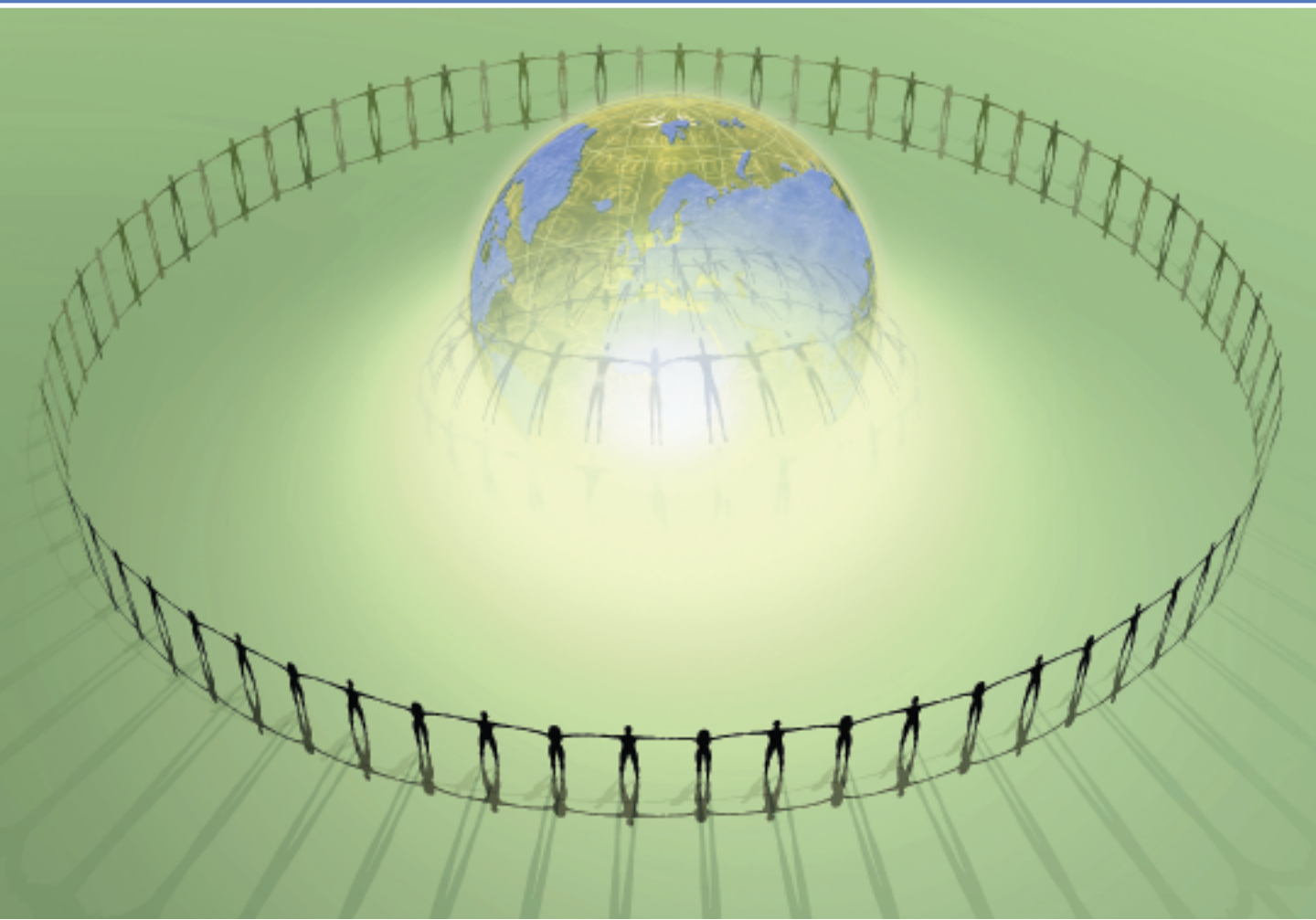




Woodrow Wilson  
International  
Center  
for Scholars

# Human Rights in the International System

*Enforcing Global Governance*



LATIN AMERICAN PROGRAM





**Woodrow Wilson  
International  
Center  
for Scholars**

*Latin American Program*

# **Human Rights in the International System *Enforcing Global Governance***

## *A Conference Report*

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# Introduction and Executive Summary

**I**n the aftermath of the Cold War, sharp divisions have characterized debates among academics and policymakers over security, sovereignty, and citizenship. Part of the problem has to do with the nature of the new international community, with its new actors, new types of threats, and new efforts to identify values that can be shared as a basis for sustaining peace. Through its *Creating Community Project*, the Latin American Program of the Woodrow Wilson International Center for Scholars has followed these debates for many years.

Today, after the 9/11 terrorist attacks on the United States, and given the resulting “war on terrorism,” the world scenario is changing once again. We find it is imperative to identify the world’s most pressing security threats, and evaluate how governments are addressing them. In the light of recent armed conflicts and alleged human rights abuses that began as a consequence of this new world order, we must acknowledge the significant constraints placed on states by the international community, international relations, international institutions, and international law. Human rights standards and activism may play an important role in designing a state’s domestic and foreign policies, and in increasing global governance. Thus, an interdisciplinary approach is necessary to understand which strategies effectively encourage states to take human rights standards into account, which actors play key roles to that extent, and why certain states participate more in the international system, and comply more than others with international standards.

As part of its ongoing effort to promote public discussion of key elements in the debate, the Latin American Program organized the conference “Human Rights in the International System: Enforcing Global Governance” to study the current role of human rights in the international system, and the use of human rights as a foreign policy strategy. As Richard Falk says, “achieving a human rights culture and realizing global justice are intertwined and mutually reinforcing goals. The overarching aim of normative commitment is to incorporate rights and justice into a framework of humane governance.”<sup>1</sup> In practice, some powerful states include human rights in their pronouncements, if not necessarily in their

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**In the light of recent armed conflicts and alleged human rights abuses that began as a consequence of this new world order, we must acknowledge the significant constraints placed on states by the international community, international relations, international institutions, and international law.**

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**Are human rights in foreign policy an effective component of increasing global governance? What is the relationship between human rights, international relations, and soft power; and what effect does this relationship have in the Americas?**

actions. Others use human rights as a strategy to increase their leverage in the international community. Developing countries in search of international recognition and legitimacy adopt the promotion of human rights as a foreign policy priority, but it is not clear how it translates into a greater respect of human rights in their own territory.

This conference addressed various questions arising from this new world order: To what extent does a state's position in world affairs affect its decision to adopt human rights as a component of its foreign policy? Are human rights in foreign policy only related to the promotion and respect of human rights abroad? Are human rights in foreign policy an effective component of increasing global governance? What is the relationship between human rights, international relations, and soft power; and what effect does this relationship have in the Americas? How does the proliferation of new actors who participate in the new international system influence state behavior? Which strategies do they pursue?

In his opening remarks, **JOSEPH S. TULCHIN**, director of the Latin American Program of the Woodrow Wilson Center, explained that this conference reflects a concern with changes in international governance shared by many during the last five years. These changes have particularly affected the roles that nations other than traditional great powers have in the international community; and the nature of legitimacy, influence, and power.

**AMBASSADOR HERALDO MUÑOZ**, permanent representative of Chile to the United Nations and keynote speaker of this conference, described the new world scenario, in which the combat of terrorism and weapons of mass destruction are the top priorities on the international agenda. The new international scenario that is the result of the end of the Cold War and the terrorist attacks on the United States on September 11, 2001 increased the attention given to "hard security" concerns, leaving aside "soft security" concerns such as human rights. The elements needed to strengthen global governance and global security are the implementation of human rights standards, the promotion of the right to democracy, the promotion of post-conflict reconciliation, and the struggle against poverty and inequity. Ambassador Muñoz concluded that the array of new security threats, such as terrorism and weapons of mass destruction, should not overshadow threats that are related to human rights and democracy. He emphasized that regarding democracy as a right and a legal obligation will favor global governance, and that it is essential that the concerns of developing countries be recognized in order to achieve a more secure world. During the question and answer period, the discussion focused on the abil-

ity and political willingness of the United Nations Security Council to intervene in humanitarian crises, its intelligence capacity, the need to develop crisis-prevention strategies, and the role of the Democratic Charter of the Organization of American States in the recent Haitian crisis.

The first panel discussed human rights as a component of foreign policy. **MARIE GERVAIS-VIDRICAIRE**, director general of the Global Issues Bureau at the Canadian Department of Foreign Affairs and International Trade, stated that human rights have long been an integral part of Canadian foreign policy. Canadian culture and history—the historical importance of respect for rights and diversity and Canada’s history as a country of immigrants—have influenced Canada’s commitment to human rights internally and in the international realm. Canadians expect their government to express certain values abroad; but human rights are seen as a matter of international law, not merely as values. Canada has emerged as a natural mediator in international conflicts, and has participated in various humanitarian interventions. It also has lobbied in favor of various international human rights conventions, holds annual consultation meetings with NGOs before the meeting of the UN Commission on Human Rights to establish the country’s positions, and advocates for counter-terrorism measures to comply with international law and respect for human rights. Gervais-Vidricaire argued that it is necessary to implement existing human rights standards, advance in multilateral forums, strengthen international institutions, reform the UN Commission on Human Rights to increase its effectiveness, and participate in international conferences to create international norms.

**ROBERT JACKSON**, director of the Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights, and Labor at the United States Department of State, argued that human rights are well integrated programmatically into U.S. foreign policy. According to the National Security Strategy of the United States, the key to national success today is a model that combines freedom, democracy, and free enterprise. Consequently, the United States recognizes that human rights violations abroad are a threat to U.S. security. U.S. foreign policy is based on values such as freedom, equality, and the rule of law; these values are also the basis of U.S. strength. The United States has increased its cooperation with democratic countries, and Jackson insisted accusations that the United States creates alliances with states that violate human rights stem from past errors. Jackson argued that the United States faces difficulties as it tries to integrate human rights into its strategies to fight and prevent terrorism. To illustrate, he outlined some initiatives through which the

United States has integrated human rights into its foreign policy, and explained that five percent of the U.S. foreign assistance budget is directed to promoting democracy, human rights, and the rule of law abroad.

**MARICLAIRE ACOSTA**, former Under Secretary of Human Rights at the Mexican Ministry of Foreign Affairs, argued that states need to incorporate international human rights laws, standards, and mechanisms into their domestic spheres. Acosta commented that while internationally recognized human rights standards have been regarded as part of Mexico's diplomatic efforts, they have not been an integral part of Mexico's political system and culture. The changes in the Mexican democratic system encouraged changes in the area of human rights, but not radical ones. President Fox said human rights would be a central component of his government; although he has done more than his predecessors, there has not been a coordinated effort to address the deep structural problems faced by the country. The new human rights- and democracy-related Mexican foreign policy has meant a radical break from Mexico's traditional position of defending national sovereignty in the international human rights sphere. Nevertheless, legal reform is still necessary for Mexico to become a law-abiding country with an improved human rights record, but there is no clear political consensus to generate such reform.

From the international relations perspective, **ROBERT LITWAK**, director of the Division of International Studies at the Woodrow Wilson Center, stated that human rights are an important element of foreign policy, but do not constitute foreign policy by themselves. The challenge is to integrate human rights considerations with other objectives of a state's foreign policy. There are two schools of thought with regard to foreign policy: liberalism (also known as idealism) and realism. While liberalism favors the promotion of human rights and the proliferation of democracies to achieve international peace, realism posits that international peace can be achieved through an external balance of power between states. The history of U.S. foreign policy reflects both, and it is necessary to understand the interaction between the two approaches. After the end of the Cold War, the liberal approach ascended, and with Clinton's strategy of "engagement and enlargement," the key to U.S. success has been its role in the community of democracies. In the 1990s, the United States emerged as a super power, both in terms of hard and soft power. The realists had foreseen that the whole world would balance against the United States, but that did not happen because the United States had chosen to channel its power through a web of international norms and institutions that it had helped create. After September 11, 2001, there was a radical change in U.S. foreign poli-



cy. However, Litwak argued that 9/11 did not change the structure of international affairs or the international order, it just pointed out a new vulnerability. Litwak noted that to integrate human rights into foreign policy three challenges must be addressed: how to deal with competing conceptions of sovereignty, with competing values and conceptions of human rights, and with competing interests and priorities. Litwak concluded that the major challenge is to achieve a balance between competing priorities.

During the question and answer period following this first session, the discussion centered on to what extent human rights issues translated into domestic reforms in Mexico and the relationship between sovereignty claims and international donations in support of the promotion of human rights. The discussion also addressed how the United States deals with the issue of competing priorities; the complexity of U.S. foreign policy; the role of military interventions in the promotion of democracy; and the possible role of soft power, human rights, and democratic values in trumping a more traditional evaluation of national security. Finally, the panelists discussed the potential of a human rights-oriented foreign policy for reintegrating Cuba into the hemispheric community of nations.

The second panel studied the impact of human rights activism on state behavior. **AMBASSADOR JOSEPH B. GILDENHORN**, chairman of the Board of Trustees of the Woodrow Wilson Center, stated that human rights have long been part of U.S. foreign policy, regardless of the political party in power; and that human rights are a key part of the community of values that bind nations together.

**JOSÉ MIGUEL VIVANCO**, executive director of Human Rights Watch/Americas, noted that there are no magic formulas to influence state behavior concerning human rights. Work must be done on a case-by-case basis, and the results and strategies will largely depend on the government one wishes to influence. In addition, there are other effective options—such as sanctions and conditions to receive loans and grants from development institutions—that may be used in different situations. Vivanco described other mechanisms that can be employed to influence state behavior, including international stigmatization of a country that violates human rights and utilizing the media to mobilize public opinion. Other options available to human rights advocates are to use international mechanisms of human rights protection and to create coalitions of non-governmental organizations. Finally, extreme situations of ongoing and massive human rights violations, such as genocide, could justify humanitarian interventions. Vivanco maintained that in order to push the human rights agenda forward, it helps to have allies in the NGO community and inside

governments. Finally, Vivanco offered several suggestions that could help NGOs in changing human rights policies in different countries, including making concrete recommendations, targeting authorities and institutions responsible for human rights abuses, and generating reliable, high-quality research.

**VIVIANA KRSTICEVIC**, executive director of the Center for Justice and International Law, explained how human rights advocates have affected state behavior in Latin America through campaigns, advocacy, and litigation at both the domestic and international levels. In general, NGOs in the Americas have been at the forefront of systematically documenting human rights abuses. The work of such NGOs has created awareness of existing human rights situations and has led to institutional initiatives that help address human rights violations. Krsticevic contended that to increase their legitimacy as political actors, it is imperative that human rights organizations be consistent, fair, and not have a political agenda. The main limitation of human rights activists, Krsticevic argued, is that while they have the ability to convince, propose, and influence governments to include certain issues in their agendas, they are unable to determine the agenda. Two important strategies that, according to Krsticevic, have helped influence state behavior are coalition building at the local, regional, and international levels to help bring effective change in a specific country, and international litigation of cases before the Inter-American System on Human Rights.

**HÉLAN JAWORSKI**, advisor to the rector at the Pontifical Catholic University of Peru, and former executive director of the Reparations Program of Peru's Truth and Reconciliation Commission (TRC), presented a case study of the role of the human rights movement in Peru. Peru's Truth and Reconciliation Commission (TRC) evaluated the role of various civil society organizations (human rights NGOs, the Catholic Church, and trade unions, among others) in Peru's internal armed conflict during the 1980s and 1990s. Jaworski outlined the main findings of the TRC's report. First, with the creation of the Coordinadora in 1985, the human rights movement was able to contribute significantly toward moderating the state's harsh anti-subversive strategies and to overcome some of the worst obstacles to due process in the administration of justice. Second, the human rights movement was instrumental in changing public opinion concerning the victims of the conflict from indifference into solidarity. Third, even though human rights activists initially concentrated their attention on the documentation of state repression, when they started focusing on human rights abuses committed by Shinning Path and the

MRTA, their credibility increased. Finally, the TRC acknowledged in their report that the work of human rights activists must be recognized by the democratic state and must be translated into institutional measures. Jaworski concluded that attention must be transferred from political and civil human rights violations to internal inequalities and socioeconomic problems related to poverty, the country must evolve from peacemaking to peacekeeping initiatives to make a real national reconciliation possible, and a certain degree of institutional reform is necessary.

**CLAUDIO GROSSMAN**, dean of the American University Washington College of Law, argued that regular elections in a country are not enough to ensure respect for human rights. A failure to expand human rights in a particular country may be due to ignorance or lack of interest, resources, or imagination. Grossman identified international law as a powerful tool to improve the human rights situation in a particular country because it establishes norms—such as due process, reasonable length of detention, and freedom of expression—that can be used in political and ethical discourse to criticize state behavior. Grossman argued that the mere ratification of treaties is not enough because the law loses legitimacy if it is not applied. Instruments of international supervision must be developed and ratified. The success of international law relies on its influence on domestic systems. Grossman also argued that NGOs can be important in increasing the respect for human rights in the hemisphere. For their work to be effective, he contended, they must be serious, independent, and transparent. According to Grossman, the UN Charter allows for a humanitarian intervention in the case of genocidal regimes with no interest in improving the human rights situation of their citizens. Grossman emphasized the importance of working on the prevention of human rights violations and providing international mechanisms for the protection of human rights with the necessary resources.

During the question and answer period, the panelists discussed in further detail the United States' loss of moral authority in light of recent U.S. activities in Iraq, the necessity to provide international mechanisms with adequate resources, the need for political space for local organizations to develop, and the question of why Latin American nations should be committed to values and laws that the United States does not respect.

## NOTE

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1. Richard Falk, *Human Rights Horizons: The Pursuit of Justice in a Globalizing World*, (New York: Routledge, 2000), p. 10.

# Human Rights and Global Governance, a Keynote Address

## OPENING

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In his introduction of Ambassador Muñoz, **JOSEPH S. TULCHIN** recalled that Muñoz and others organized a seminar four years ago to discuss these issues, which later became the book *Latin America in the International System*. Before that, Ambassador Muñoz, who is a productive and innovative scholar, published an article in the *Latin American Research Review* expressing his ideas on “interdependency.” This article addressed the concept of “soft-power,” which Joseph Nye and Robert Keohane were just starting to articulate at that time. Tulchin also mentioned that he and Ambassador Muñoz had edited a volume on *Latin America and World Politics*, which was one of the first efforts in English to discuss how the nations in Latin America formulated their own foreign policies, without assuming that they were mere responses to U.S. foreign policy.

Ambassador Muñoz entered politics with the return to democracy in Chile. Tulchin described his extensive political career pointing out that Muñoz deals with the central issues of this conference on a daily basis at the UN Security Council.

## DEMOCRACY, HUMAN RIGHTS, AND GLOBAL GOVERNANCE—A KEYNOTE ADDRESS

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*By Heraldo Muñoz, Ambassador of Chile to the United Nations*

### I. INTRODUCTION

The world has witnessed major changes in recent times. The U.S. military victory over the Saddam Hussein regime in Iraq signaled a new world scenario in which the United States showed that it had the political will to eliminate or minimize threats to its security from a unilateral perspective or, if possible, through ad-hoc “coalitions of the willing.” It also became abundantly clear that the U.S. security priorities were now terrorism and weapons of mass destruction (WMDs).

With the war in Iraq dominating today's international agenda, other pressing issues, like human rights, have been left on the fringes. This fact prompted an organization like Amnesty International in its last annual report to make a call to address the "forgotten conflicts."

In the new world scenario, globalization has continued to spread, generating both threats and opportunities. It has brought along new global threats ranging from cyber-terrorism to pandemic diseases like SARS or HIV/AIDS. Many view globalization as a process carrying dangers from unaccountable forces that might be responsible for the marginalization of vast numbers of people around the world, living mainly in developing countries.

But, from the point of view of human rights, globalization can be credited with a growing awareness of human rights violations. Today, it is virtually impossible to keep massive human rights violations abuses secret. The globalization of news media means that people around the globe know when a human rights tragedy is occurring.<sup>1</sup> This, in turn, has led the UN Security Council to intervene in countries where humanitarian crises occur, something that rarely happened in the past. Globalization can also be positive for human rights by empowering an emerging global civil society and a network of active NGOs. Globalization has created new opportunities to challenge the State "from above and below," in the words of Richard Falk.<sup>2</sup>

My purpose in this essay is to focus on the new security challenges to global governance and security and on how to reintroduce in the global agenda the forgotten issues, including democracy and human rights, considered as a body of norms and institutions representing core values of the international community.

## **II. THE NEW THREATS**

The new international scenario has been taking shape for some time and was marked by two major unexpected and traumatic events: the 1989 fall of the Berlin Wall, and the fall of the Twin Towers in New York as a consequence of the terrorist attack of September 11, 2001.

The fall of the Berlin Wall symbolized the end of the Cold War, which dominated world affairs during the second half of the 20<sup>th</sup> century and, along with the collapse of the planned centralized economies, also signaled an acceleration of economic globalization driven by markets. With the disappearance of the Cold War, the logic of zero-sum confrontation, which characterized international politics during the past fifty years, came to an

end. Furthermore, the principal concept that spurred the external policies of the United States since World War II, that of containing the Soviet Union and communism, also came to an end. Thus disappeared the main threat that shaped Washington's view of the world in the second half of the 20<sup>th</sup> century.

The end of the Cold War was celebrated as a great opportunity to create a new world order characterized by the rule of law and democracy, respect for human rights and the revitalization of multilateral diplomacy, and the corresponding dividends of peace. The "enlargement" of a community of democracies and market-based economies replaced the U.S. security worldview of containment of communism. Security was linked to democracy as in the words of Lawrence H. Summers, who argued in the mid-90s that, "since World War II, there has been no war between two democratic nations and in the last 50 years, there has never been a famine in a country with a free press."<sup>3</sup> Independently of the strict accuracy of such statement, it reflected the preeminence that the international community was placing on human rights and democracy in the post-Cold War world.

The great expectations of peace and cooperation anticipated from the end of the Cold War were later found to be excessive. The passing of the Cold War unburied national and ethnic rivalries, power ambitions, and regional tensions. The collapse of the Berlin Wall and the disappearance of the Soviet Union indirectly rekindled deeply felt ethnic, nationalist, and religious tensions that the East-West conflict had repressed. Although the threat of global nuclear destruction receded, new regional and domestic conflicts erupted and spread, for example, in the Balkans or the former Soviet republics, leading to international community intervention in an effort to preserve international peace and safeguard human rights.

The terrorist attack on September 11 represented a watershed in international relations and U.S. policies. For the first time an external assault struck a blow to the American continent. U.S. defense policy directed at establishing an antinuclear space shield was questioned by the "unconventional threat" of terrorism. The World Trade Center and the Pentagon attacks became a moment that changed the world political and military scenario. The September 11 attacks joined, and eventually overshadowed, the new world threats uncovered by the end of the Cold War and made it clear that the great challenge was how to fight the "asymmetrical threat of terrorism."

After 9/11, the struggle against terrorism developed into the top priorities of the international community. On September 28, 2001, the UN

Security Council approved Resolution 1373 that created the Counter Terrorism Committee oriented, among other things, at increasing the capability of states to fight terrorism, providing technical assistance to the countries that need it, promoting the adoption of laws and regulations to combat terrorism, and stimulating adherence of states to the UN conventions against terrorism. Additionally, the Al Qaeda and Taliban Sanctions Committee of the Security Council was strengthened and expanded.

### III. AND THE OTHER SECURITY THREATS?

In the meantime, prominent threats had festered, ranging from the collapse of failed states, global pandemics like AIDS, and illegal mass migration, to drug trafficking, and intra-state conflict, most notably, inter-ethnic conflict and the weakening of the sovereign state.

Post-Cold War security was no longer an exclusively military topic. One case in point is the threat stemming from the illegal sale of small and light arms connected to drug-trafficking, transnational organized crime and mercenary activities. Estimates show that, worldwide, at least 500 thousand people—the most vulnerable sectors—lose their lives every year as victims of the use of small and light arms; weapons acquired either legitimately or illegitimately. Thus, it can be argued that they are true “weapons of mass destruction”; even though they don’t have the power to decimate entire cities or towns in a few seconds, they cause an average of approximately 1,300 deaths a day on the planet. Each week more than twice the number of people who died in the Twin Towers terrorist attack die from bullets fired from small weapons.

Insecurity in people’s lives is not new. What is new is that human insecurity and socio-economic rights have worsened over the last decade. On any given day, 68,000 newborns will join families living on less than \$1 a day. The income gap between the richest 20% and the poorest 20% has doubled in the past three decades. During the last two decades of the 20<sup>th</sup> century, there were a total of 164 violent conflicts lasting six to seven years, involving 89 countries. These conflicts were concentrated in poorer countries, the African region being the most heavily affected.

Lasting security, therefore, should also be based on the security of peoples not only because of humanitarian reasons, but also to avert future security threats. In other words, a consensus is necessary on what constitutes a security threat across the globe. If a measurement criterion for security threats were to be the number of deaths caused, infectious diseases and extreme poverty would have to be listed right along with terrorism.

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—Heraldo Muñoz

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**An unexpected side-effect of this new wave of threats has been the placing of human rights concerns in a fringe position, while giving so-called “hard security” concerns precedence over “soft security” challenges, including humanitarian concerns. Addressing security problems and respecting human rights should and can go hand in hand.**  
—Heraldo Muñoz

Twelve million people die from HIV/AIDS, tuberculosis, and malaria each year, and 95% of all HIV infections occur in developing countries.

Of course, there is no such thing as security concerns of the North vs. those of the South. For southern countries such as Indonesia, Morocco, or Turkey, for example, terrorism is very much a top security matter; while drug-trafficking and forced economic migration in Latin America and the Caribbean are indeed security concerns for a Northern nation like the United States. It is not a question either of “prioritizing” threats, but rather of including among the world security challenges those pressing and deadly problems that affect the developing and poor nations, along with such evident dangers as terrorism and weapons of mass destruction.

#### **IV. INTRODUCING DEMOCRATIC GOVERNANCE IN GLOBAL SECURITY**

An unexpected side-effect of this new wave of threats has been the placing of human rights concerns in a fringe position, while giving so-called “hard security” concerns precedence over “soft security” challenges, including humanitarian concerns. Addressing security problems and respecting human rights should and can go hand in hand. One concrete example is the Landmines Convention of 1997, which came into existence as a result of intense grass-roots work by human rights groups and other non-state actors.

From a theoretical point of view, I think that global governance and security can be enhanced through respect for human rights and its democratic corollary. I have selected four elements that should be included in any strategy aimed at favoring security and governance in the field of human rights, namely:

- Implementation of human rights standards,
- Promotion of the right to democracy,
- Promotion of post-conflict reconciliation, and
- Fight against poverty and inequity.

##### ***1. Implementation of Human Rights Standards***

The 1948 Declaration of Human Rights and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are widely considered to set the meaning of human rights in contemporary international society.<sup>4</sup> They have come to be accepted as the minimum standard to judge any State’s compliance with regard to these rights. But, I would submit that the key



issue is less a problem of having international human rights standards, than a question of compliance with those standards. Underlying, there is a deeper problem rooted in states reluctant to comply: the lack of accountability for failure to live up to international human rights standards. As the UN Secretary-General has put it: “There is a serious tension between increasingly influential global principles, on the one hand, and the practical difficulty, on the other hand, of implementing them in the face of states reluctant either to abide by the principles of human rights or to commit the resources needed to give those principles impartial and general effect when they are violated.”<sup>5</sup>

The accent should be on implementation, rather than standard-setting activities. Universal ratification of human rights instruments as well as withdrawal of reservations to them remains a pending task. Moreover, an active role of the state is needed through affirmative action on behalf of human rights. Overall, international implementation machinery remains weak and open to political influence. A case in point is the UN Human Rights Commission. About a third of the membership of this organ is composed of states considered to be among the worst human rights violators. Moreover, UN election rules do not provide for mechanisms to block one of those states to preside over the Commission, showing one of the most salient paradoxes of the international system of protection of human rights.

In any case, there is room for creative standard setting and developing new institutions. And here, there is one issue that wasn't addressed adequately until recently, namely how to deal with the accountability of non-state actors, like warlords or irregular forces one encounters in numerous conflicts today. We have international human rights machinery that only considers the State as a possible human rights violator. This is correct from a theoretical point of view, but how then to hold accountable those in an environment where the state does not have effective control over its territory, or a state that does not have a link with an irregular force committing atrocities?

This leads me to the International Criminal Court, whose creation is one of the major achievements in contemporary international law in the search to end impunity for the most serious crimes, such as genocide or crimes against humanity. The establishment of the principle of individual criminal accountability for all who commit such crimes was an indispensable measure in a system that seeks to strengthen effectively human rights law and humanitarian law, thus contributing to global governance. In some cases, human rights must be implemented from “above” or, at times, from

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**—Heraldo Muñoz**

outside. There is a growing recognition that the international community must intervene to stop massive violations of human rights and, even, the overthrow of democratic regimes.

The post-Cold War marked the willingness of the Security Council to address conflicts of a domestic nature such as democracy-related crises or humanitarian conflicts that in the past were avoided, under a strict interpretation of the principle of non-intervention in sovereign affairs. Moreover, the Security Council innovated in the realm of international law by creating international criminal tribunals for the former Yugoslavia and Rwanda in 1993 and 1994, respectively. A trend that continued with the establishment in 2002 of a Special Court for Sierra Leone to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and domestic law committed in that country.

Whatever one may think of the Security Council's recent decision to authorize a Multinational Interim Force in Haiti for 90 days to assist in the creation of an environment of security and stability and to facilitate the delivery of humanitarian aid—that will be followed by a UN stabilization force—the purpose was to avoid the Council's failures in past humanitarian conflicts in Rwanda, Bosnia, Somalia, and Kosovo, and, therefore, to assume our responsibility as regards global governance and human rights.

It should be added that today most UN Security Council authorizations of multinational forces or deployment of peacekeeping forces, particularly in Africa, are related to humanitarian crises and domestic conflicts. Hence, as a former U.S. Ambassador to the United Nations stated correctly, “the UN Charter says nothing about the importance of elected governments, yet UN missions routinely sponsor democratic transitions, monitor elections, and promote free institutions.”<sup>6</sup>

## ***2. Promotion of the Right to Democracy***

The relationship between human rights and democracy has been dealt at length in doctrine and practice. Democracy is founded on the primacy of the law and the exercise of human rights. In a democratic state, no one is above the law and all are equal before the law.<sup>7</sup>

I have postulated that the OAS “Santiago Commitment to Democracy” and Resolution 1080 gave rise to a new norm of international law of the Americas: the right to democracy, not to be understood as the preeminence of the body of political rights consecrated in the Pact of San Jose or other conventions on human rights, but, instead, as the formal recognition that democracy can and should be defended through collective, peaceful action. The right to democracy was initially incorporated into the demo-

cratic clauses of the Mercosur, but it was formalized in the OAS Inter-American Democratic Charter, approved in Lima on September 11, 2001, in article 1, that reads: “The peoples of the Americas have a right to democracy and their governments have the obligation to promote and defend it.”

These achievements by the OAS allowed for the transformation of democracy from a moral prescription to an international legal obligation. In turn, these advancements became possible because of the end of the Cold War, for the passing of that conflict sharply reduced the risk that resolutions endorsing hemispheric action on behalf of democracy would be treated as licenses for the pursuit of political ends related loosely, if at all, to the consolidation and preservation of representative government.

Beyond the OAS, we need to get other international institutions more actively involved in promoting the right to democracy. One alternative could be to reinforce the mandate of the UN High Commissioner for Human Rights in the promotion of democracy so as to make it a proactive agent in the dissemination of democratic principles. Another could be to use the capacity of organs that already fulfilled their work. One case in point is the UN Trusteeship Council, a principal organ of the United Nations that is in search of a new direction after completing its mission regarding trust territories. We could reconfigure the Trusteeship Council with a completely new mandate that could be focused in the promotion of democracy and the rule of law across the world, with particular emphasis on so-called “failed states.” This could be coupled with the development of instruments such as democratic indicators and follow-up machinery. Evidently, this would require UN Charter changes.

One current example of concrete action of democracy promotion is that of the Community of Democracies which was launched in Warsaw, Poland, in June 2000. For the first time, a global gathering of over 100 governments committed to democracy came together to develop and pursue a common agenda. This community of diverse States promotes a core set of democratic principles and support cooperation among democracies worldwide. The group promotes stronger democracies through “good governance.” Good governance, as defined by the Seoul Plan of Action, has three elements: to promote the rule of law; to alleviate poverty and to promote economic growth; and to build and sustain a strong political party system and a healthy civil society.

Chile, as the current Chair of the Convening Group, has been primarily working on the implementation of the Seoul Plan of Action, in a wide array of initiatives and activities: promoting and sponsoring regional meet-

ings, seminars and civil society and public diplomacy initiatives, with an emphasis on developing “independent judiciaries and accountable government institutions” and strengthening “political parties, free press, civil society groups, and a democratic political culture.”

The most important event of the Community of Democracies last year was the Ministerial Meeting of the Convening Group, held in New York, in September at the 58<sup>th</sup> session of the United Nations General Assembly. On that occasion, the Convening Group emphasized the interdependence between peace, development, human rights and democracy, and it was agreed that the Convening Group members will consult and coordinate actions, as appropriate, at the UN General Assembly, the ECOSOC and the Commission of Human Rights.

Of course, the consolidation of democracy is a long-term process, and it is unlikely to occur by imposition from the outside. As a major study on the subject concludes: “because democracy inherently involves self-determination and autonomy, outside efforts to nurture it must be restrained, respectful, sensitive and patient.”<sup>8</sup>

### ***3. Promotion of Post-Conflict Reconciliation***

One further element in supporting governance in the area of human rights is the promotion of reconciliation in post-conflict situations. This is a matter to which the UN Security Council has not attached particular attention, since it has a tendency to focus on conflicts themselves rather than on long-term stability measures, such as the promotion of national reconciliation.

We should explore how the United Nations, in particular the Security Council, can contribute to restore the foundations of normal life and governance so as to avoid the reemergence of new cycles of political, social or ethnic confrontation that could require, in turn, new actions and resources on the part of the international community. Certainly, one can find the rationale of reconciliation underlying a number of UN missions and activities, sometimes behind the wider area of human rights or the pursuit of justice. But the fact remains that there is a greater need for the United Nations to address reconciliation aspects in societies emerging from conflict in a more articulated and systematic way. This is why Chile introduced this matter in the Security Council’s agenda this year, launching a process of discussion on post-conflict national reconciliation. The process seeks the United Nations to use its tools to add to reconciliation efforts carried out in divided societies. Hence, the idea is that reconciliation has to be approached practically. Experiences and mechanisms used

in different countries to deal with reconciliation are useful, inasmuch as their lessons can be translated into UN action. The focus is not on reconciliation experiences as such, but on what they can teach us about the future.

Reconciliation is doubtless a complex concept. It is a *process* as well as a *goal*, involving a powerful ethical component. There are different views as to what its components are. Here we encounter concepts such as the search for truth, reparations for victims, forgiveness and, certainly, justice. Soon, the UN Secretary General will issue a report on the rule of law and reconciliation. We will draw on its recommendations with a view to argue for the establishment a focal point in the UN dealing with reconciliation efforts.

#### ***4. Fighting Poverty and Inequity***

Long-term stability cannot exist if social exclusion is not addressed properly. This is why the fight against poverty and inequity deserves to be taken into account as an element providing global governance and security. In fact, the international community will have to focus more efforts in the coming decades on achieving equity among and within nations, between the sexes and for human development. This calls for equality among people, regardless of their different abilities and needs.<sup>9</sup>

Here there is a key role for international financing agencies, such as the World Bank, the International Monetary Fund and regional banks. Fortunately, in recent times these organizations have reoriented their perspectives toward supporting programs that fight poverty and inequity. This trend should be promoted and heightened.

Although promotion of democracy as regards socioeconomic inequality should be mainly an endeavor at the governmental level, nongovernmental organizations also can help democratic governance with well-focused programs to favor the more vulnerable sectors of societies.

Although not a tendency of these new times, bilateral aid programs to the poorest nations should be encouraged to continue or to be instituted where they are most needed. Interestingly, Latin American countries now have their own international cooperation programs to assist poorer countries in the region. Chile, for example, has an active cooperation program with Central American and the English-speaking Caribbean nations.

Finally, reducing trade barriers, minimizing protectionist trends, and increasing market access for goods and services of developing countries should also be favored, since for many developing countries “trade and not aid” is their repeated demand.

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## V. CONCLUSIONS

The emergence of an array of new security threats like terrorism or WMDs has overshadowed other security challenges, particularly those of the South, also placing human rights and democracy in a fringe position of the international agenda. There is an urgent need to reinstate human rights in the forefront of the world agenda and focus efforts on implementation.

The United Nations is facing new demands to address long-term concerns, such as the rule of law and reconciliation in post conflict situations. The process so far has shown a surprising degree of convergence of views among the UN members about usually divisive issues. This trend should contribute to enhance global governance.

Global governance will be favored if implementing democracy is viewed as a legal obligation. The achievements in the Americas could be extended worldwide through the work of the Community of Democracies.

At the end of the day, global governance and security will not improve if the security threats and interests of developing countries are not added to those of the North, and if human rights and democracy are not seen as an integral component of a safer and more stable world order.

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## QUESTION AND ANSWER PERIOD

**MARK SCHNEIDER**, from the International Crisis Group, asked if the Security Council had the information it needed to take action early enough to prevent humanitarian tragedies. Three years ago, the Secretary General said that there was a major gap in terms of intelligence for the UN Secretariat and for the Security Council because they do not have the capacity to match the bilateral intelligence agencies and do not have a coordinating intelligence capacity within the system. Schneider said the Secretary General had advocated for this situation to be remedied, particularly to provide for early warning in cases of humanitarian emergencies. On the occasion of the tenth anniversary of the Rwanda genocide, the Secretary General announced that he was creating a new special advisor on genocide within his office. Schneider argued that the Secretary General created this post to make up for the failure of the system to create the capacity for early warning. As an example of the continued inadequacy of the system, Schneider mentioned the case of the Darfur region in Sudan, where the Sudanese government has displaced hundreds of people, and there are allegations of torture, burning of villages, and even genocide.

Despite these allegations, the Security Council issued a press statement expressing their deep concern about the massive humanitarian crisis, but did not adopt a resolution to intervene, creating a situation in which the massive destruction of human life might continue to take place.

Schneider noted that the Security Council did not act in the case of Haiti after CARICOM first requested it to intervene. He asked, “Is the Security Council at this point able to have before it the level of information that you think necessary to permit it to act sufficiently early to prevent massive loss of human life, or is it still a matter of the major powers—beyond the issue of the veto—essentially having a dominant influence on such decision? What can be done to achieve the growing concept of the responsibility of the international community to protect the rights of individuals when they are massively threatened?”

Muñoz argued that the United Nations lacks the intelligence capacity needed to avert humanitarian crises and massive human rights violations. He clarified that the Secretary General suggested that NGOs could help provide early warnings because they are on the ground and, therefore, able to witness the local situation. Muñoz commented that the Secretary General had also stated in that speech that all the actors had failed in Rwanda—including other countries that had intelligence and were working in the country, regional organizations, and NGOs. Muñoz argued that the gravity of the situation was overlooked and that the failure to react may have led individuals to carry out the massacres. Muñoz suggested that better coordination among all actors interested in human rights and in stopping humanitarian crisis is necessary. He argued that naming a special representative for the prevention of genocide is a good step because this office would not focus on conflict but rather on avoiding conflict, which is a needed process in order to avoid humanitarian crises.

Muñoz explained that the Security Council works upwards: it issues a statement, then a presidential declaration, and finally a resolution. There have been negotiations going on in the Security Council related to the crisis in Sudan, but the province of Darfur is a special situation. While Muñoz claimed the Security Council was aware of the situation and weary of it turning into another Rwanda, he agreed that there is enough evidence to justify immediate action.

Muñoz argued that it is not true that the Security Council did not respond to CARICOM’s request to intervene in Haiti. The first response from the Security Council was when Chile brought the issue back to the Security Council on March 19, 2004—long before any other country expressed concern. The Security Council acted immediately to avoid a

bloodbath in Port-au-Prince; it acted with its past failures in mind. This initiative was led by the United States, France, Brazil, and Chile, from within the Security Council, and by Canada, from outside. Muñoz wondered if the problem with Haiti was that the Security Council had not paid enough attention to it in the past. While the tendency of the UN Security Council is to allow post-conflict resolution to take place internally, Muñoz suggested that some external aid be provided for six months. In countries that are very divided and may even be failed states, Muñoz argued that post-conflict resolution programs are essential to avoid repeating the same tragedies over and over again.

**JOSEPH S. TULCHIN** asked Muñoz if the United Nations has the human and material resources, and is willing, to intervene to avoid a bloodbath in the dozen epicenters of conflict in the world today.

Muñoz answered that there is political willingness, but that the problem of the Department of Peacekeeping Operations is that it would need to launch at least five operations (in Sudan, Burundi, Ivory Coast, Haiti, and Cyprus) in the next few weeks and there are no resources to do so. Countries are willing to authorize the UN to intervene, but they are not willing to collaborate. While there is agreement that the United Nations should be on the ground in particular situations, the problem is money and United Nations' capacity to intervene. For the United Nations to direct an operation, it needs at least two months to get started. Therefore, in the meantime, after the UN approves the mobilization of a multinational force, countries send national troops to begin work on the ground immediately, under UN supervision.

**MARIE GERVAIS-VIDRICAIRE** commented on the issue of humanitarian interventions. She agreed that the creation of a special advisor to prevent genocide in the Secretary General's office was a good initiative to help create early-warning mechanisms, but argued that in Rwanda it was not the case that people did not know what was going to happen. Since many special rapporteurs had said there was a clear risk of genocide in Rwanda, Gervais-Vidricaire concluded that there was a clear lack of political will in the Security Council. Nevertheless, she conceded that the Security Council has evolved in the past ten years in the way it treats a number of situations, and it discusses issues that were previously not taken into account.

Gervais-Vidricaire mentioned that there is a report called "The Responsibility to Protect," which outlines clear criteria for the Security Council to act. She held that it would be better to follow these criteria than to work in an ad-hoc fashion. Currently, what happens depends on the membership of the Council.



Gervais-Vidricaire argued that there is a clear link between conflict prevention and human rights; currently, not enough is being done in the realm of conflict prevention. While countries and institutions usually wait until conflict erupts, and then have to deal with its terrible consequences, Gervais-Vidricaire suggested that a stronger focus on prevention is necessary.

Finally, Gervais-Vidricaire mentioned that the Secretary General had established a high-level panel on challenges facing the United Nations, and asked if Chile or other countries were working with that panel to examine much-needed reforms.

Muñoz agreed that there was a lack of political will in the case of Rwanda because what was going on was well known, but he argued that that has changed. Before, interventions were done in cases where there was some effect on another country's sovereignty, for example, arguing that the flow of refugees would cause a threat to international peace. Now, domestic conflicts of a humanitarian nature are seen as a threat.

Muñoz also agreed that the Security Council should follow the criteria for prevention instead of forming ad-hoc reactions. The problem with the Security Council, Muñoz argued, is that everything is tremendously intense; since there is a crisis that must be addressed everyday, the tendency is to concentrate more on reaction than on planning. Muñoz also argued that the Secretariat must force the Security Council to carry out the agreed upon steps to prevent humanitarian crises.

Muñoz acknowledged that there was an ongoing discussion about the panel examining reforms within the UN, and Chile has actively participated in it. Currently, the Chilean government is thinking about the creation of a "group of friends of reform," composed of 20 critical countries that would back the proposal once it gets to the General Assembly. Muñoz held that if the reform is only focused on the Security Council, it will fail. Rather, it must address the entire UN system and be conceived of as a reform in which every country has something to win, even the permanent members of the Security Council that have veto power.

**MARICLAIRE ACOSTA** asked Muñoz to comment on the failure of the Democratic Charter at the OAS level to deal with the Haitian crisis, and asked what must change for that instrument to be effective in these cases.

Muñoz answered on a personal level, not as a government representative. From his perspective from the United Nations, it was not a failure of will but rather of instruments. The Security Council issued a statement in support of the political initiatives led by the OAS and CARICOM to arrive at a negotiated solution in Haiti. At a certain point, the negotiated

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solution was not possible, and the OAS did not have the necessary enforcement mechanisms that the United Nations has (e.g., article 25 and Chapter VII of the UN Charter). Then, the OAS asked the UN Security Council to take this matter into consideration. Therefore, Muñoz argued that the problem was that the OAS does not have enforcement mechanisms or the possibility to use force.

## NOTES

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1. Wayne Sandholtz, “Humanitarian Intervention: Global Enforcement of Human Rights?” in *Globalization and Human Rights*, Alison Brysk (ed.) (Los Angeles: University of California Press, 2002), p. 202.
2. Richard Falk, “Interpreting the Interaction of Global Markets and Human Rights,” in *Globalization and Human Rights*, Alison Brysk (ed.) (Los Angeles: University of California Press, 2002), p. 61.
3. Lawrence Summers quoted in *The World Bank: Governance and Human Rights*, (Washington D.C.: Lawyers Committee for Human Rights, 1995), p. 41.
4. See “Human Rights, Globalizing Flows, and State Power,” Jack Donnelly, in *Globalization and Human Rights*, Alison Brysk (ed.) (Los Angeles: University of California Press, 2002), p. 228.
5. Quoted in *The Globalization of Human Rights*, Jean-Marc Coicaud *et al.* (Tokyo: United Nations University Press, 2003), p. 1.
6. See Madeleine K. Albright “Think Again: United Nations,” *Foreign Policy*, September-October, 2003, p. 18.
7. See *Universal Declaration on Democracy*, adopted by the Council of the Interparliamentary Union in September 1997.
8. Abraham Lowenthal, “Learning from History,” in A. Lowenthal (ed.), *Exporting Democracy*, (Baltimore: The Johns Hopkins University Press, 1991), p. 262.
9. Role of the United Nations in promoting development in the context of globalization and interdependence, Report of the Secretary-General, A/58/394, 26 September 2001, paragraph 12.

## Human Rights as a Component of Foreign Policy

**M**ARIE GERVAIS-VIDRICAIRE observed that human rights have long been an integral part of Canadian foreign policy. Gervais-Vidricaire argued that the Canadian view of human rights is a reflection of Canadian society and history. Canadians developed a respect for human rights and diversity early in their country's history. In 1774, for example, the English power recognized the rights of francophones to maintain their culture, language, and religion through the Quebec Act. Furthermore, Canada has always been a country of immigrants, which helps explain the natural commitment to human rights and respect for diversity that Canadians have developed over the years. In 1929, women were legally recognized as "persons," an explicit recognition of women's legal rights in the context of Canadian law. In the decades that followed, the movement for women's equal rights continued to gain momentum. Gender equality and the human rights of women are now areas to which Canada devotes special attention in its foreign policy. After World War II and particularly since the 1970s, Canada's concern with human rights has increased; Canadians have expressed a real interest in having human rights integrated into Canadian foreign policy.

Gervais-Vidricaire pointed out that Canada has had a relatively good human rights record at home, which has improved its ability to advocate and promote human rights internationally. One particular challenge in the human rights arena has been the question of the rights of Canada's indigenous populations. In 1982, Canada adopted its new Charter on Rights and Freedoms, which is founded on the rule of law and entrenches the rights and freedoms Canadians believe are necessary in a free and democratic society in the Constitution of Canada. The Charter deals with fundamental freedoms, democratic rights, mobility rights, legal rights, and equality rights. It protects official language and minority language education rights, and it guarantees the rights of the Aboriginal peoples of Canada.

Gervais-Vidricaire noted that Canadians expect their government to reflect and promote Canadian values abroad. In the 1995 document entitled "Canada and the World," the government recognized that Canadian values, and their projection abroad, are key to the achievement of prosper-

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**For Gervais-Vidricaire, a people-centered approach to foreign policy is a necessary complement to the work done to promote human rights, human development, and national security.**

ity within Canada and to the protection of global security. This document also stated that Canada would make effective use of its influence in economic, trade, and development assistance relationships in order to promote human rights. Gervais-Vidricaire also argued that Canada sees human rights as a matter of international law. The UN Charter and customary international law requires countries to promote and protect human rights. Thus, human rights are not merely a question of values but also a mutual obligation of members of the international community.

According to Gervais-Vidricaire, the integration of human rights in Canadian foreign policy was progressive. After World War II, Canadians soon became aware that in an increasingly interdependent world their welfare at home depended on peace and prosperity abroad. Canada emerged as a natural mediator in multilateral organizations at this time. Canada's middle-power status allowed it to help build bridges and create coalitions between states. Canada's human rights profile increased even more beginning in the 1970s as the country took concrete measures to incorporate human rights into public policy at all levels. Every jurisdiction in Canada, for example, passed anti-discrimination statutes. Beginning in 1977, Canadian parliamentarians sought to link development aid to human rights. Canada also played an active role in the Conference on Security and Cooperation in Europe, which led to the Helsinki Act of 1975. A response to human rights crises in communist states and in other countries suffering from gross human rights violations, the Helsinki Act was the first international agreement to give human rights status equal to other established principles of international law, such as the inviolability of national frontiers.

Gervais-Vidricaire explained that a 1975 conference of Canadian ministers created a federal-provincial committee to create a link between domestic and international human rights issues. For example, in the late 1970s, profound indignation for the wide-scale violations of human rights in South Africa prompted the Canadian government to take strong positions against the apartheid regime, including the implementation of sanctions. Later, in 1986, Parliament's Special Joint Committee on Canada's International Relations declared an all-party consensus that "the international promotion of human rights is a fundamental and integral part of Canadian foreign policy." In 1990, Prime Minister Mulroney played a key role as co-chair of the Summit on Children and the adoption of the Convention on the Rights of the Child.

Gervais-Vidricaire argued that "Canada in the World" reaffirmed the central role of human rights in Canadian foreign policy, not only as a fundamental value but also as a crucial element in the development of stable

democratic societies. At the same time, the Canadian International Development Agency was one of the first among its peers to issue a policy on human rights, democratization, and good governance, and to actively undertake programming in this area.

Gervais-Vidricaire credited engagement between government and civil society with helping shape human rights in Canada's foreign policy. For example, every year for the past 16 years, the Department of Foreign Affairs has held annual NGO human rights consultations in preparation for the meetings of the UN Commission on Human Rights (UNCHR). The annual human rights reports prepared by Canadian missions abroad are another important element of the discussion on how Canada engages with these countries and the positions it takes at the UNCHR.

In the 1990s, Canada decided to put human security at the center of its foreign policy. Gervais-Vidricaire argued that this move was a direct response to the new realities emerging since the end of the Cold War—including devastating civil conflicts and unchecked brutality against innocent civilians. For Gervais-Vidricaire, a people-centered approach to foreign policy is a necessary complement to the work done to promote human rights, human development, and national security.

Due to its commitment to human rights and human security, Gervais-Vidricaire explained, Canada has participated in various humanitarian interventions. The landmark report “The Responsibility to Protect” drafted by the independent International Commission on Intervention and State Sovereignty, which was created by the Canadian government in 2000, argued that states have the primary responsibility to protect their populations, but when they are unable or unwilling to do so—or are themselves the perpetrators of massive abuses—the international community, essentially through the Security Council, has the responsibility to react. Gervais-Vidricaire argued that the responsibility to protect has become an important theme of Canadian foreign policy.

Gervais-Vidricaire noted that in today's difficult international environment, it has become even clearer that respect for human rights is one of the keys to establishing the necessary conditions for economic and social development. It is also a key to preventing conflict and situations that foster the growth of terrorism. Gervais-Vidricaire quoted Mary Robinson, the UN High Commissioner for Human Rights, who said, “Today's human rights violations are tomorrow's conflicts.” The Canadian government has argued that counter-terrorism measures must incorporate respect for human rights and fundamental freedoms and must comply with international law, including humanitarian and refugee law.

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Canada has worked to promote human rights at the multilateral level. Gervais-Vidricaire observed that Canada has been active in the Commission on Human Rights and normally participates—often with ministerial representation—in important human rights meetings and conferences, such as the Durban World Conference on Racism. Canada has also been an active participant in the negotiations on the UN Draft Declaration on the Rights of Indigenous Peoples.

Gervais-Vidricaire noted that another strategy pursued by the Canadian government is to work at the bilateral level, where it seeks to maximize its influence through constructive engagement. In the case of China, for example, Canada has established an annual bilateral dialogue on human rights that is complemented by an annual Plurilateral Regional Human Rights Symposium, which takes place in Asia and is co-organized by Norway.

Gervais-Vidricaire acknowledged that Canada needs to work with like-minded countries to advance the cause of human rights at the international level, particularly in today's context of strained international relations. This is why Canada holds regular consultations with countries of the European Union, the U.S., and Mexico. Canada also needs to take into account the increasingly important interplay between international human rights and domestic policies and programs. Gervais-Vidricaire argued that the new government of Prime Minister Paul Martin will continue to attach great importance to human rights. Although a revision of Canadian foreign policy is currently underway, Gervais-Vidricaire predicted that the promotion of human rights is will remain a key component of what Canada does internationally.

**ROBERT P. JACKSON** pointed out that human rights are well integrated into the U.S. policy process, both diplomatically and programmatically. He stated that according to the National Security Strategy of the United States, the key to national success today is to be found in a model combining freedom, democracy, and free enterprise. The key to international security is a community of nations that accept their responsibility to extend political freedom and economic liberty, and resist aggression and brutality aiming to tear at the fabric of free societies.

The United States uses various tools in pursuing the protection of human rights and democracy. When preparing various human rights reports, conducting bilateral or multilateral diplomacy, or providing assistance, the U.S. government is guided by the principle that all nations are accountable for their human rights record, and that such accountability improves the prospects for a more stable and secure world. Jackson men-

tioned that President George W. Bush said that there are essential principles common to every successful society, in every culture, which include limiting the power of the state, the rule of law, healthy civic institutions, religious freedom, and economic liberty. According to Jackson, Secretary of State Powell said that this administration has led, during the past three years, a foreign policy based on values and principles (such as democracy, dignity of the individual, human rights, economic freedom and openness of trading systems) and remains committed to those principles and values.

According to Jackson, the United States has arrived to this point after a long, uneven evolution of its foreign policy. While John Quincy Adams once declared that the United States was the well-wisher of freedom and independence for all but only the champion of her own, the United States now recognizes that human rights violations abroad can damage U.S. national interests. Jackson argued that this change is the result of a global environment that was unimaginable in the earliest days of the United States. Another contributing factor, which Secretary Powell has often stressed, is the realization that the country's values—freedom, equality, and the rule of law—are a great source of U.S. strength. Indeed, these values may be as important as, or even more important than, the military might or economic power of the United States. In fact, Jackson argued that when the United States has lost sight of human rights and similar considerations in its foreign relations, it has suffered the consequences of unreliable alliances, international resentment, and suspicion of U.S. motives and purposes in the world.

Jackson explained that recognition of these problems compelled the U.S. Congress in the 1970s to create the Bureau of Democracy, Human Rights, and Labor at the Department of State and to mandate an annual report on human rights practices around the world in order to elevate the importance of human rights in U.S. relations with other countries. At the same time, the Helsinki Final Act included the human rights practices of countries as a proper and legitimate concern of the community of nations, weakening the claims of repressive regimes that such concerns were an intolerable form of interference in their internal affairs.

Jackson commented that the United States has been increasingly careful with its relationships with such regimes and the people they rule in order to build the United States' credibility as a defender of human rights and a supporter of reform. Jackson acknowledged that when George W. Bush's administration pushes for improvements in human rights, it may encounter suspicion or be accused of undermining governments, exploiting weaker nations, pursuing material gain, or of using human rights

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**Jackson argued that when the United States has lost sight of human rights and similar considerations in its foreign relations, it has suffered the consequences of unreliable alliances, international resentment, and suspicion of U.S. motives and purposes in the world.**

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**Jackson outlined some of the ways the United States has integrated human rights into its foreign policy. For example, in the last decade the United States government has spent \$750 million per year—which is five percent of its foreign assistance budget—in promoting democracy, good governance, human rights, and the rule of law.**

against governments that are inimical to U.S. interests. Nevertheless, Jackson argued that these suspicions are a hangover from previous eras and may take a long time to overcome.

Jackson commented on the difficulties the United States is facing today, as it integrates human rights into its strategies to fight and prevent terrorism. The U.S. government has been widely criticized in the Arab world, with some arguing that the United States cannot be a credible agent for democratic change in the region. However, Jackson argued that the United States has an advantage now compared to the situation in the 1970s because democracy and respect for human rights has spread to the countries of Latin America, Asia, and Eastern Europe. Even if the work is never easy, Jackson held that the trends point clearly toward increasing freedom. When the Bureau of Democracy, Human Rights, and Labor was created there were 20 democracies in the world; today, there are 120. The United States is strengthening its cooperation with these democratic partners globally, through the creation of a Democracy Caucus in international organizations, for example.

Jackson outlined some of the ways the United States has integrated human rights into its foreign policy. For example, in the last decade the United States government has spent \$750 million per year—which is five percent of its foreign assistance budget—in promoting democracy, good governance, human rights, and the rule of law. Various government-supported programs supplement U.S. diplomatic engagement with these principles and put them into practice. For example, in 2004 the Human Rights and Democracy Fund will provide \$36 million for projects to support independent media, political party development, and judicial and legal training. The Millennium Challenge Account, another channel for support, is designed to help countries that are governed justly, support economic freedom, and invest in their own people. According to Jackson, human rights and democracy will play a key role in Millennium Challenge account strategy, for which Congress has provided \$1 billion this year. The U.S.-Middle East Partnership Initiative (MEPI), announced in December 2002, is a State Department initiative funding assistance in four separate areas relevant to the advancement of democracy and human rights in the Middle East: economic reform, business investment, and private sector development; education; development of political pluralism, including independent parties, independent judiciaries, effective legislative bodies, and strong civil society, all committed to good governance and transparency; and full and equal opportunities for women across all spheres of social life.



In relation to work in Latin America, Jackson argued that in 2003 and 2004 the United States continued to focus on consolidating democratic institutions and on promoting transparency and respect for human rights in the Western Hemisphere. U.S. assistance to the region included coordinated projects to strengthen labor systems and markets through the promotion of freedom of association, collective bargaining, and protection of core labor standards in Central America as well as regional political party development programs that incorporated internal party reforms with democratization and expanded outreach to constituents. Outreach to indigenous communities and other marginalized populations, including Afro-Latinos and women, was strengthened and expanded in the region, with particular emphasis on Bolivia, Brazil, Colombia, Ecuador, and Peru. Among other outreach and inclusion initiatives, the U.S. Embassy in La Paz hired indigenous advisors and supported the development of original radio programming and publications on democracy and other key issues in indigenous languages. Throughout the region, programs run by the United States Agency for International Development (USAID) worked to support grassroots democratization, transparency, and efficiency in municipal governments, and the political and economic inclusion of traditionally marginalized populations. In support of UN Security Council Resolution 1529 and the Caribbean Community (CARICOM) Prior Action Plan for Haiti, the United States quickly established an interagency coordinating group to support the reconstruction of democracy in Haiti, including key institutions such as the criminal justice system. Throughout the Hemisphere, the United States has worked to strengthen and restructure local government, and promote reconciliation and social reintegration. Mediation and conflict resolution programs in Venezuela sought to encourage peaceful democratic dialogue among polarized groups in that country and to promote a constitutional solution to the political impasse. Additional U.S. programs worked to help children affected by the civil conflict in Colombia, including the reintegration into society and emotional recovery of more than one thousand child soldiers. Other programs in the Hemisphere identified and helped combat the worst forms of child labor, including sexual exploitation. In Brazil, for example, the United States is working through civil society and governmental networks to expand assistance for child victims of trafficking. In Belize, Bolivia, Guatemala, Haiti, Mexico, and other countries, the United States has supported anti-trafficking educational and assistance programs and promoted research, training, and the development of remedial legislation concerned with child trafficking.

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**In the span of over a little more than fifty years, the world acquired a body of law regarding human rights and a set of standards and international mechanisms to uphold these laws. Nevertheless, Acosta argued that these laws, standards, and mechanisms have yet to be well incorporated into the domestic sphere of most of the member states of the United Nations.**

Promoting human rights and democracy is central to U.S. policy, Jackson argued, as it has been for 25 years. Furthermore, he noted it is consistent with U.S. interests and values, and “it is the right thing to do.”

**MARICLAIRE ACOSTA** began her presentation by quoting the well-known human rights scholar Judge Thomas Burgenthal, who once said that making human rights a part of the everyday life in any society is the most difficult and lengthy process that mankind has encountered. It requires changing deeply rooted behaviors, cultural patterns, and social structures. Acosta argued that the world is just beginning this process. Burgenthal distinguished several stages in the global development of human rights. The first one concludes with the establishment of the Universal Declaration of Human Rights in 1948, the first truly global bill of basic and fundamental rights recognized by all of the member states of the United Nations. After the promulgation of this Declaration came the codification of these broad principles and aspirations into a body of international law, represented by the UN conventions on human rights, which have been accepted by most of the member states of the United Nations. Along with the codification of human rights, a whole international system for the enforcement of these rights has been created, both at the UN level and in every continent but Asia at the regional level. In the span of over a little more than fifty years, the world acquired a body of law regarding human rights and a set of standards and international mechanisms to uphold these laws. Nevertheless, Acosta argued that these laws, standards, and mechanisms have yet to be well incorporated into the domestic sphere of most of the member states of the United Nations.

The case of Mexico illustrates Acosta’s argument well. Mexico has participated in building the international body of human rights law. While Mexico’s level of involvement has varied over the years, it has been important, particularly with respect to the rights of migrants and indigenous peoples. However, when it comes to the incorporation of these laws and standards of international human rights into the domestic sphere, the situation changes dramatically. While the Mexican Senate ratified most of the human rights conventions and other legal instruments in fitful spurts in the latter part of the twentieth century, they are still not part of domestic law or institutional practice.

Acosta argued that the Mexican people have long aspired to achieve respect for human rights, since the 1813 Constitution of Apatzingán proclaimed by the insurgents established that all men were free and equal. However, Acosta commented that while internationally recognized human rights have been regarded as part of Mexico’s diplomatic efforts,

they have not been an integral part of Mexico's political system and culture. Acosta credited this dichotomy to Mexico's lack of democratic development and explained that the Fox administration came to power after the first truly democratic election held in the country in at least 90 years. Fox's election broke the monopoly of power over the state apparatus that the ruling party (the Partido Revolucionario Institucional, or PRI) had held since the Mexican Revolution in the early twentieth century. Although democracy in Mexico has not automatically delivered respect for human rights, it has brought about some significant changes that have had an impact on the way these rights are perceived by large sectors of society and by the government. In his inaugural address, President Fox stated that human rights would be a central concern of his government. However, Acosta attested that this has not been the case even though Fox's government has done more for human rights than the preceding ones.

Acosta argued that the Fox administration has protected human rights in a haphazard fashion, without a consistent, coordinated set of efforts to tackle the deeply ingrained structural problems of the country. At the beginning of his administration, Fox delegated the matter almost entirely to foreign policy, based on the assumption that the rest of his government, by virtue of having been elected in a democratic election, would automatically be committed to human rights. In the first two years of his administration, for example, a strategy to deal with the legacy of the PRI's human rights abuses was developed in the Ministry of Foreign Affairs. In fact, human rights and democratic development were put at the very center of Fox's foreign policy agenda with the purpose of giving Mexico a more active international role. Human rights and democracy were to be the cornerstone of Mexico's participation in multilateral organizations and were considered the essential foundations of the new international system. Acosta argued that this was also a deliberate effort to spur democratic change in Mexico by institutionalizing foreign support and pressure, in very much the same way that democratic development was aided in Spain and Portugal by virtue of their being part of the European Union. At that time, the Office of the Special Ambassador for Human Rights and Democracy was created, which later became the Deputy Ministry for Human Rights and Democracy, and was in charge of developing this vision into policy. Acosta noted that after the mid-term election in 2003, when the Fox government veered towards more conservative positions, this office was disbanded and merged into the Deputy Ministry for Global Affairs.

In this scheme, foreign and domestic policies were regarded as two sides of the same coin. Acosta admitted that this meant a radical break away

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from Mexico's traditional position in the international human rights sphere of defending national sovereignty, self-determination, and non-interference in order to ward off international supervision of its deplorable human rights record. The zealous defense of these principles made Mexico the leader of an informal caucus of repressive countries in the UNCHR, such as Pakistan and Cuba, which referred to itself as the "like-minded group."

In the spring of 2001, Jorge Castañeda, the then Minister of Foreign Affairs, announced to the UNCHR that Mexico regarded human rights as universal and absolute values, superceding national sovereignty in importance. Castañeda argued that the international community had an essential role to play in protecting these rights in all parts of the world. He also stated that the Fox government was committed to this vision and that it would do its utmost to uphold it by actively joining in the efforts of the Human Rights Commission and other international bodies to make respect for human rights a universal reality. Castañeda ended by welcoming international cooperation in helping Mexico resolve its own human rights situation. An open invitation was thus issued to all of the UN mechanisms for the protection of human rights to visit the country on demand, without having to wait for a formal invitation. Castañeda's announcement to the Commission had an immediate effect. At the end of the six-week session, in an unprecedented movement, more than 30 countries had followed suit and issued similar invitations to Special Rapporteurs.

Acosta argued that Mexico's human rights- and democracy-related foreign policy was two-pronged. It consisted of strengthening the international edifice for the protection of human rights while simultaneously taking advantage of it to affect domestic change. In the course of the two years following Castañeda's speech, Mexico received thirteen visits from UN representatives, OAS Special Rapporteurs, and other representatives of international organizations. The jurisdiction of the Inter-American Human Rights Commission and Court were fully accepted by the Mexican government. The Ministry of Foreign Affairs designed a novel arrangement to deal with the Commission's bulky caseload related to Mexico, which sought amicable settlements to human rights violations committed by the Mexican government. In an attempt to focus on the areas that needed the most attention—such as the design of a national human rights policy and the introduction of the study of human rights into the system of higher education—Mexico signed ambitious agreements of cooperation with UN agencies like the UNHCHR and UNESCO, with the European Union. New international instruments for the protection of human rights were signed, including the Statute of the

International Criminal Court, and restrictions on others were lifted. The notion of the universal jurisdiction of crimes against humanity was applied in the case of Miguel Cavallo, an Argentine accused of committing torture who was detained in Mexico and eventually extradited to Spain. The Mexican government also encouraged and institutionalized civil society participation in the design and supervision of public policy initiatives in human rights.

The positions Mexico has taken internationally have changed significantly with the Fox administration. They have favored protecting human rights, even when that has meant contradicting some of Mexico's traditional stances, for example, on the fight against terrorism or on Cuba's human rights situation. Acosta pointed out that resistance to this kind of change was almost immediate. In the domestic sphere, opposition to these new positions appeared across the whole ideological spectrum, spearheaded by the opposition parties in the Congress and sectors of the press and the human rights establishment, particularly the President of the National Human Rights Commission. Even the NGO community was hesitant to offer support at first. Nationalism and the notion of sovereignty dominated debate, spurred by the controversy surrounding Mexico's position before the UNCHR on human rights in Cuba.

Nevertheless, according to Acosta, there was broad but diffuse support for the new policy. A large part of the Mexican electorate had voted for change, and respect for human rights had been a widespread demand during Fox's bid for the presidency. Human rights had a high profile in the new government's rhetoric. On his second day in office, Fox signed a cooperation agreement with Mary Robinson, the UN High Commissioner for Human Rights. This agreement, demanded by the human rights community after the massacre of dozens of Tzotzil Indians in Acteal, Chiapas in 1997, had been deferred by the Zedillo administration. Long-standing cases of abuse were re-opened and dealt with in a different, positive manner, which led to an incipient trust in the government. This trust was ruptured by the violent, suspicious death of Digna Ochoa, a widely known and respected human rights defender, in October of 2001. The national and international uproar that followed her death spurred President Fox to take on more responsibility in the field of human rights. Some of his boldest initiatives correspond to this period. Some examples are the liberation of environmental activists Rodolfo Montiel and Teodoro Cabrera, and General José Francisco Gallardo Rodríguez (who had criticized the Mexican armed forces for human rights violations and proposed the creation of a military human rights ombudsman to investigate these

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violations), all of which were considered prisoners of conscience by Amnesty International; the establishment of a Special Prosecutor's office to investigate past abuses; and the creation of a high-level human rights office in the Ministry of the Interior.

However, Acosta noted that cooperation with the international community and compliance with international human rights law "is easier said than done." The terrorist attack on the United States on September 11, 2001 changed the world's international priorities in a drastic manner. In this new context, Acosta argued, Mexico was unable to become the middle-sized power exerting influence in world affairs that the Fox administration hoped Mexico would become. Although the present government is still committed to a proactive human rights policy and to carrying out the recommendations issued by international bodies on several of the more serious cases in Mexico, progress in resolving them and putting an end to impunity has been slow and inconsistent. Even in situations when there is a will to comply with international norms, the lack of legislation in Mexico to enable compliance makes it almost impossible.

Acosta argued that legal reform is necessary if Mexico is to become a modern, law-abiding country with an improved human rights record. This means incorporating human rights law into domestic law; training lawyers, judges, and law enforcement officials to use it; upgrading the official human rights commissions; and helping civil society organizations build their capacities. Schools, universities, professional organizations, the media, and political parties have to be brought together in a national effort to build consensus in order to bring about badly needed reforms. Without this effort, Acosta predicted there would be no progress in human rights.

Acosta commented that the measures taken so far have not changed Mexico's human rights situation. Furthermore, they have generated a strong reaction against reform. They have, however, generated a process of change by bringing together the national and international stakeholders. One positive result was the 2002 establishment of a UNCHR office in Mexico to support the government's human rights efforts. This office has just completed an unprecedented diagnostic of the present state of human rights in Mexico, which carried out jointly by government and civil society. This is the first step toward building a human rights agenda with a truly national scope. In fact, President Fox recently announced a broad reform of the justice system, which was based in part on the recommendations contained in this diagnostic.

Acosta argued that the future of human rights in Mexico is closely tied to the future of Mexican democracy, which is murky at best. The Fox

administration seems to be moving into a vacuum, given the political elite's failure to create a political consensus around the basic institutional reforms that the country needs in order to become a real democracy. Political parties are in crisis, beset by power struggles, fragmentation, and corruption. In addition, currently there are a number of disturbing social and political conflicts, which involve violence and corruption. Acosta noted that the political culture of the past seems to have invaded almost all of the political organizations, and the PRI has not yet relinquished its hold on vast portions of the state apparatus, especially at the local level. In terms of democratic development, the country seems paralyzed. Although civil society has been given unprecedented freedom to develop, it is still disjointed and weak, without a common cause.

Acosta remained doubtful that the Fox administration will have the power and the political acumen required to undertake the badly needed reforms of the justice system. Without national consensus and the pressure of a strong, organized civil society, it looks almost impossible. Nevertheless, Acosta concluded by saying that "miracles can always happen." Acosta predicted that the Mexican government will continue to promote a proactive human rights policy abroad. However, such a foreign policy needs to be sustained by more than promising plans and programs; it has to be sustained by real changes on the ground. Acosta warned that if these changes do not occur in the near future, it will certainly impede Mexico's influence elsewhere.

**ROBERT LITWAK**, in his dual role of moderator and commentator, mentioned that the current era of international relations has been shaped by two events: the end of the Cold War and the 9/11 terrorist attacks. Litwak argued that human rights are an important element of foreign policy, but do not constitute foreign policy by themselves. The pressing challenge now is how to integrate human rights into a foreign policy that includes multiple objectives.

In the United States, the promotion of human rights is the result of one of the two foreign policy schools of thought—liberalism (also known as idealism) and realism—that have historically shaped U.S. foreign policy. Each has influenced foreign policy differently; each offers different answers as to how international peace can be achieved. For realists like Henry Kissinger, a stable, external balance of power between states is the key to international peace. Realists do not consider human rights to be an appropriate objective for U.S. foreign policy. This position was evident in the Cold War period. For liberals, such as Woodrow Wilson, Jimmy Carter, or Bill Clinton, international peace depends on the internal organization of

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states and, therefore, arises from the proliferation of democracy. Litwak quoted President Clinton famous addage, “Democracies don’t fight each other.” In this liberal conception of foreign relations, human rights are embedded in the broader process of democratization.

The history of U.S. diplomacy reflects both schools of thought; therefore, it is not a necessary to choose one over the other but rather to understand the interaction between the two approaches. Litwak is a self-proclaimed proponent of the pendulum conception of international relations, which dictates that the pendulum swings from one school to the other, but never completely adopts one. After the Cold War, the liberal approach ascended. The grand strategy of the Clinton administration was “engagement” and “enlargement,” the idea being that if you expand the community of democracies with market economies, it will produce a peaceful international system. The Clinton administration created a four-tier typology of states: advanced industrial democracies (the so-called “club”), merging democracies with market economies (states aspiring to join the club), failed states, and rogue states (states pursuing weapons of mass destruction, using terrorism as state policy, and posing a threat to their region). Litwak noted that prior to 1979, the “pariah” status (later called “rogue” status) was rooted in an evaluation of how a government treated its own people. In the 1980s, and the criteria to determine that a state was a rogue state shifted to focus on how it behaved externally. The Clinton administration, given its liberal approach, was more open to humanitarian intervention to address horrific conditions within states. Foreign policy realists in the United States, who referred to humanitarian interventions as social work, opposed this emphasis. According to Litwak, with the demise of the Soviet threat, the realist fear of great power competition has subsided. According to John Mearsheimer, a prominent realist theorist, this period is transitional and will not last. Mearsheimer predicts that in the middle of this century, with the rise of China, we will see a renewal of great power competition. During the 1990s, the United States emerged as the sole superpower; it was the dominant power of the system, both in terms of hard and soft power. Litwak differentiated between hard and soft power by explaining that hard power is economic and military power, and soft power is the ability to influence without coercing, making others follow your example through the promotion of a culture and values that the society holds.

What the realists would have predicted to happen in the 1990s did not happen: the whole world did not balance against the super-power. Litwak argued that the reason for this lies in the development of a web of interna-



tional institutions and norms that emerged after World War II, which the United States helped to create. Since the United States chose to channel its power through these institutions and norms, it was more legitimate and less threatening to others. The key to U.S. success at this time was its role in the community of democracies as the “benign super-power.” The policy of “engagement” and “enlargement” was not only a strategy, but also a concept of societal change: if you promote a democratic system, you will yield peace and promote human rights. Before 9/11, the George W. Bush administration had a realist orientation and eschewed the notion that U.S. foreign policy should focus on nation-building or failed states. It chose to focus on great power relations and on rogue states. After 9/11, there was a profound change in U.S. foreign policy. Litwak clarified that 9/11 did not change the structure of international affairs or the international order but rather demonstrated a new vulnerability, manifested in the phenomenon of Al Qaeda. After 9/11, there was also a breakdown in the categories used in the 1990s. The George W. Bush administration stated that U.S. foreign policy would no longer focus on failed states and would focus on the rogue state problem. Litwak argued that 9/11 showed that the failed state issue could not be neglected. After all, Afghanistan was a failed state and a terrorist-sponsored state.

Litwak noted that to integrate human rights into broader foreign policy, we must address three challenges: how to deal with competing conceptions of sovereignty; how to deal with competing values and conceptions of human rights; and how to deal with competing priorities. First, there is a tension in the UN Charter between the protection of sovereignty and human rights provisions. In the 1970s and 1990s, when U.S. foreign policy was emphasizing human rights to a greater extent than it had in preceding periods, there was resentment by part of the international community because concern for human rights was considered a sort of intervention in a state’s internal affairs. The UN Secretary General has talked about a changing concept of sovereignty and has declared that the old concept of sovereignty that permitted abusive states to hide behind it should no longer prevail. According to Litwak, the U.S. attitude on sovereignty is conflicted. In the National Security Strategy, it agrees that if a state cannot ensure its own sovereignty, it can sacrifice it and allow international intervention. At the same time, however, the United States defends its own sovereignty.

Second, there is a conflict between universalism of values and cultural relativism. The human rights values reflected in the UN Charter may be seen as the exportation of Western values to the international community. Samuel Huntington has argued that the alternative to the liberal and realist

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approaches is a cleavage along civilization lines, leading to the nightmare scenario of the clash of civilizations. The political impulse that underlies these civilization cleavages is, in some respect, a rejection of Western values. The political impact of these differences must be recognized.

Third, there are competing priorities in foreign policy. The challenge is how to integrate human rights as a priority into a foreign policy that includes multiple objectives. In crisis periods, unfortunately, human rights are one priority that can be easily squeezed out by a seemingly higher priority. For example, during the Cold War the United States did not pay attention to authoritarianism in Latin America because those states were seen as an important element of a Cold War coalition against the Soviet Union. In the current era, similar dilemmas arise when dealing with Central Asian states that are needed in order to maintain access to regions of conflict. Litwak summarized this dilemma: “How do we address human rights abuses within their societies so that their support for the war against terrorism does not translate into a blank check on how they treat their own people?”

Litwak concluded that the challenge is to achieve a balance between competing priorities. Joseph Nye offers pragmatic guidelines for this, such as pursuing tactical steps to promote long-term change within societies, without sacrificing other foreign policy interests. The key is that the United States, which plays an important role in the international system, must use its hard and soft power. As Litwak put it, “We need to ensure our homeland security, but without becoming a fortress, and recognizing that international organizations offer legitimacy and utility.”

## QUESTION AND ANSWER PERIOD

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**ANDREW SELEE**, director of the Mexico Institute at the Woodrow Wilson Center, asked Acosta if there is an ongoing change or a re-evaluation of how Mexico sees its sovereignty within the foreign policy establishment. Selee referred to the interface between foreign and domestic policy mentioned by Acosta, and asked to what extent human rights issues translate into questions of justice reform, civil-military relations, and transparency issues.

Acosta argued that in Mexico there still is an engrained traditional notion of sovereignty not only in the Ministry of Foreign Affairs or the Mexican bureaucracy, but also in the Mexican population. Further, she stated that there is an incredible dichotomy in the perception of sovereignty “in a country that exports people.” One of Mexico’s major sources of

revenue comes from people, including migrants and emigrants' remittances, yet it continues to maintain a traditional notion of sovereignty that is going to take a long time to change. According to Acosta, the current discussion about giving Mexicans abroad the ability to vote will probably begin to change this notion of sovereignty, but it will take time. Acosta noted that Mexico's reaction to the crisis in Haiti was discouraging. In an unprecedented act, it even closed its Embassy in Port-au-Prince. She concluded that the defensive notion seems to be taking over again.

Acosta argued that the Fox administration's major problem has been its lack of internal coordination; it does not seem to have a consistent view on many issues, including human rights. While there were some efforts made to institutionalize coordination, inter-agency competition has once again taken over. Acosta concluded that whatever came out of the human rights policy in the first years of the Fox administration is "what we will see from Mexico."

**FERNANDA GONZALEZ**, a graduate student from American University, asked Acosta if she were to select an international donor to ask for support for the promotion of democratic governance in Mexico and for the implementation of existing human rights mechanisms, who she would choose and to which areas she would allocate those resources.

Acosta answered that the United States and Canada have been very important donors in supporting human rights in Mexico for many years, and the European Union is beginning to play an important role. However, she argued that the notion of state sovereignty also gets in the way. Some agencies that receive money from foreign countries or from international institutions have been severely criticized. For example, she mentioned an accord between Mexico and the European Union that channeled funds to upgrade the official human rights protection system. The money resulting from this agreement was actually given back to the European Union by the Ombudsman's office, arguing that it violated Mexican sovereignty.

**ROBERT LITWAK** asked Jackson to comment on how the U.S. government addresses the issue of competing priorities, and how it attempts to balance them.

Jackson responded that many people would be surprised at how often human rights are at the top of the U.S. government's agenda with foreign leaders. The Department of State issues annual human rights reports on approximately 100 countries. Jackson argued that human rights is one of the top three issues the President or the Secretary of State mentions when meeting with someone from one of those countries. While there is competition for how human rights is framed and whether it is the first or third

priority in the discussion, the United States is pushing for democracy and human rights, even in the context of the war on terrorism. Even though Jackson claimed the United States is working hard in achieving a balance, he recognized it is a constant struggle.

**KIRA NEEL** from the Guatemala Human Rights Commission commented on Jackson's explanation of U.S. involvement in Latin America. She argued that the presence of the military is supposed to promote democracy, yet in the promotion of democracy they often commit horrible human rights violations.

Jackson affirmed that using military force is always the last recourse, and this was evident in Iraq and Afghanistan. In the Latin American context, the United States provides very little military assistance to certain countries because of the history of their security forces' behavior. For example, in Guatemala, the United States provides almost no training. The United States also collaborates with CICIACS, the new UN commission that will investigate human rights violations in Guatemala, and has funded the Special Prosecutor for Human Rights in Guatemala, which has been trying to prosecute the clandestine groups that have violated human rights. In relation to security, Colombia is a good example of how the United States looks very carefully at the assistance provided. These decisions are subject to review by the Secretary of State, who must report to Congress every six months on the assistance given to Colombia, so Congress can decide if the assistance can be released in full or in part. Jackson argued that this system is useful to evaluate if international military assistance and training are good tools for promoting human rights. According to Jackson, the Southern Command, which is responsible for the Western Hemisphere, has successfully incorporated human rights into its training and doctrine. The United States is trying to get other military commands in the world to follow that model.

**JOSEPH S. TULCHIN** reflected on the issue of priorities during the Cold War, mentioning how Litwak had noted that in moments of crisis, the United States had supported non-democratic or authoritarian regimes. The declassification of recent documents in American archives made it clear that in certain periods the United States had been more than a passive observer in the case of coups. Tulchin asked Litwak if he could imagine scenarios in the future in which soft power, human rights, and democratic values trump a more traditional evaluation of national security, whether it is in Central Asia, the Middle East, or another area in the world.

Litwak argued that given the stakes for American society in the war on terrorism, the issue of competing priorities will require continued atten-

tion and an ongoing process of balancing U.S. priorities. To answer Tulchin's question, Litwak referred to the case of Libya. In the last decade, Libya has made a concerted effort to address the objectionable behavior that had led to its prior status. In the 1990s, the state's rogue status was linked to external behavior, not the way it treated its own people. The George W. Bush administration has agreed to normalize relations with Libya because it has changed its behavior with respect to its objective external behavior. Bush has faced some resistance for allowing Libya to join the community of nations, but Litwak pointed out that it is striking that the current strategy toward Libya is rooted in a concept of societal change. The idea is that as Libya rejoins the family of nations, it will have to undergo changes with respect to the rule of law and political transparency, if it wants to have trade agreements with the European Union, for example. This will promote domestic change in Libya. This is an example of the soft power approach. The challenge is to try to empower groups within the society which promote change since regimes like the Qadafi's, the North Korean regime, or Iranian regime will try to insulate themselves from the political consequences of such engagement. Litwak argued that this kind of engagement should take place on a case-by-case basis and context-dependent.

**HERALDO MUÑOZ** commented that his understanding of U.S. policy is more complex than what has been described. Muñoz argued that there are some deeply engrained values in U.S. foreign policy related to the promotion of human rights and democracy, which have been part of the U.S. worldview since the country's independence. Even if certain circumstances have led the United States to form alliances with dictators, it has always been an unstable type of support either because there were differences between sectors of the U.S. administration or because public opinion questioned that type of support. During the second half of the 1980s, the Pinochet dictatorship celebrated Reagan's election as U.S. President. At the beginning, Chile was not criticized openly due to the policy of "quiet diplomacy." Eventually, public criticism began, and this made U.S.-Pinochet relations as bad as they were during Carter's presidency. There are other cases that show that alliances with dictators give rise to these polemics and eventual decisions to abandon the dictators. Muñoz argued that the current U.S. administration is focusing on a greater democratic Middle East, where democracy and the markets prevail. If that is the case, the United States and the world would be more secure, which is in fact the view of the world Clinton tried to promote, i.e., that an increase in the number of democracies and free-market economies will make the United States safer in the long run.

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**Muñoz argued that there are some deeply engrained values in U.S. foreign policy related to the promotion of human rights and democracy, which have been part of the U.S. worldview since the country's independence. Even if certain circumstances have led the United States to form alliances with dictators, it has always been an unstable type of support ...**

Litwak argued that both schools are reflected in U.S. diplomatic history and enduring aspects of both may be seen, including the promotion of values. The Reagan administration does not fit the mold because he was the precursor of what we call today the “neo-conservative” movement. Today the “neo-conservatives” are interested in the promotion of democracy as an objective of U.S. foreign policy, without emphasizing the institutional side of the Wilsonian approach. Reagan was helped by the fact that towards the end of his period, the Cold War was ending and, as a result, there was less pressure to rely on unsavory regimes. Regarding the present Bush administration, Litwak argued that the National Security Strategy is a conflicted document. Some paragraphs could easily have been written during the Clinton administration—particularly those related to expanding the community of democracies—while other paragraphs relate to the new age of vulnerability, which is seen in the importance placed on preemption, a reaction to the 9/11 attacks.

**JOSEPH S. TULCHIN** asked the Canadian and Mexican representatives how they saw human rights as part of foreign policy working to reintegrate Cuba in the hemispheric community of nations.

Gervais-Vidricaire claimed that Canada had maintained an active dialogue with the Cubans on human rights issues, and that it is not producing the results they hoped it would. Nevertheless, Canada considers it is worth trying and not closing the door to dialogue. Gervais-Vidricaire argued that there are also other opportunities to raise this issue, such as the UNCHR. Canada has always co-sponsored resolutions on Cuba and has been active in lobbying for their adoption. Cuba is a real concern for Canada; these concerns are raised at every political meeting with the Cubans. Gervais-Vidricaire noted that there are few possibilities of creating change with the current Cuban regime. She also observed that the Cubans are very active at the UNCHR, and raise many issues in hopes of creating solidarity among the countries of the developing world so they will not vote against Cuba. Gervais-Vidricaire argued that it is an interesting game, but not a very productive one.

Acosta noted that Mexico’s positions regarding Cuba in the UNCHR are unpredictable. Voting against Cuba has had a tremendous political cost in the past. There is resistance to it in the Mexican political class and with the PRI-dominated Congress. The Mexican Ministry of Foreign Affairs is also doubtful about the need for continuing to press for human rights in Cuba. Acosta held that in Mexico criticizing Cuba is seen as a consequence of U.S. pressure. However, she thinks that it is necessary for Mexico to develop a policy on human rights in Cuba because it is in Mexico’s interest to play a role in what happens in Cuba.

# The Impact of Human Rights Activism On State Behavior

**A** **MBASSADOR JOSEPH B. GILDENHORN**, moderator of the afternoon panel, opened the discussion by highlighting the importance of human rights activists like the panelists who work tirelessly in support of human rights around the world. In addition, he noted that these activists have been influential in encouraging their respective governments to make human rights issues a high priority.

Speaking as the former U.S. ambassador to Switzerland, Gildenhorn recognized that human rights have long been a central part of U.S. foreign policy, regardless of the political party in power. Gildenhorn quoted Henry Kissinger, who recently stated in *The New York Times*, “No other country has treated human rights in the support of democracy as so central to its foreign policy.” The support for human rights has been a consistent element in U.S. policy and is consistent with U.S. participation in multilateral organizations. According to Gildenhorn, it has been through these multilateral organizations that the United States has vigorously demanded respect for human rights.

Gildenhorn emphasized that human rights are a key part of the community of values that bind nations together; as such, we must make it our mission to make all governments aware of the need to protect the rights of others, and to encourage them to make this a central part of their domestic and foreign policies. Gildenhorn proposed that the debate focus on strategies initiated by human rights organizations to increase governmental awareness of human rights issues and ways to promote the enactment of positive public policies on human rights.

**JOSÉ MIGUEL VIVANCO** explained some of the strategies human rights activists use to pressure states and influence their behavior regarding respect for fundamental rights and freedoms. Vivanco outlined three important conclusions from his work in the human rights field. First, there are no magic formulas for influencing state behavior. Indeed, there are multiple options from which to choose. Second, one must work on a case-by-case basis; formulas, strategies, and options devised for one case may not be applicable to another. Therefore, it is not possible to extrapolate a general rule from a single experience. Finally, strategies and their results

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**Vivanco outlined three important conclusions from his work in the human rights field. First, there are no magic formulas for influencing state behavior. ... Second, one must work on a case-by-case basis; ... Finally, strategies and their results will vary according to the type of government in power in a particular country ...**

will vary according to the type of government in power in a particular country (e.g., a democratic government, a dictatorship, or a strong presidential regime).

Several examples were offered to illustrate these points. For instance, Alberto Fujimori, a well-known autocratic ruler of Peru, was generally dismissive of international criticism. One of the reasons that perhaps prompted this attitude was the vast support he enjoyed for many years in his country. This presented a huge challenge for international human rights organizations seeking to influence Fujimori's policies. Similarly, if one wished to influence Cuba's behavior on human rights, Vivanco pointed out, it would be useless to publish a report in Washington, D.C. or Miami on Cuba's human rights record. Fidel Castro is not interested in what is said about his government within the United States. On the contrary, he might be rather concerned if a Cuban human rights report addressed the audience of a strategic ally of his government. In a third example, Vivanco mentioned the case of Mexico. Whereas previous Mexican administrations had invoked sovereignty and cited interference with internal affairs when facing international criticism on human rights, the Fox administration has made human rights an important component of its foreign policy and, consequently, is very open to criticism.

Vivanco described various mechanisms that can be employed to influence state behavior, including international stigmatization of a country that violates human rights and utilizing the media to mobilize public opinion. Shame and the stigma of being recognized in the international community as a country which violates human rights have been effective tools in the last twenty years, especially when dealing with democratically-elected governments. Additionally, there are other effective options—such as sanctions, and conditions to receive loans and grants from development institutions—that may be used in different situations. In this way, financial and political relationships may be used as incentives for change in countries that have serious human rights problems. However, Vivanco argued that sanctions must not be an end in themselves, but rather instruments to achieve a higher goal. For example, successive U.S. administrations have pursued the embargo against Cuba as an end in itself. Nevertheless, there has been no evaluation of the effectiveness of the isolation caused by the embargo during the last forty years. In summary, these pragmatic options must be adjusted according to the circumstances. Other options available to human rights advocates are to use international mechanisms of human rights protection, such as the Inter-American System on Human Rights and the United Nations, and to create coalitions of non-governmental



organizations. Finally, extreme situations of ongoing and massive human rights violations, such as genocide, could justify humanitarian interventions. In these extreme cases, states can use force to intervene in another country, without the consent of the local government, to stop imminent or ongoing massive human rights violations.

Vivanco maintained that in order to push the human rights agenda forward, it helps to have allies in the NGO community and inside governments. The U.S. government—particularly the U.S. Congress—has historically been an important ally for the promotion of human rights standards around the world. However, Vivanco argued that the George W. Bush administration unfortunately has lost moral authority on this issue. In the present situation, it is difficult to convince the international community that the United States is committed to the promotion of human rights because the Bush administration has been incredibly arrogant regarding international law, fundamental principles of human rights, and the International Criminal Court. Vivanco contended that there are tremendous inconsistencies in the way this administration has dealt with its allies in the war on terrorism. For example, it has avoided criticizing the human rights records of key countries from which it needs political or logistical support. Nevertheless, Vivanco also recognized that unfortunately, in foreign policy, such inconsistencies are nothing new. Many examples can be used to illustrate this point. Though not comparable to the catastrophic discredit that the United States has suffered during the present administration, the Clinton administration, for example, supported Fujimori's government because of the importance it attributed to the war on drugs. It supported this government despite well-known evidence that it engaged in human rights abuses, corruption, and was undermining democracy.

While governments are important actors in the human rights arena, NGOs are becoming equally more important. NGOs must pay careful attention to shaping their message in order to be able to influence state behavior. Vivanco offered several suggestions that could help NGOs in changing human rights policies in different countries. He recommended that NGOs make sure that their methods of investigation reflect objectively the human rights record of a given country. They should make concrete, specific recommendations and offer feasible solutions to governments. They must identify where the human rights problems are and target authorities and institutions that are responsible for human rights abuses. Even though the state as a whole may act as an interlocutor, NGOs must specify which governmental agency is responsible for the abuses. NGOs should act consistently and promote the same discourse in both public and

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**According to Vivanco, Shame and the stigma of being recognized in the international community as a country which violates human rights have been effective tools in the last twenty years, especially when dealing with democratically-elected governments. Additionally, ... financial and political relationships may be used as incentives for change in countries that have serious human rights problems.**

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**Krsticevic explained how human rights advocates have affected state behavior in Latin America through campaigns, advocacy, and litigation at both the domestic and international levels. In general, NGOs in the Americas have been at the forefront of systematically documenting human rights abuses. The work of such NGOs has created awareness of existing human rights situations and has led to institutional initiatives that help address human rights violations.**

private meetings with government representatives. In addition, it is important that these organizations generate reliable, quality research in a reasonable timeframe. This research should thoroughly analyze the context—particularly the political one—in which the human rights violations take place in order to ensure that the NGOs exercise the right pressure at the right time.

**VIVIANA KRSTICEVIC** explained how human rights advocates have affected state behavior in Latin America through campaigns, advocacy, and litigation at both the domestic and international levels. In general, NGOs in the Americas have been at the forefront of systematically documenting human rights abuses. The work of such NGOs has created awareness of existing human rights situations and has led to institutional initiatives that help address human rights violations. In Peru, for example, human rights activists compiled data that has increased awareness about problems related to the fight against terrorism. This led to the creation of an ad-hoc Commission to study human rights abuses and, eventually, to some institutional changes. Similarly, in the 1970s Argentine human rights NGOs began documenting human rights abuses; this effort was invaluable for combating patterns of repression in the 1970s. The documentation led to an on-site visit of the Inter-American Commission on Human Rights, which issued a report that helped to change the situation in the country. Today, in fact, human rights NGOs also help shape the Argentine government's justice agenda.

These examples demonstrate that the impact of human rights activism on state behavior can be enormous. Such activism has led to changes in legislation, new policies, and individual and group compensation for victims of human rights abuses. In many countries, the human rights movement filled in a gap created by political groups or parties that did not have the moral courage and foresight to denounce certain activities. For example, human rights NGOs in Peru decided to document human rights abuses during Fujimori's fight against terrorism, whereas other political actors avoided criticizing the government while it was fighting such a reprehensible organization as Shinning Path. Human rights NGOs made a public statement saying that while they would not support terrorist activities, they would continue to document the human rights abuses in the country. As a consequence of these experiences, Krsticevic contended that to increase their legitimacy as political actors, it is imperative that human rights organizations be consistent, fair, and not have a political agenda. Krsticevic warned that determining whether an organization is non-political and fair is not always easy. While some organizations use international

human rights law and international humanitarian law to guide them when deciding what they will criticize at the domestic level, organizations also have other options from which to choose in order to guide their work.

Krsticevic pointed out that human rights organizations are varied; they used different strategies; some have a very specific focus while others are more general. Many are very legal in their approach, but others are experts in campaigning and symbolic denunciation of abuses. The main limitation of human rights activists, Krsticevic argued, is that while they have the ability to convince, propose, and influence governments to include certain issues in their agendas, they are unable to determine the agenda. This limitation is evident because although the human rights movement has been very active in the Americas, human rights violations continue to exist in the region.

However, Krsticevic also identified two important strategies that have helped advance human rights issues in government agendas. The first is coalition building at the local, regional, and international levels to help bring effective change in a specific country. This enables human rights activists to reach influential actors in different countries, which is crucial in order to attack human rights problems from multiple angles. This is important also because different organizations play different roles in the course of advocating the same message.

The second strategy is international litigation of cases, which creates a different dynamic with the government that is accused of human rights violations. At the international level, the government cannot use the same answers and strategies that it does internally. If the accused government or officials lose, they are bound by an international judgment and obligation. The Inter-American System on Human Rights helps increase international awareness of a country's particular human rights situation or of a particular case. It also provides individual reparations to victims of human rights abuses, and asks for changes of laws and the establishment of additional guarantees for the protection of human rights. For example, when the Inter-American Commission on Human Rights granted precautionary measures in favor of the patients of a psychiatric hospital in Paraguay, President Duarte decided to visit the hospital. After evaluating the conditions in which the patients lived, his government started working on a revision of the national health system. Krsticevic acknowledged that while there may be difficulties with these strategies, it would be interesting to explore them further since they have provided extremely positive results.

As the only panelist who does not describe himself as a human rights activist, **HÉLAN JAWORSKI** evaluated the role of the human rights move-

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**Jaworski emphasized the main findings of the TRC's report. In Peru ... with the creation of the Coordinadora in 1985, the human rights movement was able to contribute significantly toward moderating the state's harsh anti-subversive strategies and to overcome some of the worst obstacles to due process in the administration of justice.**

ment in Peru during the twenty-year period that was reviewed by Peru's Truth and Reconciliation Commission (TRC).

Instead of trying to summarize all of Peruvian history, Jaworski made a brief presentation of facts he considered important for his presentation. He described two peaks of violence in Peru's recent history: one in 1983-84 and another in 1989-90. The violence ended when the state was able to capture Shinning Path's leader and began to change its strategy by relying more on intelligence than on brutal repression. During this period of violence, 70,000 people were killed or disappeared; both the country's image and economy suffered. Since the early 1980s, human rights organizations have been active in Peru; many of them developed out of the model of previous NGOs that worked at the local level. Civil society organizations realized—even before the rest of the country did—that Shinning Path and the MRTA were possibly committing genocide. They noticed that as these groups waged a subversive war against the state, they put at risk the lives and hopes of some of the most disadvantaged populations in the Andean part of the country. By 1985, one of the worst periods of brutal killings and assassinations was over, and the National Coordinating Commission for Human Rights (the Coordinadora) was created. The Coordinadora has been the principal human rights organization in the country since then. Other organizations also played important roles in one of the most active human rights movements in Latin America. As evidence of the importance of such organizations, Peru's TRC included a chapter in its report on the role of different civil society groups during the armed conflict. These groups included human rights organizations, the Church, the educational sector, trade unions, and the media.

Jaworski emphasized the main findings of the TRC's report. First, with the creation of the Coordinadora in 1985, the human rights movement was able to contribute significantly toward moderating the state's harsh anti-subversive strategies and to overcome some of the worst obstacles to due process in the administration of justice. No other group in the country took the time to evaluate the danger the armed conflict posed for the society as a whole, nor to develop legal instruments to deal with both the subversive actions of Shinning Path and the MRTA and the state's repressive strategies. The political forces in the country, particularly those on the left of the political spectrum, were hesitant to admit that Shinning Path was actually carrying out genocide against rural Andeans. Others thought that since Shinning Path began their assault in the mountains, it would not become a real danger to the political system as a whole.

Second, the human rights movement was instrumental in changing public opinion about the victims of the conflict from indifference into sol-

idity. Jaworski claimed the movement also prepared the ground for other social changes to take place, including a new respect for differences and an understanding of ethnicity in a country where it was not really considered before. These changes, in turn, made it possible to rebuild Peruvian democracy, which was significantly affected by the conflict.

In the third place, even though human rights activists initially concentrated their attention on the documentation of state repression, when they started focusing on human rights abuses committed by Shinning Path and the MRTA, their credibility increased. This change in focus enabled more people to begin to understand and respect the activities of human rights groups.

Finally, the TRC acknowledged in their report that the work of human rights activists must be recognized by the democratic state and must be translated into institutional measures. The main recommendations made by human rights organizations were to annul the general amnesty granted to perpetrators of serious crimes and human rights violations; to recognize the victims' rights to truth, justice, and appropriate reparations; and to reform security and intelligence policies to prevent the repetition of this kind of tragedy. Jaworski noted that in the application of the reparations program of the TRC, the participation of human rights organizations was crucial.

Jaworski outlined several pending actions for the human rights movement in Peru. In the first place, he argued that attention should be shifted from political and civil rights (for example, Fujimori's extradition from Japan) to internal inequalities and socio-economic problems related to poverty. These changes should emphasize respect for diversity and a rejection of racism, which is still prevalent in Peruvian society. Various human rights activists and leaders have begun working for the government or in the TRC. Therefore, it is also necessary to rebuild the strength of the human rights movement, given that there is more work to be done. The country must evolve from peacemaking to peacekeeping initiatives to make a real national reconciliation possible. Finally, Jaworski maintained that it is necessary to undertake a real and complete implementation of all of the TRC's recommendations; for this to occur, a certain degree of institutional reform is necessary.

**CLAUDIO GROSSMAN** warned that we have to be careful when we attempt to identify a typology of cases in order to create a framework for possible action. It is important to bear in mind that certain states and societies are interested in improving their human rights situation, and others are not.

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**Grossman identified international law as a powerful tool to improve the human rights situation in a particular country. ... The legitimacy of international law is based on the fact that it establishes norms ... that can be used in political and ethical discourse to criticize state behavior.**

Grossman argued that regular elections are not enough to ensure respect for human rights. A failure to expand human rights in a particular country may be due to ignorance or lack of interest, resources, or imagination. It may also be the consequence of impunity related to the independence of the judiciary. Grossman argued that a judiciary cannot function correctly in relation to contract enforcement or taxes if there is impunity and no accountability of past events and actions. Allowing crimes against humanity to go unpunished, therefore, creates serious obstacles to institutional development.

Grossman identified international law as a powerful tool to improve the human rights situation in a particular country. It may be difficult to find solutions to human rights problems in the domestic setting because the judiciary has not yet been socialized into the new ideology of democracy, transparency, and human rights. Grossman contended that the existence of truth commissions demonstrates the failure of the judiciary to address past human rights violations. The legitimacy of international law is based on the fact that it establishes norms—such as due process, reasonable length of detention, and freedom of expression—that can be used in political and ethical discourse to criticize state behavior. From this perspective, an important strategy is to push for the ratification of international treaties.

Nevertheless, Grossman argued that the mere ratification of treaties is not enough because the law loses legitimacy if it is not applied. Thus, the second strategy must be the development and ratification of instruments of international supervision. These supervisory mechanisms, which may be judicial or quasi-judicial, measure state conduct against standards of international law. Grossman mentioned the example of the Inter-American Commission and Court on Human Rights, which are composed of independent specialists. While measures of transparency are still needed, bodies of independent experts have more legitimacy to supervise state behavior than bodies constituted by government representatives. The fact that almost all South America has accepted the Court's compulsory jurisdiction is important because the Court's decisions are binding. Through petitions and precautionary measures, the Inter-American system is able to deliver justice in a concrete way and restore the people's trust in the rule of law. The system plays other roles as well: it acts as an early-warning system; it promotes an independent judiciary, non-discriminatory practices, and transparent values through due process; and it pressures states to adopt new laws while modifying preexisting ones. The real challenge for international law, Grossman maintained, is to permeate domestic systems and for

judges to take international law standards into account when applying the law in their everyday work. For this purpose, judges and lawyers must be trained so that they understand and are able to use international law.

Grossman also considered NGOs to be important in increasing the respect for human rights in the Hemisphere. For their work to be effective, he argued, they must be serious, independent, and transparent.

Grossman questioned how we measure success. Saving one life is a success, but today systemic success in the human rights field is not only a function of human rights. According to Grossman, it is also crucial to fight corruption and promote transparency to have a strong democracy. Furthermore, some important battles that affect human rights are now fought on issues other than human rights, such as the current discussions related to free trade and economic subsidies.

On the other extreme, Grossman identified genocidal regimes, which are not interested in improving the human rights situation of their citizens. In these cases, the United Nations Charter allows for a humanitarian intervention. Grossman stated that the discussion on the use of force against genocidal regimes obscures the debate about what should have been done to prevent the genocide. In other words, the discussion should not be if the UN should send troops to a country that is committing genocide but rather how to prevent the next one. To do so, Grossman called for an increase in the budget of international organisms of supervision to be able to develop a legitimate international bill of rights. It is extremely important to work on the prevention of human rights abuses; the costs of repairing past violations are much higher.

Grossman also criticized ideological approaches to human rights. In the case of Cuba, for example, he argued that the economic boycott imposed by the United States has been unable to give way to a free Cuba. In other words, ideological approaches to the promotion of human rights have not been successful. Instead, human rights activists should be pragmatic while keeping important values in mind.

## **QUESTION AND ANSWER PERIOD**

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**AMBASSADOR GILDENHORN** questioned Vivanco's allegation that the United States had lost moral authority in light of recent U.S. activities in Iraq, given that the United States also brought down the Taliban regime in Afghanistan and Saddam Hussein's regime in Iraq. In addition, Gildenhorn asked if Vivanco's opinion regarding the United States' loss of moral authority was widespread in Latin America.

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**Vivanco clarified that he was not only thinking about Iraq when he referred to the loss of U.S. moral authority. He also had in mind Guantanamo Bay, the concept of “unlawful enemy combatants,” and the trend toward denying detainees due process and holding detainees—both U.S. citizens and foreign nationals—in undisclosed locations. ... the United States’ campaign against the International Criminal Court only contributes to the loss of moral authority.**

Vivanco clarified that he was not only thinking about Iraq when he referred to the loss of U.S. moral authority. He also had in mind Guantanamo Bay, the concept of “unlawful enemy combatants,” and the trend toward denying detainees due process and holding detainees—both U.S. citizens and foreign nationals—in undisclosed locations. Vivanco said, “It is unacceptable that under this administration, the United States has decided to ignore the Geneva Conventions in the case of Guantanamo, and to detain individuals indefinitely, with no due process.” He also noted that the U.S. has classified these individuals in a special category under which they are not entitled to any kind of protection. The basic principles of the Geneva Conventions state that if there is evidence that people were involved in war crimes, they should be promptly prosecuted before a court of law, including military tribunals, otherwise they should be granted the status of prisoners of war and be released as soon as hostilities cease.

Vivanco pointed out that the United States’ campaign against the International Criminal Court only contributes to the loss of moral authority. On the other hand, he also recognized that Afghanistan is better off today without the Taliban in power and that Iraq is better off without Saddam Hussein, despite the tremendous instability in Iraq today. Although he recognized that Hussein was a brutal dictator, the real question for him was the extent to which the George W. Bush administration had justification for use of force in accordance with international human rights law. There is no doubt, Vivanco stated, that Saddam Hussein imposed a bloody dictatorship, “but his worst crimes were committed in the 1980’s when he engaged in mass killings and extermination of Kurds and Shiites. It should be noted that Saddam Hussein was considered by the Reagan administration to be a key ally in the fight against Iran. The United States supported Saddam Hussein at that time with intelligence as well as diplomatic aid.” Vivanco maintained that if there had been a justification for armed intervention, it was during that decade and not in March of 2003.

**MARICLAIRE ACOSTA** emphasized the use of international mechanisms with adequate resources in ensuring human rights. She told of her experience in signing a cooperative agreement with the UN High Commissioner’s office on behalf of the Mexican government, which was meant to be a broad, far-reaching accord. The UN High Commissioner pledged three million dollars for a two-year program, but these resources were never delivered; the UN High Commissioner’s office did not have the money due to dependency on voluntary contributions from states. Acosta commented how shameful it was that international organizations



have to raise their own money—a fact she argued is often overlooked by civil society organizations. “Everybody seems to think that the whole international system of protection of human rights is very powerful,” Acosta noted, “however it is really incredibly fragile in many ways.”

Acosta also referred to her work in civil society under an authoritarian regime. She stressed that it is very important to create political space for local organizations to develop. International pressure is invaluable and carries more resonance when it also has domestic resonance. Governments may be forced to act when both international and domestic pressures come to bear.

**ALEXANDRE VIDAL PORTO**, first secretary in charge of human rights issues at the Brazilian Embassy, raised the question of why Latin American nations should be committed to values and laws that the United States does not respect. Vidal Porto asked, “To what extent the lack of commitment to the system of international protection of human rights shown by the present U.S. administration could foster a similar lack of commitment by other countries?”

Grossman recalled that during his tenure at the Inter-American Commission on Human Rights, the fact that the United States did not ratify the Inter-American Convention led some Latin American states to question why that law should be binding for them. From Grossman’s perspective, each state should ratify the Inter-American Convention because of its human rights concerns (e.g. it wants to ensure due process, its stance against torture, etc.). The fact that one state does not ratify the Convention does not provide an excuse for the lack of compliance with human rights norms by other states.

Grossman also argued that in the current situation, it is important for the human rights movement to see what they can do pragmatically. While activists should criticize human rights violations by the United States, they should avoid generalizations that could put their larger objectives in jeopardy. Human rights NGOs must understand that we live in a real world. By picking and choosing their battles, these NGOs are not betraying their principles but rather pursuing a pragmatic approach.

Vivanco’s view was that the George W. Bush’s administration had created obstacles to the promotion of human rights. The principal strategic allies of the United States in the war against terrorism show that this administration is willing to subordinate human rights in certain countries to reach its goals. This is the case, for example, of Russia—a close ally—that is responsible for massive human rights violations in the breakaway republic of Chechnya. The Bush administration’s questionable authority to deal with

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**Vivanco mentioned that it is also difficult for the U.S. government to raise concerns about human rights with governments that are taking advantage of the “momentum” caused by the war on terrorism and passing legislation that is inconsistent with international human rights standards ...**

human rights and democracy was also evident in the case of Venezuela in 2002. The administration justified the coup against President Chavez even though it had previously spent political capital on the protection of democracy with the adoption of the Inter-American Democratic Charter. It is also difficult for the U.S. government to raise concerns about human rights with governments that are taking advantage of the “momentum” caused by the war on terrorism and passing legislation that is inconsistent with international human rights standards; this is the case of the government of President Alvaro Uribe in Colombia. The new anti-terrorism legislation, for instance, allows the Colombian security forces to make arrests, conduct searches, seize property, and intercept communications without prior judicial warrant when they investigate terrorist cases. In this scenario, Vivanco asked, “Can the U.S. complain about these cases in Colombia, taking into account that worse abuses of due process are ongoing in U.S. territory and outside with full support of the U.S. government?”

# Conference Agenda

## **HUMAN RIGHTS IN THE INTERNATIONAL SYSTEM: ENFORCING GLOBAL GOVERNANCE**

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*April 13, 2004 – 5th Floor Conference Room*

### **9:15 AM: WELCOME AND INTRODUCTION**

*Joseph S. Tulchin, Latin American Program, WWICS*

### **9:30 – 10:30 AM: HUMAN RIGHTS AND GLOBAL GOVERNANCE, A KEYNOTE ADDRESS**

*Ambassador Heraldo Muñoz, Permanent Representative of Chile to the  
United Nations*

### **10:30 – 11:00 AM: COFFEE BREAK**

### **11:00 AM – 1:00 PM: FIRST PANEL DISCUSSION: “HUMAN RIGHTS AS A COMPONENT OF FOREIGN POLICY”**

*Marie Gervais-Vidricaire, Director-General, Global Issues Bureau,  
Canadian Department of Foreign Affairs and International Trade*  
*Robert P. Jackson, Acting Deputy Assistant Secretary of State, Bureau of  
Democracy, Human Rights, and Labor, US Department of State*  
*Mariclaire Acosta, Former Under Secretary of Human Rights, Mexican  
Ministry of Foreign Affairs*  
Moderator and Commentator: *Robert Litwak, Division of International  
Studies, WWICS*

### **1:00 – 2:30 PM: LUNCH BREAK**

**2:30 – 4:30 PM: SECOND PANEL DISCUSSION: “THE IMPACT OF HUMAN RIGHTS ACTIVISM ON STATE BEHAVIOR”**

*José Miguel Vivanco*, Human Rights Watch – Americas

*Viviana Krsticevic*, Center for Justice and International Law

*Hélan Jaworski*, Catholic University of Peru

*Claudio Grossman*, Washington College of Law, American University,  
Former President of the Inter-American Commission on Human  
Rights, OAS

Moderator and Commentator: *Joseph B. Gildenhorn*, Chairman, Board of  
Trustees, WWICS

**4:30 PM: RECEPTION**

## Participants' Biographies

**MARICLAIRE ACOSTA** is general director of the Acosta, Gaitán & Tinajero Consulting Group. She acted as under secretary of human rights of the Mexican Ministry of Foreign Affairs between October 2001 and August 2003 and was ambassador with special mission for human rights and democracy between December 2000 and October 2001. She has been a researcher at the Instituto Politécnico Nacional and El Colegio de México and professor at the Universidad Nacional Autónoma de México, the Universidad Iberoamericana, and Wellesley College. She has also been president of Amnesty International/Mexico, executive director of the Academia Mexicana de Derechos Humanos, and founding president of the Comisión Mexicana de Defensa y Promoción de los Derechos A.C. Acosta is a member of the Council on Foreign Relations' Advisory Board and of the Center for Justice and International Law's Executive Board. She has published several books and her articles have appeared in numerous journals and newspapers. One of her most recent publications is "Towards a public policy favoring human rights as universal values," *Revista Mexicana de Política Exterior* 67/8, February 2003. Acosta studied sociology at the Universidad Nacional Autónoma de México and holds a master's degree in politics and government from the University of Essex.

**MARIE GERVAIS-VIDRICAIRE** is director general of the Global Issues Bureau at the Canadian Ministry of Foreign Affairs. Her previous posting was at the Canadian Mission to the United Nations in Geneva, where she was deputy permanent representative. She was the head of the Canadian delegation to the UN Commission on Human Rights in 2001 and 2002. In Ottawa, Ms. Gervais-Vidricaire held a number of positions both at the Department of Foreign Affairs and at the Privy Council Office. Before going to Geneva in 1998, she was director for Southern Europe, including the Balkans. Before that, she was posted at the Canadian Embassy in Paris (1991-1994), at the Canadian Permanent Mission in New York (1983-1987), and in Bogota (1981-83). In June 2003, she was appointed to the Board of Directors of Rights and Democracy, a Canadian institution dedicated to human rights and democratic development. Ms. Gervais-

Vidricaire holds a bachelor's degree from the Laval University in Quebec, a diploma in international relations studies from the Institut d'Etudes Politiques in France, and a diploma of advanced studies in political sociology from the Ecole des Hautes Etudes en Sciences Sociales in France.

**JOSEPH B. GILDENHORN** was named chairman of the Board of Trustees of the Woodrow Wilson International Center for Scholars in June 2002. Ambassador Gildenhorn is a widely respected diplomat and businessman. In 1989, he was appointed by former President George H.W. Bush to serve as the United States ambassador to Switzerland, where he served until 1993. He is founding partner and director of The JBG Companies in Washington, D.C., a real estate development and management firm. Ambassador Gildenhorn serves on numerous civic and public policy-oriented boards, including the University of Maryland College Park Foundation, the Institute for the Study of Diplomacy at Georgetown University, the Council of American Ambassadors, the Center for Strategic and International Studies, and the American Jewish Joint Distribution Committee. He was named "Washingtonian of the Year 1996" by the Washingtonian magazine. In 2000, Ambassador Gildenhorn was honored with the Woodrow Wilson Award for Corporate Citizenship and served as a member of the Wilson Council until his appointment as Board chairman.

**CLAUDIO GROSSMAN** was appointed dean of the American University Washington College of Law in 1995. He is the Raymond Geraldson Scholar of International and Humanitarian Law. Dean Grossman was elected as a member and as vice president of the United Nations Committee Against Torture in November 2003. In 1993, he was elected to the Inter-American Commission on Human Rights (IACHR) of the Organization of American States. During his eight-year term with the IACHR, he chaired the organization twice and acted as the special rapporteur on women's rights and the rights of indigenous populations. He is currently the IACHR delegate observing the AMIA case in Buenos Aires, Argentina, which involves a Jewish community center that was bombed. Dean Grossman has written extensively in the area of international law and is actively recruited for his expertise on human rights. In addition, Dean Grossman has served as the general rapporteur of the Inter-American Bar Association, an organization representing lawyers of the Americas, and is currently an executive board member of the Council of the Inter-American Institute of Human Rights. He has served as chair of the Inter-American Bar Association's Human Rights Committee and from 1987-

1993 was a board member of the International Human Rights Law Group. Dean Grossman has a law degree from the University of Chile and a doctorate from the University of Amsterdam Law School.

**ROBERT P. JACKSON** has been director of the Office for the Promotion of Human Rights and Democracy in the U.S. Department of State since July 2002. Mr. Jackson's previous assignments include postings as political-economic counselor at the U.S. Embassy in Abidjan, Cote d'Ivoire; political-military officer in Lisbon, Portugal; coordinator of the Junior Officer Training Program and deputy director of the Orientation Division at the Foreign Service Institute; country officer for Zimbabwe and Botswana at the Department of State in Washington, D.C.; chief of the Political Section in Harare, Zimbabwe; country officer for Nigeria; political-economic officer in Bujumbura, Burundi; and consular-economic officer in Montreal, Canada. Prior to joining the foreign service in 1982, Mr. Jackson taught French and English as a foreign language at the Institut Montana in Zugerberg, Switzerland. He had previously taught English and American civilization at the University of Clermont in Clermont-Ferrand, France. Mr. Jackson earned a master's degree in international affairs from the George Washington University in Washington, D.C. and a bachelor's in government and legal studies from Bowdoin College in Brunswick, Maine. He has received two individual superior honor awards and two individual meritorious honor awards.

**HÉLAN JAWORSKI** is an advisor to the rector at the Pontifical Catholic University of Peru on management studies and international relations and professor at the Graduate School at the same university. He is also general director of PALESTRA, a web page on public affairs. Previously, Mr. Jaworski was executive director of the Reparations Program of Peru's Truth and Reconciliation Commission; deputy secretary-general for socio-economic affairs at the Italian-Latin American Institute; and an international independent consultant with governmental agencies, multilateral organizations, and European NGOs on aid policies, alternative financial mechanisms, popular participation, human resources development, and international cooperation. Mr. Jaworski has published a considerable number of scholarly articles on international relations, public policies, and alternative financial mechanisms. In addition to authoring two books on development cooperation, he has published two books on North-South relations and the importance of new European alternative financial mechanisms, which were published by the Basque Government

at the beginning of 1994 and CIPSI in Italy in 1997. Mr. Jaworski studied law at the Catholic University of Peru and has been a professor and researcher in various Peruvian and U.S. universities.

**VIVIANA KRSTICEVIC** is executive director of the Center for Justice and International Law (CEJIL). CEJIL is a regional human rights organization that works to ensure the full implementation of international human rights norms in member states of the Organization of American States (OAS) through the use of the Inter-American System for the protection of human rights. Before coming to CEJIL she worked as a legal fellow at Cambridge University and at Somerville Legal Services, where she counseled refugee women from Somalia and Haiti on immigration law. She founded a legal journal in Argentina, *No Hay Derecho*, and worked as a staff attorney at Gutierrez and Associates in Buenos Aires. She also founded the legal assistance clinic “Villa No. 31.” She has taught at American University, Stanford University, Colegio Nacional Sarmiento, and the Universidad de Buenos Aires. Ms. Krsticevic received a law degree with honors from the University of Buenos Aires. She received a master’s degree in Latin American studies at Stanford University, where she wrote her thesis on gender discrimination in the Argentine labor market. She also holds a master of laws degree from Harvard University, where she was a research assistant and representative on the Law School Council.

**ROBERT LITWAK** is director of the Division of International Studies at the Woodrow Wilson International Center for Scholars. Before joining the Woodrow Wilson Center staff in 1983, he was a research associate at the International Institute for Strategic Studies in London and a fellow at Harvard University’s Center for International Affairs and Russian Research Center. Litwak has held visiting fellowships at the Russian Academy of Sciences in Moscow, the Graduate Institute of International Studies in Geneva, and the United States Institute of Peace, and is a member of the Council on Foreign Relations. In 1995–1996, he took a leave from the Center to serve as director for nonproliferation and export controls on the National Security Council staff at the White House. He is the author or editor of seven books, including *Détente and the Nixon Doctrine*, *Security in the Persian Gulf*, and *Nuclear Proliferation after the Cold War*. Litwak is currently completing a book comparing U.S. strategies toward countries of nonproliferation concern—North Korea, Iran, and Iraq. He was educated at Haverford College and the London School of Economics (University of London), where he received his doctorate in international relations.



**HERALDO MUÑOZ** is ambassador permanent representative of Chile to the United Nations, and chairman of the UN Security Council Sanctions Committee against Al Qaeda and the Taliban. Previously, he was minister secretary general of government between January 2002 and March 2003, deputy foreign minister between March 2000 and January 2002, and ambassador of Chile to Brazil (1994–1998). He was ambassador to the Organization of American States (1990–1994), where he presided over the Environment Committee (1991–1992) and the Permanent Council (1993). He was the chief negotiator of the “Santiago Commitment to Democracy,” an instrument that, beginning in 1991, allowed the OAS member states to act multilaterally to defend democratic governments in the Americas. He is a co-founder of the Party for Democracy (PPD) and held various government posts in Chile before and after the Pinochet military government. He was president of the Economist Conferences, Chile (1998–1999); and president of Latinanalyst Consultores. He is a professor at the Institute of International Studies of the University of Chile. He founded and was director of the foreign policy institute, “Programa de Seguimiento de las Políticas Exteriores Latinoamericanas” (PROSPEL), Santiago, Chile, 1983–1990. He has published more than 20 books and dozens of essays in academic journals. His books include *Latin American Nations in World Politics*, 2nd Edition (Boulder and London: Westview Press, 1998), co-edited with J. Tulchin, and *Globalización XXI* (Santiago: Aguilar, 2000). He has also written numerous op-ed pieces in newspapers. Ambassador Muñoz holds a doctorate in international studies from the University of Denver, Colorado (1978), and a diploma in international relations from the Catholic University of Chile (1975, graduated with honors). He received the “Distinguished Alumnus Award” from the Graduate School of International Studies at the University of Denver (1991), and he was bestowed with the title of Doctor *Honoris Causa* from the State University of New York (1996).

**JOSEPH S. TULCHIN** is director of the Latin American Program at the Woodrow Wilson Center. Before moving to Washington, Tulchin was professor of history and director of international programs at the University of North Carolina (UNC) at Chapel Hill. He taught at UNC for 20 years, at Yale University before that for seven years, and has also taught at the Naval War College, Newport, RI; the University of Buenos Aires, Argentina; the Ortega y Gasset Foundation, Madrid, Spain; Georgetown University; The Johns Hopkins University School of Advanced International Studies; several branches of the Latin American

Social Science Faculty (FLACSO), and El Colegio de México in Mexico City. His areas of expertise are U.S. foreign policy, inter-American relations, contemporary Latin America, strategic planning and social science research methodology. Tulchin is the former editor of the *Latin American Research Review*. He has published more than twenty books, including three monographs, on inter-American relations, Latin American affairs, Spanish foreign policy, and international relations, as well as fifty scholarly articles in English, French, Spanish, Portuguese, Russian, and German. His book *Argentina and the United States: A Conflicted Relationship* was a best-seller in Argentina for several years. Tulchin holds a Ph.D. in history from Harvard University.

**JOSÉ MIGUEL VIVANCO** has been executive director of Human Rights Watch/Americas since September 1994. During 1986 and 1987, he worked as an attorney at Human Rights Watch, then known as Americas Watch. From 1987 to 1989, Mr. Vivanco was an attorney for the Inter-American Commission on Human Rights of the OAS. In 1990, he founded the Center for Justice and International Law (CEJIL) and functioned as its executive director until August 1994. Mr. Vivanco has also been an adjunct professor of law at Georgetown University Law Center and the School of Advanced International Studies of Johns Hopkins University. Mr. Vivanco has received several scholarships and fellowships in the field of human rights, has authored numerous academic articles and publications, and written op-eds for prominent newspapers such as *The New York Times*, the *Washington Post*, the *Wall Street Journal*, *El Tiempo*, *La Nación*, *El Mercurio*, and *Reforma*. He studied law at the University of Chile, and then at Salamanca Law School in Spain. He also holds a master of laws degree from Harvard University Law School.

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