recently now, that's changed. I mean, there's this understanding that these things that we have been talking about, the counter-drug, the terrorism, the migration, environment, those aren't the exclusive purview of the military.

On the other hand, there's also the realization that they have a security component, in other words, that degree of security necessary for the political, the economic, the social reform to go forward. If we're to be effective, we've got to get together. So, over the last couple of years, really in, I think, a significant way, the relationship between the board and the OAS has begun to mature.

In 1992, the OAS created something called the Hemispheric Security Committee. They made it a permanent committee this past summer. That, for the first time, has given us a vehicle for communication back and forth on a regular or routine basis. It's a much healthier arrangement than we had previously.

The OAS is starting, for the first time in some time, to put the board to work in response to their priorities, their concerns; to wit, the board is involved in de-mining operations in Honduras, training and supervising Honduran teams to pull those things out of the ground, doing that in response to the OAS who had a request from the government of Honduras.

The board is just back from having participated in the confidence and security building measures conference hosted by the OAS in Santiago. It was the board, in response to a request from the OAS, that prepared that inventory of confidence and security building measures already present within and among the armed forces of the hemisphere.

Since that's one thing that the OSCE is involved with, I'll just make the point that it's a very extensive list. In other words, this hemisphere has not been sitting on its hands while the rest of the world has been moving out in that regard.

The board is also putting together an inventory of military capabilities that could be made available to support disaster relief, and participating in a number of fora associated with trying to develop a consensus on the threat posed by narco-trafficking and the military's role in trying to assist in responding to it.

None of that stuff is earth-shattering alone, but if you look at where we are, if you look at the subjects that we now have under the umbrella of security and that we are now talking about, and if you look at the degree of coordination—that may be stretching it a bit—dialog going on between the civil side of the OAS and the military side represented to a degree by the board, I think, positive development. Again, don't want to overstate it. We are very much like porcupines, I think, trying to get to know one another at this stage of the game.

We talked a lot about the judicial system and human rights support for democracy. Let me just close by a couple of observations. These aren't thought out, but I think it's worthwhile because when we start talking the judicial system, when we start talking human rights, we invariably start talking the military.

As I said, I am very impressed with the progress that I see. I saw the commanders of the armies of this continent commit themselves to this proposition that democracy and human rights are the fundamental ingredient in security. But just as the Ambassador said, we tend to talk by one another in some of these conversations. In other words, your

definition of democracy or your definition of human rights might not be the same as mine, and so we'll both be saying the same thing, we'll think we're communicating, frequently we still tend to talk past one another.

The military, by and large, as Vivianna said, they're focused on the result. They're focused on making it happen. They're focused on that narco-trafficker or that Sendero Luminoso who constitutes a threat to their government, to their society. So, where they will draw the line will be different from where we might draw the line, the whole time professing honestly and sincerely in support of the same human rights that we're talking about.

We talked about the fact that those institutions still are resistant to change, that they don't open themselves up, or that the governments who are trying to re-invigorate the judicial system as it applies to human rights are sometimes restricted in what they can do because of the continuing presence of the military. All true.

Important to understand, that institutional loyalty by the Latin American military is very strong. It's getting better as for its willingness to subordinate itself to democratic leadership. If you take a poll, everybody will raise their hand and say, "Yes, we are subordinate to the elected civilian leadership, but"—and there are a number of buts. However, the number of those buts is going down precisely as the democratic process matures, as the democratic process begins to start to live up to some of its promises. Their acceptance is beginning to improve as the judicial system begins to improve, as it begins to live up to some of its promises. The previous argument being that it didn't work. We have no recourse other than to take these extralegal means.

Now, that's not by way of an apology or making excuse. That's just my observation. I think it's a good news story. Democracy is up, the judicial process is moving, the dialog between the communities is stronger, and that might be my closing point. As we work our way through this, it's got to be an inclusive process. The one thing we absolutely cannot do is label the different communities and then allow them to go their separate ways. We lose every time we do that.

One final point. I was in El Salvador and you know that El Salvador, in the early part of the war years, had a terrible, terrible human rights record. So one major thing that we were trying to do was address that. We created a national training center, in other words, an eye in the needle so that every new soldier coming into the Salvadoran armed forces got a common education, a common training base. A big part of that was human rights.

I remember very well sitting out there 1 day, sat through a class. A sergeant gave this great class on human rights, on taking prisoners, proper care of prisoners, securing them, moving them, getting them back to proper authorities. The class was over. Any questions? A soldier sticks his hand up in the back and says, "Right, Sarge, I got that, but when do we get to hit them, etc.?"

Well, my point is that we're on a journey here. It's a process. That kid was a product of his society. He'd heard the sergeant give the class. It was a good class. The sergeant said all the right things. It just didn't track with the world from which he came, from his reality. I'm sorry, you don't change the world, you don't change reality from 1 day to the next.

Still, again, it is changing and I see some very positive developments in that regard. Thank you very much, appreciate it.

**Mr. Buergenthal.** Thank you very much, General. Thank you very much, members of the panel. I don't think you came here to hear the moderator, so I won't say very much, but let me just bring you back to the purpose of this conference. You've heard a very good overview of some problems that we face in Latin America.

There are many more that could be mentioned, but one issue of particular interest to the Helsinki Commission concerns the extent to which the CSCE process provides an experience that may be of value to and be used in Latin America. In that connection, let me just say I believe that in some ways Eastern Europe was probably luckier than Latin America. What I mean by this is that when the Soviet empire collapsed, everything—the entire system—collapsed with it. That did not happen in Latin America when democratically elected regimes took over. When you look around various countries in Latin America, and while it is true, as the general points out, that things have gotten better, in some of these countries you have little more than facades of democratic regimes. But behind this facade there remains much left over from the past: great poverty, discrimination, and a tradition of corruption, all things that are extremely difficult to change. It may take longer to change than in Eastern Europe.

It is really a pity that we don't have on this panel somebody from the Inter-American Development Bank who could focus on the linkage between economic, political, and security issues. The great genius of the CSCE, its great inventiveness, was the linkage between human rights, on the one hand, and security, on the other. While the linkage between security and human rights is of less significance in Europe today than it was in the past, linkage between human rights and economic issues is more important than ever. What has happened in Europe is that the new states, particularly the members of the former Soviet alliance and former Soviet republics, start membership in the CSCE in order to join the Council of Europe and eventually the European Union. They see it as progressive steps because of the importance to them of the economic benefits the European Union can offer. Hence, what you have in Europe is a sort of interactional organizational cauldron or interaction between the Council of Europe, the CSCE, the European Union, and various other organizations that advance the cause of human rights. I don't see institutional interaction taking place in the inter-American system. I believe that if we want to achieve in the inter-American system what is being achieved in Europe, much greater reform of the OAS system will be required than the states are currently willing to agree to.

One thing that is missing in the intra-American system moreover is that we do not have a built-in institutional rights lobby. We do have that in the OSCE to some extent in that government delegations to OSCE meetings often include private citizens. NGOs are taken much more into account in the OSCE. This practice does not exist in the OAS. You have an OAS general assembly meeting, and there are no NGOs other than in the hallway. You have in the permanent council, where everything of importance is taking place—and here too there are no NGOs. In the Council of Europe, which is really the human rights arm of Europe, you have a parliament composed of members of national parliaments who often act as a human rights lobby. No such institution exists in the OAS. And that's one of the big problems.

I hope you have many questions, particularly questions that relate to application of the CSCE experience to Latin America. Any questions. If you have questions, please come up and identify yourself and speak into the mike. Yes, sir, please?

**Questioner.** My question is to the general. Yesterday when I came to this conference I came with interest that some discussion will be at least to some extent on security. I thought by coming here that I would learn about whether the European experience can be applied to other regional security organizations. Since I came yesterday up to now, human rights have dominated the whole discussion. I'm not saying that's wrong. I appreciate that. But I came here at least to get some idea about whether the European experience can be applied to regional experience. I'm from Saudi Arabia, and we have what we call the Gulf Cooperation Council. My interest is would I pick something from this and maybe pass it, and so far, you are the first one to talk about security. So since you are a general, would you think that the European experience can be applied to other regional security organizations? If not, what are some shortcomings of the European experience?

**Gen. Ellerson.** Yeah. Well, let's pick a couple of aspects of the European security model, and see if they apply. You see, unfortunately, I am proud of myself, because I know what OSCE stands for. I mean, I am not very familiar—I am not a Europeanist. I don't know a lot about the OSCE, except that it is now about 20 years into this business, and they're playing a pretty important role in some of the near abroad states now.

But I am more familiar with the NATO, the construct, for just the collective security construct.

**Questioner.** But the question, sir, was whether the CSCE should take over NATO or not—

**Gen. Ellerson.** The answer is no. But I want to get back to your area of the world. I think what you have in the collective security model is you have a forum for discussion at a time when the world is going crazy, at a time when the issues that the Saudi Arabian military now has to deal with are different from the issues they had to deal with 5, 10, or 15 years ago—or at least many of their allies to whom you will look in addressing those issues now have a completely different outlook. Many threats that we are now dealing with (“threats” is probably the wrong term—concerns or challenges)—the migration, the drugs, the environment—those sorts of the things which are a part of the security equation are largely transnational in their nature and scope. So if the challenge is transnational, then the argument would be that the response needs to be transnational as well. So, again, it argues for these fora of communication and consensus-building which both NATO and the OSCE provide in terms of dealing with this changing sweep of challenges that you have got to come to grips with. Beyond that I'd really be stretching it.

**Mr. Buergenthal.** Thank you. Any other questions? The weather must affect it. Yes, please?

**Questioner.** My name is Richard Livingston. I'm with the Helsinki Commission. I was talking to one of our speakers earlier. One question that came up was accountability as for past regimes that have been guilty of human rights abuses. So perhaps she could address what has been a successful model for dealing with the military. Are all members held accountable, or just the leaders? Perhaps she could give an example of a successful case, and perhaps an example of a not so successful case? Thank you.

**Ms. Kristicevic.** We were discussing before how the different Latin American states have dealt with the question of accountability, and the experiences of the different truth commissions and our experience of prosecuting the former military regimes. I think here I would make two brief comments. One is that in the most part the experiences in Latin America with the truth commission in Chile and El Salvador, with the truth commission

in Argentina, and the prosecution of the military commanders in Argentina, has been, in terms of getting the truth, somehow successful, but in terms of getting justice pretty unsuccessful. This is due to a variety of reasons, and we could go into each of the specific cases in more detail. But I think the most relevant topic is linking the issue of accountability in military regimes with how different countries reacted after democratic elections. It relates to how the structures of the past is still so much alive in our judicial structures.

Many Latin American countries, as you can see, not only through learning of their legal regimes, but also through looking at the cases that are currently before the Inter-American Court, still have a special set of military courts that adjudicate cases of human rights violations by members of the military. I think there it is a crucial area where if the military of the region were serious about respecting democracy and the rule of law and human rights they could make an impact through changing their military justice system in order to make those militaries responsive to the civilian authorities and to the rule of law, and to be more respectful of human rights. I think we can learn from experience about how to address the gross human rights violations of the past through those truth commissions, and the resulting prosecutions which were mainly unsuccessful.

However, the most that we can do at this point as for the accountability of the military is to focus upon current violations that are generally veiled, and this system that guarantees impunity for the military, which is the military justice system.

**Mr. Buergenthal.** Thank you. Maybe I could add something on this subject since I was a member of the United Nations Truth Commission for El Salvador. Let me note first that the Salvadoran Truth Commission was an international truth commission. All the others, like that of Chile and Argentina, were national commissions established by those countries. There is now a Haitian truth commission that is a mixed national-international truth commission.

As has been pointed out by Vivianna, not these commissions were very effective. In El Salvador we managed at least to obtain the resignation of more than a hundred military officers whom we had found responsible for very large scale violations of human rights. But they were immediately amnestied. That's really what has happened in much of Latin America. For example, you probably saw that in Chile right now the man responsible for placing the bomb here in Washington in a car that killed the former foreign minister of the Allende government was kept out of jail by the military for a year after he was convicted.

There is a serious problem right now in Guatemala. The reason the peace process is not moving in Guatemala is because the military doesn't want a truth commission, and the military has the power. The same thing is happening in Honduras. This is in a sense what I meant by democratic facades. The impression is created that things are happening, that there is real democracy, but in fact it's a very slow process and it will probably take 20 or more years before this whole generation of the military involved in national security battles is gone. The military in Latin America is still very powerful, and it often determines what civilian presidents are allowed to do in a number of Latin American countries. In a sense, Chile could be said to be a democratic state under a military protectorate. General Pinochet is still there and keeps an eye on the government. This is the reality in Latin America in many countries. It has improved in others, but even a country like Venezuela, which for many years was viewed as a democratic success, is now having serious problems also with its military.

That's what I meant before when I said that to some extent Europe was luckier than Latin America because the end of the cold war led to the total collapse of many totalitarian Communist regimes and their control of the society. By contrast, the military has always played a very strong role in Latin America. Unfortunately, I am not as optimistic as you are, General, that the military has changed all that much.

Because you mentioned the institutional loyalty of the military, General Ellerson, I should tell you a story about my experience in El Salvador. The military high command told us from the very beginning that many crimes committed in El Salvador were the work of some bad apples in the military, that the institution had to be protected, because the institution wasn't responsible for these crimes. Well, when we then started to name names, the names of the high command, the same people suddenly told us: "No, no, no, you can't name names—because the institution and not we are responsible." In other words, "to hell with the institution—we want to protect ourselves." So much for institutional loyalty. That is really what has happened in a number of Latin American countries. It is now so evident in Honduras. So the problems in Latin America are serious, and I think the United States, the Congress, and a number of other really democratic countries can play an important role. But I don't think that right now Organization of American States can do it. Unfortunately, I think it needs a much more direct involvement by democratic countries. But let me give the floor to the Ambassador to address that issue. She knows much more than do I.

**Amb. Picado.** No, I would only like to make some comments regarding the role of the OAS in difficult situations like the case of Haiti that as you mentioned. This showed that the OAS came out and acted tough. Actually, I was part of the first mission that went into Haiti almost less than a month after the first [inaudible] killed. Of course, the main issue that was raised in Haiti is you are not welcome, you are violating our own self-determination, our own rights and our sovereignty.

In Haiti we are going to talk about regional systems. We really have to stop thinking about sovereignty, non-intervention, self-determination. I think this is just—especially I have attended some of the last meetings of the OAS. The commission has been attacked systematically. One thing that impressed me during the process of the Summit of the Americas was how reluctant the official representatives of the countries involving the Summit of the Americas were to let the NGOs have any participation. I mean, again, the NGOs can come in to pay for it, but they cannot come really in to participate in the summit or the relations in the OAS.

You mentioned, General, that you don't want to militarize. I can understand that, but I think that, unless the OAS has a way to really make a commitment of force—and I think it's some inconsistency that in Haiti they called for the restoration of democracy, but they were not willing to really put up the force to go into Haiti and put President Aristide back. They completely gave the role to the United Nations. Then, when the United Nations came into the picture, the OAS said, "No, we don't want to intervene."

I mean, how is this intervention? I mean, there was the Declaration of Santiago in '91, which all the countries had agreed to work together to restore democracy. There was the whole system of the OAS that claimed to bring back the president-elect. I think there were many other interests in between, and I think that is one of the most difficult problems, how to work out this new vision of security that would help bring him to the government working in a much more civil way, promoting democracy.

I mean, I think it sounds very well, but unless we really manage to change the way the governments have been working, unless we manage to change the political decisions—again, the political—even the very democratic countries are very afraid to be judged by the human rights institutions. They don't want their security to even move a little bit out of their hands. They're very afraid of multinational securities.

Coming from a country that doesn't have an army, let me tell you that very often problems with Nicaragua have threatened us. All along we have relied on multilateral organizations. I mean, if we had been invaded, and at a certain point we were invaded in 1951 by Nicaragua—I mean, unless we believe that multilateral organizations have security and can really give a response, I mean, what sense would be not to have any army? Then you have all these small countries defending themselves from whom? Well, from each other. You have the case of one of the countries here are Peru and Ecuador. I didn't see the OAS playing a very strong role in that.

Let me say just one last word, because I think we have 2 minutes. I think it would be unfair not to mention the Inter-American Institute of Human Rights as part of the inter-American system. Though the Inter-American Institute of Human Rights is not an organ, is not part of the OAS, it was created in an agreement between the Inter-American Court. It was the idea of Tom Buergenthal to have an institution for the education, promotion and research of human rights in a very crucial time. But not the founders, not those of us that directed the institute ever wanted to create a platonic institution in a Latin America so full of problems.

So we had a very active role working with the NGOs, working with the refugees, working with the indigenous populations, training people. Because we cannot change the culture of violence, like the culture of violence in Latin America. There has been violence at home because it is vertical at home, vertical in school, vertical in the army, in the state. I mean, you have to change attitudes, and unless you educate people, you will never be able to really bring a democracy.

Let me say that one of the most controversial programs of the institutes, the Institute for the Promotion of the Elections, came to play a vital role in the transition to democracy. The lost decade of the '80's—from the point of view of the economy, from the point of view of civil rights, it was very much a lost decade, but Sanguinetti once said not everything was lost. The gains were a strong transition to democracy in Latin America. In that process, the institute was present, and I'm happy to note that the institute and the OAS have signed an agreement, because the institute at this point holds the secretariat for all the electoral tribunals in America, including Mexico. They joined us 3 months ago.

We have played a very technical role which I think is very important, which is horizontal cooperation. Having such a strong member of the United States, when you work only with the supervision of the United States, when you work only with the United States, you are visualized in a different way in Latin America. In the elections in Nicaragua, the institute worked with the money from Switzerland, from England, from Canada, from France. It does give a different perspective.

In the program with the military we are working with the European Union. Of course, in collaboration with U.S. institutions. But one thing we need to be able to have an independent inter-American system is that the influence of the United States is also balanced by other regional aspects. I do agree with you, Dr. Buergenthal, that we should have the Inter-American Bank here, because the key issue that is raised here is what is development.

It's not among the questions, but unless we can develop our countries, unless we're really able to bring more economic growth—and not necessarily only by trade—I think there has to be an awareness that *more fairness has to be placed into the economic relations*. Otherwise, I think the word “globalization” means, for small nations, the big companies taking over the whole world, including the whole governments. I think that's a very dangerous thing.

**Mr. Buergenthal.** I think we have time for one more question. Yes, sir?

**Questioner.** I'm Dennis Koch, State Department faculty advisor for the Inter-American Defense College. I have three questions, but I'll go to the last one. I hope that each panelist will be prompted to answer it.

The question that the promoters of this conference posed was, what might the process in the Helsinki process in Europe have to say for the inter-American region? My question is simply the reversal of that question. What do the panelists think the inter-American process in the areas that we've discussed here—human rights, democracy, and security, and economics—what might the inter-American experience have to say for the European experience?

It occurs to me that, for example, in human rights, the most highly developed regional system, or international system in the sense of between nations, on human rights is the one developed in the Americas. You know, in democracy promotion no other international organization compares with the OAS, but let me lead with that question.

**Mr. Buergenthal.** Does anybody want to volunteer?

**Amb. Picado.** May I say something in response that I think what you have said about the human rights movement in Latin America is clearly true. I mentioned about it, *talking about the role of the NGOs. I think they played a vital role in the transition to democracy. I think they played a vital role during the times of dictatorships. One great challenge that we have is how to move the civil society, the NGO movement, from working during dictatorships into working in the democratically elected governments.*

Even if the democracies are very weak, I think the NGO community has a responsibility to strengthen that democracy and to work within a different pattern. This is something that I don't see coming out very well. I think in Europe, especially the new countries in Europe, maybe they never had the kind of trouble and weren't as strong, for example as—maybe I'm not saying that correctly, because you do have them in Poland and many other parts. But I think the *NGO community, the human rights NGO community*, like the models of the Prensa Alayu, la Vicaria y la Solidaridad, they have all lost the train when democracy came.

I mean, they are not playing a role there. I mean, democracy cannot move from claiming for the rights of the children into working within a democratic system to prevent all the tremendous violations of children. The Vicaria y la Solidaridad closed. To me it's unbelievable when the church could have played many important roles in educating and promoting human rights. I think this training of how to work should be used in both Europe and in Latin America to really—if we are going to talk about the NGO not just on paper, but in reality, we should be able to train them and help them to work democratically in a more active way and to really have their roles more defined than it is right now. Right now what is civil society, what are really NGOs—there are so many kinds of NGOs, *whether the human rights NGOs, and so you have them relatively active in*



government, because I really don't think they can grasp the concept. That may be. I don't know. Perhaps if Professor Buergenthal could tell us a little bit more about this.

Mr. Buergenthal. Well, I will answer that question, and then I think we have to stop. Let me give you this answer: The inter-American system for the protection of human rights is modeled on the European. The Council of Europe established a court and a commission of human rights in the 1950's. When the American Convention was drafted, it used the model of the European Convention. The inter-American system has been much less effective than its European counterpart. It will take the inter-American system many years before it becomes as strong as the European system.

Of course, the problems of the inter-American system until now were much more serious than those Europe had, because it was basically a Western European system. Now, with more Central and Eastern European countries coming into the Council of Europe through the CSCE, we may find that the Europeans are going to face the same type of problems that we faced in our region because these newer members lack a strong democratic tradition.

Now, one great innovation of our region that will stand the European system in great stead is the onsite investigations that the Inter-American Commission on Human Rights developed. This practice has enabled the commission, when it heard that massive violations of human rights were taking place in a country, to ask permission to visit the country. The commission would then prepare a report on its findings and submit it to the OAS. It did this in Argentina, for example, and the report had a dramatic effect.

Now, you cannot do that within the framework of the Council of Europe, but within the framework of the OSCE you can. The observer missions established by the OSCE do exactly that, particularly where questions concerning minority protection arise. Thus, combining the Council of Europe system with that of the OSCE, gives Europe some institutional techniques that might prove quite effective.

What we are lacking in our system that is now beginning to be developed within the framework of the Council on Europe and the OSCE system are norms and mechanisms to protect the rights of minorities and indigenous populations. We have serious problems with these issues in our region and no really effective institutional mechanism to deal with them.

The institution similar to the High Commissioner for National Minorities of the OSCE might, if established, perform an equally useful role in the inter-American system.

In closing, let me say that we have had an extremely interesting and useful discussion. I hope that the Helsinki Commission will now use some of the same energy it used in the past to strengthen the CSCE and to make it more transparent, to help our region to make the OAS responsive to the needs of all the peoples of the Americas.

Thank you very much for organizing this panel. We also thank all the panelists for their very fine contributions.