

*Universal
Declaration of
Human Rights
Article 8.*

*Everyone has
the right to an
effective remedy
by the competent
national tribunals
for acts violating
the fundamental
rights granted him
by the constitution
or by law.*



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Washington Office on Latin America



Instituto de Defensa Legal

Human Rights Tribunals in Latin America:

The Fujimori Trial in Comparative Perspective

**Rapporteur's report of an international symposium
Washington, D.C.
October 2, 2008**

Author: COLETTA YOUNGERS

Editor: JO-MARIE BURT



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Foreword

Over the course of the past year, former Peruvian president Alberto Fujimori has sat, three days a week, in front of a panel of three Supreme Court justices tasked with determining his responsibility in a series of grave human rights violations committed during his ten-year administration (1990-2000).

Few Peruvians imagined such a trial was ever possible. Fujimori fled Peru in November 2000, amidst explosive corruption scandals. Upon his arrival in Japan, the birthplace of his parents, he was provided protection by top political authorities and was quickly granted Japanese citizenship, effectively shielding him from the risk of extradition to Peru.

But events took a new turn in November 2005, when Fujimori left his safe haven in Japan for Chile. In what international law scholar Naomi Roht-Arriaza has referred to as “the age of human rights,” this was a critical miscalculation. Instead of launching a bid for the presidency in Peru’s 2006 elections, Fujimori instead found himself under arrest in Chile, and the Peruvian state quickly prepared an extradition request. In September 2007, after a long and complex process, the Chilean Supreme Court approved Fujimori’s extradition, and within days the former president was returned to Peru. On December 10, 2007, his trial for human rights violations began.

Domestic prosecutions of heads of state for human rights crimes are extremely rare in any country. And Peru may seem an especially unlikely place for such a high-profile trial to unfold. Fujimori remains quite popular among certain segments of the Peruvian public. The judiciary historically has been held in low esteem by Peruvian citizens. Key figures in the present-day political establishment, including the current president, vice-president, and key opposition figures, have their own reasons for being wary of possible prosecutions for human rights violations in the future. Yet, in a striking display of impartiality and professionalism, the tribunal overseeing the prosecution of the former president has been a model of fairness, fully protecting the due process rights of the accused, while also conducting an impartial inquiry into Fujimori’s responsibility for grave crimes committed during his government. Regardless of the outcome, the trial of Fujimori demonstrates that with sufficient political will, domestic tribunals can prosecute high-level public officials who commit or order the commission of grave human rights violations.

Impunity has long characterized Latin American societies emerging from years of authoritarian rule and/or internal conflict, but today numerous Latin American countries are making great strides in bringing to justice those who are responsible for such crimes. To highlight and analyze this

welcome development, the Center for Global Studies at George Mason University, the Washington Office on Latin America (WOLA) and the Instituto de Defensa Legal (IDL) joined forces to organize a conference series to examine human rights trials in Latin America. The first conference, entitled *Los culpables por violación de derechos humanos*, took place in Lima, Peru, June 25-26, 2008. (A rapporteur’s report for this conference can be found at: <www.justiciaviva.org.pe/nuevos/2008/agosto/07/seminario_culpables.pdf>.) It convened key experts in international human rights law, as well as judges, lawyers, and human rights activists from across the region, to analyze the Fujimori trial in comparative perspective.

The second conference took place in Washington, D.C., on October 2, 2008, at the Carnegie Endowment for International Peace. Several participants from the Lima conference were joined by human rights activists, lawyers, judges and scholars from across the region to examine the Fujimori trial as well as other human rights tribunals underway in Argentina, Chile, Uruguay, and Guatemala. The result is a rich multidisciplinary look at a new moment in Latin America’s history, in which impunity and forgetting is giving way to processes of accounting for crimes of the past through domestic tribunals, one piece of a broader process of coping with the difficult legacies of the authoritarian and violent past.

What follows is a report on the Washington conference, prepared by long-time human rights advocate Coletta Youngers. The report reveals the strides Latin America has made in its efforts to combat impunity and promote the rule of law and democratic governance. Though obstacles remain, as several conference participants indicated, these efforts represent a key departure from the past, and merit careful scrutiny by policymakers, scholars, and the human rights community. The Center for Global Studies at George Mason University is also publishing working papers authored by some of the conference participants, which may be viewed online at: <<http://cgs.gmu.edu/publications/wphjd.html>>.

We would like to especially thank the Latin American Program at Open Society Institute, in particular Victoria Wigodsky, which made this conference series as well as this publication possible. We also thank Arnaud Kurze at CGS/Mason and Rachel Robb at WOLA for their assistance with the conference and this report.

JO-MARIE BURT
Center for Global Studies,
George Mason University

February 2009

Human Rights Tribunals in Latin America

The Fujimori Trial in Comparative Perspective



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Organized by:
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George Mason University
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Instituto de Defensa Legal**

Carnegie Endowment for International Peace
Washington, D.C.
October 2, 2008

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John Walsh, WOLA

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Eric Schwartz, Executive Director, Connect U.S. Fund

Ricardo Gil Lavedra, Law professor, University of Buenos Aires Law School

Ernesto de la Jara, Founding Director, Instituto de Defensa Legal

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Due Process of Law Foundation (DPLF); Center for Justice and International Law (CEJIL); National Security Archive; Coordinadora Nacional de Derechos Humanos; Asociación Pro Derechos Humanos (APRODEH)

Rapporteur's Report by Coletta A. Youngers¹

Introduction

The trial of former Peruvian president, Alberto Fujimori, marks a milestone in efforts to end entrenched impunity and promote truth, justice and reconciliation in Peru and the region more broadly. As noted by conference organizer Jo-Marie Burt in her presentation:

The trial of Fujimori marks an important departure in efforts to end impunity and achieve justice and accountability in Latin America. It is the first time in Peru that a former president is standing trial for crimes against humanity and the first time ever that a former president has been extradited to face charges in his home country for such crimes. The trial therefore represents a key moment in the affirmation of democratic governance and respect for human rights in Peru and all of Latin America. It also represents the efforts by the legal system to establish and affirm three fundamental democratic principles: the rule of law; equality before the law, even for former presidents; and accountability. Eduardo Galeano has said that "Latin America has long been a sanctuary of impunity." This and other on-going human rights trials represent a dramatic shift away from this historical reality.

Fujimori's decade in power (1990-2000) was marked by grave human rights violations, serious setbacks to Peru's already fragile democratic institutions and massive corruption. In 2000, following elections marred by fraud, Fujimori began an unconstitutional third term in the presidency. Yet the regime quickly crumbled. Growing popular protests and revelations of widespread corruption led him to flee Peru for Japan, where he

1. Coletta A. Youngers is an independent consultant and a Senior Fellow at the Washington Office on Latin America.

spent several years eluding justice. In an apparent attempt to return to Peru, in 2005 Fujimori flew to Chile where he was arrested immediately and ultimately extradited to Peru – hardly the triumphant return that his supporters had envisioned.

The "mega-trial," as Peruvians call it, started on December 10, 2007, and is centered on three cases of human rights violations: the Barrios Altos massacre of 1991, in which 15 people were killed; the disappearance and later killing of nine students and a professor from the Cantuta University in 1992; and the kidnappings of journalist Gustavo Gorriti and businessman Samuel Dyer in the aftermath of the April 5, 1992, *autogolpe*, or self-coup, in which Fujimori – with the backing of the armed forces – closed congress, suspended the constitution and took control of the judiciary. In the cases of Barrios Altos and Cantuta, the killings were carried out by the Colina Group, a clandestine death squad that operated out of the Army Intelligence Service. The prosecutor alleges that Fujimori had command responsibility for these crimes. (Fujimori is formally charged with *autoría mediata*,² which is attributed to those who have the power to order and direct the system and individuals who commit crimes or, in this case, human rights violations.³) If he is convicted, Fujimori could be sentenced to up to 35 years in prison and be fined millions of dollars in reparations.⁴ At the time of this conference, the trial was entering into its final phase.

Fujimori also faces charges of corruption and abuse of authority in four cases, including phone tapping of the

2. *Autoría mediata* is also commonly defined as perpetration by means.
3. Shining Path leader Abimael Guzmán was also convicted of *autoría mediata*.
4. See Jo-Marie Burt and Coletta Youngers, "Fujimori on Trial: Third WOLA Observer Mission Report", Washington Office on Latin America, June 12, 2008, available at: <http://www.wola.org/index.php?option=com_content&task=viewp&id=724&Itemid=2&LANG=en>.

"It is the first time in Peru that a former president is standing trial for crimes against humanity and the first time ever that a former president has been extradited to face charges in his home country for such crimes."

—JO-MARIE BURT

opposition, bribing members of congress, embezzlement of state funds for illegal purposes, and the transfer of \$15 million in public funds to Vladimiro Montesinos, former *de facto* head of the National Intelligence Service (SIN). Fujimori has already been convicted of abuse of authority and sentenced to six years in prison for authorizing and participating in an illegal raid on the home of Montesinos' wife in 2000, presumably to secure and remove compromising evidence. That prison sentence was upheld on appeal. The other corruption cases will be grouped together and proceedings will begin after the present human rights trial concludes.

The Fujimori trial is taking place at a time when hundreds of other trials of human rights cases are underway in Peru and elsewhere in Latin America, most notably Chile, Argentina and Uruguay. Through these human rights tribunals, important strides are being made in Latin America in the effort to combat impunity and promote justice, accountability and the rule of law.

The conference organized by the Center for Global Studies at George Mason University, the Washington Office on Latin America (WOLA) and the Lima-based Institute for Legal Defense (IDL)⁵ was intended to provide a forum for scholars, activists and policymakers to analyze the Fujimori trial and other human rights proceedings underway in the region, with a view to assessing their significance for efforts to end impunity and promote democracy and the rule of law.⁶ Fifteen distinguished speakers from Latin America and the United States evaluated the efforts of governments, human rights movements and Latin American civil

society more broadly to promote justice and accountability through the judicial process and the ways in which this process contributes to democratic consolidation. Timed to take place shortly before the U.S. presidential and congressional elections, the conference was also intended to promote discussion about how U.S. policy can support the rule of law and democratic governance in Latin America.

The conference was organized in four panels. The first two focused on the situation in Peru: *Prosecuting a President: The Trial of Alberto Fujimori* and *Civil Society Efforts to End Impunity: The Peruvian Case*. Speakers presented a broad overview of the Fujimori trial and its legal and political implications, and analyses of the role and strategies of civil society organizations in promoting justice in Peru. The third panel, *Human Rights Trials in Latin America*, put the Fujimori panel in comparative perspective, with presentations on the human rights trials underway in Argentina, Guatemala, Chile and Uruguay. The last panel of the day, *Implications for U.S. Policy, Global Justice and Democracy*, provided further reflection on the regional impact of transitional justice and explored the role of the international community and the U.S. government in supporting such efforts.

This report provides a brief summary of the presentations made in each panel and the subsequent discussion. Complete biographical information on each speaker is provided at the end of the report. The Center for Global Studies at George Mason University will also be publishing working papers authored by some of the speakers.

5. Collaborating organizations included the Coordinadora Nacional de Derechos Humanos and the Asociación Pro-Derechos Humanos in Lima, Peru, and the Center for Justice and International Law, the Due Process of Law Foundation and the National Security Archive in Washington, D.C.
6. The conference was part of a series of events looking at the Fujimori trial. In June 2008, a similar forum was held over a two day period in Lima, Peru, with some of the same participants.

PANEL I

Prosecuting a President: The Trial of Alberto Fujimori

The moderator, **Professor Cynthia McClintock**,⁷ launched the first panel reminding the audience of an important principle of democracy: All human beings are created equal and even a president is not above the law. She reiterated the historic significance of the trial of former president Alberto Fujimori on human rights charges for Peru and for Latin America. Finally, Dr. McClintock noted that the panel would provide an in-depth look at this historic event and she underscored the “extraordinary” composition of the first panel and the depth of knowledge and personal experience that the panelists bring to the discussion.

Ronald Gamarra⁸ began with an explanation of the developments within Peru that allowed the trial to take place. The human rights trial was in fact a result of initial investigations into corruption. By mid-2000, videos began to emerge which graphically illustrated the magnitude of corruption within the Fujimori government. As investigations into government corruption progressed, it became clear that some of the accused were also implicated in human rights violations, in particular army generals involved in the Colina death squad. The need to address these human rights violations became increasingly clear.

7. Cynthia McClintock is Columbian Professor of Political Science and International Affairs at the George Washington University and a well-known scholar of Peruvian politics.

8. Ronald Gamarra is the Executive Secretary of the Coordinadora Nacional de Derechos Humanos, an umbrella group of Peru's leading human rights organizations, and a lawyer representing survivors and family members of victims of human rights violations at the Fujimori trial.



Supreme Court Judge César San Martín leads a panel of three judges who are presiding over the Fujimori trial. (Courtesy Poder Judicial del Perú)

The democratic transition – in particular the interim government of Valentin Paniagua – established new state policies with regards to human rights. For example, the previous government had contested and denied all human rights cases in the Inter-American human rights system; in contrast, the Paniagua government and then the Alejandro Toledo government recognized the violations that took place and sought to reach amicable accords with the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights.⁹ The Truth and Reconciliation Commission created during the transitional government determined that members of the armed forces were responsible for human rights violations and that in some circumstances and locations, these were systematic.¹⁰

In addition to these internal factors, external factors propelled the Fujimori trial forward. The jurisprudence of the Inter-American Court of Human Rights is particularly important. The court's March 2001 ruling on the Barrios Altos case had wide-reaching consequences across Latin America. First, the court ruled that the Peruvian amnesty law – promulgated in 1995 to prevent further inquiries into the Cantuta massacre, and which granted immunity from prosecution for all security force members implicated in human rights

9. Both the Inter-American Commission and Court are bodies of the Organization of American States.

10. For additional information, see <http://www.cverdad.org.pe/>.

“Heads of state in Latin America have not traditionally been held accountable for the crimes they commit.”

—RONALD GAMARRA

violations – was incompatible with the American Convention of Human Rights, ultimately leading to the law being overturned in Peru. Second, it ruled that this decision applied not only to Peru, but also to all countries in the region. It was only after this decision that the Peruvian Public Ministry finally formalized charges against former president Fujimori in late 2001. Gamarra also pointed to the importance of the actions taken against former Chilean dictator Augusto Pinochet and other human rights trials initiated in Chile and Argentina, which created a propitious climate for the trial of Fujimori.

Fujimori, however, was not in Peru. He refused to recognize the legal proceedings, claimed he was being politically persecuted and refused to present a lawyer for his defense. The Japanese government still had not responded to Peru’s 2003 extradition request when Fujimori left the country for Chile in late 2005. In June 2006, Peru presented Chile with an extradition request that included 12 of the 26 cases pending against him. The Chilean Supreme Court ultimately ruled in favor of the extradition on seven cases.

This is a highly unusual case; for a variety of reasons, heads of state in Latin America have not traditionally been held accountable for the crimes they commit. They are protected by a dense network of accomplices. In the few cases where such officials have faced trial, one common denominator can be found: the political character of the process which determined their responsibility prior to judicial action. The Fujimori case represents a break from this scheme. It shows that all are equal before the law, even the president. Even maximum authorities can be investigated, tried and punished; however, such trials must be carried out fairly, with respect for international standards of due process and impartiality. Gamarra asserted that all observers agree that the tribunal in the Fujimori case meets this requirement. Fujimori’s lawyer stated that this tribunal is the best his defendant could have hoped for, and the lawyers of the victims have

made similar statements. If any court can achieve justice, it is this tribunal.

Gamarra also pointed out that arriving at a just sentence in this kind of case does not depend solely on national penal codes. Over the last 25 years, international legal instruments have been developed which are useful in resolving cases of *autoría mediata* or perpetration by means. Fujimori’s lawyer has enjoyed broad liberties in presenting documents he deems pertinent to the defense, intervening when he wants, and presenting witnesses. However, Fujimori’s defense is absolutely formal. As there is no written document ordering the killings with Fujimori’s signature or seal, his lawyer claims that sufficient evidence does not exist to convict his client. For Gamarra, however, Fujimori is the perpetrator behind the perpetrator, or the perpetrator behind the desk, and bears full responsibility.

Although at the time of the conference the verdict remained pending, the tribunal has already stated that the Inter-American Court decision on Barrios Altos has standing in this case. In addition, the Peruvian Supreme Court had ruled for the first time that third parties have the right to present *amicus* briefs that may be used by the judges in formulating their decision and also upheld the right to present international experts. In turn, the Constitutional Tribunal has also issued resolutions guaranteeing the right to truth. One states that individuals cannot claim that they should not be held responsible for “reasons of state policy,” as the government has the obligation to investigate and sanction human rights crimes. It also ruled in favor of access to information, stating that the right to truth supersedes national security in human rights cases. In contrast to the prosecution, the defense team has not presented any international jurisprudence or experts, resulting in an evident imbalance in the case against Fujimori.

What is likely to happen? Gamarra believes that the tribunal will convict

Fujimori. In his opinion, it appears that in the case of Samuel Dyer, a decision has already been reached to condemn Fujimori for kidnapping and the sentence is determined. However, the Barrios Altos and La Cantuta cases are still under discussion. The strategy of Fujimori's lawyer is to get one of the three judges to vote against conviction in order to weaken the decision and hence make it easier for the verdict to be overturned on appeal.

The political context in which the case is taking place cannot be denied; however, these judges have given every indication that their verdict will be based on jurisprudence. The concern of the human rights community is that the political context will affect the automatic appeal. The Supreme Court judges, from whom the next tribunal will be composed, lack adequate judicial formation and have no background in human rights and corruption cases. The political agreement between the ruling APRA party and the Fujimori block in congress – and actions taken by them to guarantee impunity – further complicates matters. Hence, it is the appeal process that could be affected by a negative political climate and which requires international attention.

Picking up where Gamarra left off, **Gustavo Gorriti**¹¹ focused on the political context in which the Fujimori trial is taking place. He began by noting that the trial is televised. While important in terms of having a transparent judicial process, for long periods of time the proceedings could cure the worst insomniac. Yet who could resist watching when it came to Vladimiro Montesinos' witness testimony? It was the first time that the two were to be face to face, the twins who ruled Peru, the "Click and Clack" of Peruvian politics. Signals were sent, "mating calls," indicating that each was willing to reach some sort of unspoken agreement;

11. An award winning journalist, Gustavo Gorriti is the author of *Shining Path: A History of the Millenarian War in Peru* and writes a column in Peru's leading weekly, *Caretas*.



Panel 1: Left to right: Ronald Gamarra, Cynthia McClintock, Gustavo Gorriti, Jo-Marie Burt (Courtesy Tristan Golas)

everyone knew that Montesinos held the key to condemn or save Fujimori and speculation abounded as to just what he would say. On the day of his testimony, it became evident in their looks and gestures that some sort of dialogue had taken place between them and Fujimori was unusually alert and attentive, a spectator in his own trial. During his time before the tribunal, Montesinos chastised the judges, reminded them of how things operated before, when he held power, and insinuated that he still held sway over sectors of the judiciary. Montesinos' main message was that "nothing is what it seems."

Looking beyond Montesinos' audacity, it is true that the political context in which the trial is taking place is quite worrisome and stands in stark contrast to historical trends. Generally, trials for crimes against humanity have resulted from political decisions when those who were in power have been defeated, such as the cases of Nuremberg, Rwanda and even Argentina. Those on trial were morally disgraced and had no capacity to return to power. That is not the case of Fujimori, and in fact in Peru there is a history of politicians passing through prison in their ascent to power (though in different situations than that of Fujimori). In fact, through his congressional allies, Fujimori presently shares political power and is seeking to return to absolute power. While the trial is taking place in a strictly judicial environment, the political environment is

“In past trials, such as Nuremberg, Rwanda and even Argentina, those convicted were morally disgraced and had no capacity to return to power. Fujimori’s political movement, however, is not defeated, and is clearly trying to regain power in the next elections.”

—GUSTAVO GORRITI

one in which there is an alliance between the government, which judges, and the prisoner, who is being judged.

Gorriti posed the question, “How did the situation evolve from one of popular indignation that led to Fujimori’s fall to today?” First, the process was initiated reluctantly. The Toledo government was very weak politically and seemed content to let the extradition request languish in Japan. It was caught off guard with Fujimori’s audacious and risky decision to go to Chile, with plans to reinsert himself politically in Peru. In other words, the process that led to this trial was started by Fujimori himself; his gamble failed and he was imprisoned and extradited. The Peruvian government had no choice but to respond, reacting to events as they occurred.

As the extradition process was going forward, a very significant political change took place in Peru with García’s election in 2006, resulting in a clear deterioration in the political environment for Fujimori’s trial. At first, García insisted that there would be no political interference in the case; however, a few months later the Minister of the Interior visited Fujimori to reach an agreement on congressional leadership posts; shortly thereafter, Fujimori’s prison conditions were significantly relaxed. A dynamic was created in which the trial is taking place on a sort of “island of formality,” while the external reality has evolved substantially to create a totally atypical situation. In this case, Fujimori’s political movement is not defeated. On the contrary, it is clearly trying to regain power in the next elections.

The *Fujimoristas* are not just looking for power, Gorriti clarified, as in many ways, they already have it. Key positions of power held by those loyal to Fujimori include:

- The first Vice President of the congress is a notorious *Fujimorista*.
- The president of the strategic commission to review constitutional

accusations is also one of the most important Fujimori supporters.

- The first Vice President of the Republic comes from a pro-Fujimori tendency and clearly operates along those lines.
- The Minister of Production, Rafael Rey, is an old Fujimori ally and also operates as such.¹²
- The commander of the Peruvian army, General Edwin Donayre, recently gave an award to the daily newspaper, *La Razón*, presenting it as an example of good journalism.¹³ Originally used by Montesinos as a vehicle for manipulating the press, *La Razón* now operates as the storm troopers – waging psychological warfare – for the Fujimori movement in the media.

In short, there is a *de facto* coalition between the García government and the Fujimori movement that, as President García himself has stated, would not be an undesirable outcome in the 2011 elections.

Gorriti also pointed out that the business class plays a very strong political role in the present government, as it did with Fujimori, and important business leaders remain loyal to *Fujimorismo*. A sector of the business class, the Fujimori forces and the APRA government have all sought a “common enemy” – social movements and intellectual circles, the “caviars” as they call them, which include the human rights groups and especially those involved in monitoring the government. There is a campaign of hostility and threats intended to undermine and discredit them, including attacks in the press and government audits of their finances. (IDL is now being investigated for the fourth time in two years.) While the government attacks the human rights groups with words, Fujimori

12. He left that post shortly after the conference, which took place on October 2, 2008.

13. General Donayre retired in December 2008, following a media blitz about derogatory remarks he made regarding Chile.

supporters do so physically, as happened at commemorative events on the fifth anniversary of presentation of the report of the Truth and Reconciliation Commission; it is all part of the same political campaign. Finally, Gorriti noted that polls showing a possible victory for the Fujimori forces in the 2011 elections are used extensively by communications media that support him.

Thus, the tribunal is not judging a defeated ex-dictator with no political future, but a leader of a movement who is a powerful actor in his own right. If this political alliance does not operate more aggressively, it is because those involved do not want to provoke social protest; rather, the strategy is to operate below the radar. Yet the democratic victory in 2000 has essentially dissolved. While elements of democracy are present, those political forces clearly committed to democracy, the fight against corruption and the rule of law are a minority. Gorriti concluded that nonetheless, all is not lost. In 2000 during the dictatorship the situation was much worse, but within a matter of months, people took to the streets and it was defeated. If that happened in 2000 despite all of the forces operating in Fujimori's favor, it can happen again; however, it is necessary to have clarity about the present situation so that it can be confronted head on.

The final presenter on this panel, **Jo-Marie Burt**,¹⁴ began with an analysis of how transitional justice has developed in Latin America, beginning with the original proposals in the aftermath of military dictatorships in power in the 1960s, 1970s and in some cases even into the 1980s. In Uruguay and Brazil, despite the efforts of civil society groups to promote truth and justice, the governments opted for doing nothing, silence, forgetting, denying that any human rights violations occurred.



The Mothers of the Plaza de Mayo, along with other civil society organizations, have steadfastly demanded accountability for human rights violations in Argentina. (Courtesy Jo-Marie Burt)

Argentina's effort to combine truth and justice represented an important departure from this trend. Civil society and progressive politicians played an important role in pushing for a truth and justice agenda. The new democratic president, Raúl Alfonsín, created a truth commission to investigate what happened during the military dictatorship. Its mandate was not only to investigate, but also to connect truth and justice. As a result, nine military members of the junta were tried. Five of those were found guilty of grave human rights violations and received long prison sentences. However, this was followed by a series of military uprisings and ultimately the government backtracked, issuing a series of amnesty laws and pardons. Impunity was consecrated; those convicted were set free and the amnesty laws impeded any new trials from moving forward. Conservative politicians and intellectuals, such as Samuel Huntington, concluded that trials were a de-stabilizing factor in democracies and should be avoided. Thus, rather than becoming an example of truth and justice, Argentina became a counter-example – an example of why truth and justice should be avoided.

14. Jo-Marie Burt is Associate Professor of Political Science at George Mason University and author of *Political Violence and the Authoritarian State in Peru: Silencing Civil Society*.

“Central to the work of Peru’s Truth and Reconciliation Commission was the conviction that reconciliation is not possible without justice.”

—JO-MARIE BURT

In the cases that followed – Chile, Guatemala, El Salvador and even South Africa – a different model emerges, one of truth but no justice. These new governments embraced the idea of truth commissions with an investigative role, but would not put their newly gained democracies at risk by trying those responsible. As José Zalaquet, member of the Chilean Truth Commission, said, “We must work within the realm of what is possible.” In this model, truth telling becomes the central element of reconciliation. It continued to be challenged, however, by civil society groups, progressive politicians and even some academics who argued for the centrality of retributive justice to reconciliation both for individuals victims and for society as a whole.

Now in Latin America and around the world, new demands for accountability have surged – an “integral model” of transitional justice that includes not only truth and justice, but also reparations and reforms. At the international level, three important developments contributed to the emergence of this model: international tribunals were established in the aftermath of atrocities in the former Yugoslavia and Rwanda; in 1998 the UN General Assembly adopted the Rome treaty which led to the establishment of the International Criminal Court in 2002; and also in 1998, Pinochet was arrested in London, which reaffirmed the concept of universal jurisdiction. Regionally, the decisions of the Inter-American Court have played an important role. In particular the Barrios Altos decision, described previously, which paved the way for the derogation of amnesty laws and the initiation of trials across the region. At the local level, civil society efforts vary in terms of their strength, but are going forward in every relevant country in the region.

In the case of Peru, the international context in 2000 – when the democratic transition began – was very different than in the previous cases, as a new emphasis on accountability had taken hold. The interim

government that took office established a truth and reconciliation commission, with a very broad mandate. Its members studied and learned from other experiences around the world and embraced not only the need for truth and justice, but also the need for reparations to repair both communities and individuals harmed by the violence and the need to propose reforms so that these atrocities would never occur again. Central to its work was the belief that reconciliation is not possible without justice.

For the first time in Latin America, the Peruvian truth commission created a legal unit to investigate and document cases, ultimately turning over 47 “emblematic” cases to the Public Ministry for prosecution. About half of those are presently in trial and others are at the pre-trial stage, in addition to several hundred other human rights cases that are winding their way through the courts. It is a very dynamic process despite the political obstacles that Gorriti described and the *de facto* powers that are uninterested in seeing justice advance in Peru.

Burt then turned to the Fujimori trial, underscoring – as did Gamarra – that it has been impeccable, impartial, independent and transparent. At the same time, numerous problems exist. In addition to the political context described by Gorriti, there is also the problem of severe indifference on the part of many Peruvians. However, that could change, especially if he is convicted. The popular indignation of 2000 is still there and could be reactivated by what is ultimately revealed and decided.

“What are the juridical truths that have been established,” asked Burt, “and to what extent will they change the way people think about Fujimori, human rights and dictatorship?” According to Burt, we know from this trial that during the Fujimori government a clandestine structure to combat the insurgents existed and engaged in state terrorism, carrying out disappearances, extrajudicial executions and other atrocities. We know that the

Colina death squad officially operated within the armed forces and that they were officially given weapons, vehicles and a special budget, provided to them by the executive. The former commander-in-chief of the armed forces testified that Fujimori knew about the existence of the Colina group not in 1993 as he said, but immediately after the events occurred (if not before). We also know that Fujimori did nothing to stop these atrocities and he congratulated and encouraged promotions of members of the Colina death squad. Moreover, he promoted an amnesty law in 1995 that freed the few who had been convicted for the killings.

In short, the trial has already established without a doubt Fujimori's fundamental responsibility for these human rights violations. Like Gamarra, Burt is confident that he will be convicted. Like Gorriti, however, she expressed concern about what will happen afterwards. The tribunal that will preside over the appeal process could be problematic and there may be other political efforts to secure Fujimori's release through a pardon or an amnesty. Burt concluded that she is both optimistic and pessimistic at the same time – a current of thought that ran through the day's discussion.

The responses to most of the **comments and questions** that followed clarified points made in the three presentations. One point of debate was the extent to which the political forces described by Gorriti and others would trump an objective judicial decision. Both Gamarra and Gorriti pointed out that the judges are well aware of the international impact that the verdict will have. The visits by experts and judges from other countries have provided further evidence that the case is being closely watched abroad. Such visits have also highlighted the international significance of the case. As Gorriti noted, the judges have an unprecedented opportunity to influence international jurisprudence. An initial conviction would leave an "international footprint." Peru's political forces will change in the future,

yet the legacy of this decision will live on. Burt also pointed out that if the case is overturned on appeal, it would be a severe setback for human rights and democracy in Peru and regionally.

Another important clarification was made regarding the composition of the tribunal hearing the Fujimori case. In contrast to many other members of the Supreme Court who will be the candidates to hear the appeal, the three judges on the present tribunal are all very intelligent, well-prepared and have a vision that goes beyond the traditional provincialism of the Peruvian judiciary.

Both Gamarra and Burt took issue with the characterization of the tribunal as an "island of formality." Gamarra said that the judges are not isolated – they read the newspapers, know that Fujimori is a political actor and know about the alliances between the Fujimori movement and the ruling APRA party. Yet they also understand that an important sector of Peruvian society wants justice and that the Barrios Altos and La Cantuta cases are emblematic, in many ways comparable to the trial of the military junta in Argentina. As just noted, they also know that they are under international scrutiny.

Burt took issue with the island analogy because there are hundreds of other human rights cases underway in the judiciary. While progress on most of these is painfully slow, there have been some convictions and some of those have been upheld in the Supreme Court. For example, former General Salazar Monroe (former head of the SIN) was found guilty and convicted to 35 years in jail for the La Cantuta case. She also pointed out that a continuing problem in these cases is lack of cooperation from the military, which refuses to turn over documentation on the identities of the accused or other information. In some cases, such as the El Fronton prison massacre, the military has attempted to thwart the investigation. In short, it is an ambiguous and paradoxical situation.

“Experts and judges from other countries have come to observe the Fujimori trial, highlighting the global significance of the case. A conviction would leave an ‘international footprint.’”

—GUSTAVO GORRITI

In response to the question as to why Fujimori remains such a strong political force in the country, Gorriti pointed to Peru's imperfect democracy. When Fujimori fell, Peruvians had great expectations as to what would be achieved during the democratic transition and the "re-founding" of Peru – but they were left sorely disappointed. The Toledo government was very unpopular, as is the García government today. Many Peruvians associate the two elected governments following the transition as a joke. In contrast, Fujimori is portrayed as the *caudillo*, the strong man, and most importantly, as the man who saved Peru from terrorism (even though, Gorriti clarified, that is not true). In Peru and other countries that have not consolidated democracy, the appeal of such leaders cannot be underestimated.

PANEL II:

Civil Society Efforts to End Impunity: The Peruvian Case

The second panel explored the role of Peruvian and U.S.-based civil society organizations and representatives in efforts to promote truth and justice in Peru. The moderator, **Cynthia Arnson**,¹⁵ highlighted the achievement of Peruvian human rights groups in coming together in an umbrella organization, the Coordinadora Nacional de Derechos Humanos, which is unprecedented in Latin America and a testimony to the leadership provided by Peruvian human rights activists.

Francisco Soberón¹⁶ initiated the panel with reflections on the trajectory of Peruvian social movements and efforts to end impunity. This year, two of the first human rights groups – IDL and the Asociación Pro-Derechos Humanos (APRODEH) – are celebrating their 25-year anniversaries. ANFASEP,¹⁷ the first organization of family members of victims of violence, has also completed 25 years. Over the course of this long trajectory, the Peruvian human rights movement has confronted complicated and difficult circumstances, but the long path traversed has also led to this year of celebration.

Soberón reflected that "we hope that we will be able to continue celebrating the achievements we have made, despite all of the political and other difficulties described in the last panel." To be a human rights activist, one must look to the future and be optimistic. You must be willing to confront setbacks and failures and look for partial victories and steps forward. You

15. Cynthia Arnson is Director of the Latin American Program at the Woodrow Wilson International Center for Scholars.

16. Francisco Soberón is the Founding Director of the Asociación Pro-Derechos Humanos in Lima, Peru.

17. ANFASEP is the Asociación de Familiares de Secuestrados, Detenidos y Desaparecidos del Perú.

must also join forces. In 1985, the Coordinadora Nacional de Derechos Humanos was formed. The ability to work together in the *Coordinadora* greatly empowered the Peruvian human rights movement. At the time of its creation, its work was defined by the internal conflict.

While the focus on the past is still very much alive, now the human rights movement has a much broader agenda and is engaged with new actors.

The themes that have characterized the work of the Peruvian human rights movement are those of this conference: truth, justice, reparations and reforms. In this work, all manners of tactics and strategies have been used. In the early years, the movement confronted state resistance – the inactivity of the state to respond to accusations and demands for justice. Not only did officials ignore calls for justice, they worked actively to promote impunity. It was a long period of limited possibilities given the internal reality of the country.

That led Peruvian human rights groups to look externally, a significant development in the movement. Within the universal system of the United Nations, Soberón noted, “we found many limitations: interventions of a purely humanitarian nature and reports with little political impact.” However, the Peruvian groups quickly discovered the Inter-American human rights system and began to interact with the IACHR. Some of the first experiences did not bear fruit. For example, APRODEH, Human Rights Watch (then Americas Watch) and Amnesty International presented the first Peruvian case before the Commission, the Cayara massacre.¹⁸ For a variety of reasons, both



Panel II: Left to right: Francisco Soberón, Gisela Ortiz, Cynthia Arnson, Viviana Krsticevic, and Peter Kornbluh. (Courtesy Tristan Golas)

procedural and political, this case did not go anywhere – but they persisted. Dozens of Peruvian cases have resulted in reports and the rulings on cases that have reached the Inter-American Court have had a very significant impact. This shows the importance of the decision to opt for the Inter-American system, even when what would be achieved was far from clear. As noted, the decisions of the Inter-American Court have had a significant impact internally in Peru; the content of the reports and the court decisions continue to be felt.

The Peruvian human rights movement was also decisive in the response to the collapse of the Fujimori regime, and in particular in the formation of the Truth and Reconciliation Commission. Peruvian human rights groups first began discussing the idea of a truth commission in 1996, though it was clear that the political conditions in the country at the time were not yet ripe. The Fujimori government’s intervention in the Constitutional Tribunal boosted the campaign, as social movements took to the streets in protest. The role of student movements was crucial, as they put forward the Barrios Altos and La Cantuta cases as their banner, or symbol, which gave great impetus to those cases.

It is also important to highlight the role of organizations of victims and family members. ANFASEP was founded in the region most convulsed by violence,

18. On May 14, 1988, army soldiers under the command of General José Valdivia Duenas killed between 28 and 31 male residents of the village of Cayara. Returning four days later, the

soldiers arrested many villagers, dozens of whom disappeared.

Ayacucho, with Angélica Mendoza as its leader and ultimately the symbol of the family members, or *familiares*. Those involved in ANFASEP always put forward the need for justice and their persistence in demanding justice has now had concrete results. For example, the case of the killings at the Los Cabitos military base is on-going in the courts. General Clemente Noel, the first political-military commander of the base and under whose command the first disappearances occurred, died knowing that he was being prosecuted for human rights violations

The family members of the Barrios Altos and La Cantuta victims also fought tirelessly for truth and justice, even in the most difficult of times such as when the 1985 amnesty law was passed. They were always present, making their demands heard. With the collapse of the Fujimori regime, they continued their mobilizations and carried out demonstrations, sometimes small and sometimes big. At times, they had the important support of the labor movement, including the Confederación General de Trabajadores del Perú (CGTP) and the Central Unitaria de Trabajadores del Perú (CUT). Finally, these groups of *familiares* were crucial in mobilizations around Fujimori's extradition and they are a constant presence at the trial.

While these two cases are the best known, there are many other cases linked to the Colina death squad. Apart from showing the complicity of Fujimori and Monetsinos with Colina, the trial has also revealed that it was responsible for other atrocities that had previously been attributed to the Shining Path. It is only in the last year that this information has been revealed – and we will no doubt continue to learn more as the trials underway continue to produce new discoveries, new evidence, and new cases.

An important factor often overlooked in Lima, is the role that social movements are playing in the interior of the country to generate awareness of the Fujimori trial. Although it is not picked up in the polls or

reported in the press, there is an important receptivity to the trial in the provinces – there is a clamor for justice. Sometimes this demand is more passive, but it is there and can be mobilized, especially if there is a threat of a pardon or similar action in Fujimori's favor.

Finally, it is important to recognize that in addition to the political *Fujimorismo*, there is a social *Fujimorismo* in both urban and rural sectors who benefitted from the populist programs implemented by his government. Small vigilante groups have carried out aggressive actions against *familiares* and human rights advocates. In addition to the incidents at the fifth-year anniversary of the presentation of the truth commission's report, these forces have been present at the trial itself and have directly threatened family members and human rights activists. From January to September of 2008 alone, the Coordinadora Nacional de Derechos Humanos received more than 50 complaints of threats and harassment. Even the prosecutor in the Fujimori case has received threats. The Peruvian and international human rights communities need to be attentive to this situation as the cases against Fujimori and others proceed through the courts in the coming months and years.

The next speaker, **Gisela Ortiz**,¹⁹ provided an extremely moving and direct testimony from the point of view of the family members of the victims of the Cantuta massacre. She started by holding up a picture of her brother, Enrique Ortiz Perea, who was 21 years old and in his fourth year in the university when he was abducted, assassinated and disappeared by the Colina death squad. For Ortiz, her brother is the “body” and she is the “voice” that speaks in the name of the victims of this horrendous atrocity.

On July 18, 1992, at 1:30 am, a military unit entered into what is popularly known

19. Gisela Ortiz is a spokesperson of the family members of the victims of the Cantuta massacre.



Gisela Ortiz, spokesperson of the relatives of the victims of the Cantuta massacre, is interviewed by the press after a trial session. (Courtesy APRODEH)

as the Cantuta University (a national university outside of Lima) and carried out an operation with the support of the army troops already there. (The university was already under military control and a strict curfew ensured that nobody could go in and out at that hour.) The death squad members searched various buildings, mistreating the students verbally and physically. They then proceeded to identify and remove nine students from the dormitories, including Ortiz' brother. They also rounded up one professor and took them all to waiting SUVs, and drove them out of the university leaving no explanation as to their destination. Thus began the long search of the family members of the victims to find out the truth of what had happened.

They first suspected that the military in charge of the university was responsible. The violence of the entry was evident both physically, such as the scattered bullet holes and broken windows, and also in the fear of the students. At this time, there was a stigma against students in national universities, whom the military considered possible terrorists – all were suspects. Many students were therefore afraid to talk about what they had witnessed.

The *familiares* began searching military and police installations, but found no information about the whereabouts of their loved ones. On July 20, a formal judicial complaint was lodged. The uncertainty continued through the end of the year,

however. The *habeas corpus* petitions were archived, as the courts claimed that there was no evidence of the existence of the ten people who had disappeared – despite the families' testimonies and the existence of student and teacher records. By then, the judiciary was controlled by Fujimori and Montesinos. It became clear to the family members that the abduction had been carried out by state agents and that state institutions, including the judiciary, functioned to ensure impunity.

The family members also encountered roadblocks in publicly denouncing what had happened. They held a series of press conferences and visited the offices of major media; however, either the journalists that they approached did not believe them or were afraid to report on such a politically explosive case. At this time, the press was already reluctant to report on this sort of incident given the increasingly dictatorial Fujimori regime.

Following the April 1992 *autogolpe*, a new congress was elected and it formed a commission to investigate the disappearances, which ultimately issued two reports. The minority report presented by the political opposition attributed responsibility to the military, and in particular the commander of the armed forces, General Nicolás de Bari Hermoza Ríos, and Vladimiro Montesinos. The majority report, filed by Fujimori supporters, presented three possible explanations: 1) All ten had gone off to join their lovers; 2) They all went to join a terrorist organization; or 3) They kidnapped themselves. These reasons were given as justification to archive the congressional investigation.

In 1993, however, the initial grave sight was uncovered. Among the evidence that the bodies buried there were the Cantuta victims, two sets of keys were found that were proven to belong to two of those abducted. Later that year, a journalist's investigation led to the discovery of the location of a subsequent grave. What is now known is that the victims were

“The *familiares* agreed on two basic principles: the need to know the truth, and the need for justice —not just for those who pulled the trigger, but for those responsible for giving the orders.”

—GISELA ORTIZ

initially taken to the first site and shot in the back of the head while kneeling with their hands tied behind their back. They were buried but shortly thereafter moved to this more elaborate gravesite, where most of the bodies were burned and the remains were re-buried. The only body found in the second location was that of Enrique Ortiz Perea.

“Although this is the hardest thing I have ever had to go through and the image still torments me,” recounted Ortiz tearfully, it was proof of the brutality of the atrocity. It showed the magnitude of the savagery of the dictatorship and provided a true understanding of what those who were disappeared suffered – what it meant to be disappeared.

Returning to the organization and role of the *familiares*, Ortiz noted that from the beginning, they all agreed on two basic principles which guided their work over the years: 1) The need to know the truth – what happened, where the bodies were, and who was responsible; and 2) The need for justice, not just for those who pulled the triggers, but for those responsible for giving the orders for the operation. They also agreed on the importance of influencing public opinion, in addition to taking legal action. What allowed them to persevere for so long was a shared conviction that they had the right to do what they were doing; that they were exercising their basic rights as citizens. “I can say with great clarity,” continued Ortiz, “that we were not acting out of hate or vengeance ... what I feel is sadness” over what it means to lose one’s humanity by committing acts of torture or assassination. The family members were motivated not by hatred, but by those they lost; they did what they had to do for their relatives, who would have done the same for them.

By 1993, the *familiares* had established relationships with national and international human rights groups. Also, the fact that the victims were university students opened up space in other

universities, even private ones. Students mobilized in support of justice and against the 1995 amnesty law. They were joined by other social sectors, such as the unions mentioned previously. Often, they were able to convoke large mobilizations demanding truth and justice in the Cantuta case. In 2007, nearly 10,000 people converged before the Embassy of Chile in support of Fujimori’s extradition. The coming together of different social forces has allowed for justice in this case, in contrast to so many others that remain in impunity.

Ortiz expressed optimism that their work has not been in vain, but rather has led to a fair and transparent trial, where the family members have been vindicated by the attitude of the judges and the questions they ask. A history is now being written that cannot be reversed. “We believe that this history is written not only with the blood of our family members, but also with our efforts,” concluded Ortiz, “and this story must end with the conviction of Fujimori and all of those who have human rights cases pending before Peruvian courts.” International solidarity and support is crucial in this fight against impunity.

The topic then turned to the role of international groups, with a presentation by **Peter Kornbluh**²⁰ on the role of declassified U.S. documents in the Fujimori trial. He began by noting that the conference represented an extraordinary meeting at an extraordinary time, just two weeks shy of the tenth anniversary of Pinochet’s stunning arrest in London. Looking back over those ten years, an enormous amount of effort has gone into advancing the cause of peace, justice and dignity in Latin America – against the Fujimori’s and Pinochet’s of the world. What Peruvian groups and individuals have been able to do in bringing the Fujimori trial to fruition is a major

20. A Senior Analyst at the National Security Archive, Peter Kornbluh is the author of *The Pinochet File: A Declassified Dossier on Atrocity and Accountability*.

accomplishment for everyone who works on human rights.

Kornbluh then turned to the role of declassified documents in promoting justice. While such documents are not the most substantive evidence presented in these trials, they still play a key role and have been used in prosecutions. When U.S. government documents on Chile were declassified in 1999, those pertaining to Operation Condor were given to Judge Baltasar Garzón in Spain, to be used in his case to extradite Pinochet. A similar set of documents was provided to Judge Juan Guzmán in Chile, who prosecuted Pinochet upon his return. Declassified documents were also used in the case of the killing of Guatemalan anthropologist Myrna Mack, both in the Guatemalan courts and in the Inter-American Court of Human Rights.

Seventy documents were provided to assist in the prosecution of former president Juan María Bordaberry in Uruguay, who is currently in jail and will likely be convicted.

According to Kornbluh, declassified U.S. documents play three distinct roles. First is the role of publicity in these prosecutions. Declassified documents that were once top secret have sex appeal for the media. They have played a role in generating publicity and media coverage, setting the stage and getting public attention as trials go forward. Second, the documents have been used as evidence in courts across Latin America and Europe, and in international forums. They are not without their problems as evidence, but they can provide details and information when documents in a given country are not accessible. Finally, they contain references to other archives in-country. For example, a U.S. document referring to

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PEOV - FUJIMORI

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E.O. 12356: DECL: OADR EXTEND CLASSIFICATION
TAGS: PGOV, PHUM, ASEC, SNAR, PTER, PE
SUBJECT: (S/NF) REPORTED SECRET ANNEX TO NATIONAL
PACIFICATION/HUMAN RIGHTS PLAN

REP: A) LIMA 12153, B) LIMA 11756

1. [REDACTED] - ENTIRE TEXT

2. SUMMARY. A FORMER MILITARY INTELLIGENCE OFFICER MAINTAINS THAT PRESIDENT FUJIMORI WILL SUPPORT A TWO-TIERED ANTI-SUBVERSION PLAN. THE FIRST TIER WILL BE PUBLIC AND WILL INCLUDE A STRONG HUMAN RIGHTS EMPHASIS.

[REDACTED]

SOURCE REPORTS THE PLAN IS BEING ADVOCATED BY PRESIDENTIAL ADVISOR VLADIMIRO MONTESINOS. BUT MONTESINOS APPEARS TO BE LOSING THE SUPPORT OF PRESIDENT FUJIMORI AS THE PRESS CONTINUES TO HOUND THIS FORMER ARMY CAPTAIN FOR HIS TIES TO NARCOTICS TRAFFICKERS AND HIS EXCESSIVE REACH FOR POWER. END SUMMARY.

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THE PUBLIC PLAN

UNITED STATES DEPARTMENT OF STATE EXDIS
REVIEW AUTHORITY: NORMAN M. BOUTON
DATE/CASE ID: 12 APR 2002 199700716
CLASSIFICATION: SECRET REASON: 25X1, 25X6 Page: 1
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Box 13218

Declassified U.S. Embassy cable from August 1990. (Courtesy National Security Archives)

a certain meeting or document provides an important lead; it provides evidence to press for the release of other documents.

Kornbluh then provided examples of how these roles have played out in Peru. One of the documents obtained was a Defense Intelligence Agency (DIA) report on the Chavín de Huantar operation to take back the Japanese Embassy and hostages captured by the Tupac Amaru Revolutionary Movement (MRTA) insurgents.²¹ In that operation, three members of the MRTA were executed even though they had surrendered. The

21. On December 17, 1996, members of the MRTA took hundreds of high-level diplomats, government and military officials and business executives hostage during a party at the official residence of Japan's ambassador to Peru. Most of hostages were released, but some were held for 126 days, when a Peruvian armed forces commando unit stormed the building, resulting in the death of one hostage, two commandos, and all the MRTA militants.

“One key declassified document was a report from then-Ambassador Anthony Quinton titled, ‘US Ambassador presses Fujimori on military role in Barrios Altos massacre,’ from December 1991.”

—PETER KORNBLOUH

DIA document states that Fujimori gave the order for their execution. While the document is not directly related to the on-going trial, it does provide evidence that Fujimori had given such orders in other circumstances; in other words, that he was capable of ordering human rights violations. The National Security Archive posted the document on its web page the day that the trial opened on December 10, 2007, and it was given to the *New York Times* in advance so that a story could hit the press that same day. The story reverberated around the United States, Europe and Latin America and was headline news in Peru. It helped set the tone for the trial as it got underway.

The National Security Archive provided hundreds of documents to the Peruvian truth commission, some of which were integrated into the cases turned over to the Public Ministry. Once the extradition process began, the Archive began to triage and re-file Freedom of Information Act (FOIA) requests that might be useful in the Fujimori trial. Forty-nine documents were eventually submitted to the tribunal as evidence.

One of these was a U.S. Embassy cable from August 1990, just after Fujimori was first inaugurated, which provided details on a two-tier strategy for confronting the insurgency. One was a public stance, that human rights would be respected. The other was a secret plan (the document even refers to a secret annex): special operations that included extrajudicial executions, as happened in the Barrios Altos and La Cantuta cases. Another document refers to an Embassy cable which goes to the heart of Fujimori's defense that he was not involved in any decisions regarding human rights violations, which he claimed were the result of unauthorized, rogue operations. This extraordinary document from the State Department reports on systematic human rights violations, providing a long list of atrocities committed during the García and Fujimori governments, and quotes a source who clearly states that within



Relatives of the victims of the Cantuta case march before the Chilean Supreme Court demanding Fujimori's extradition. (Courtesy APRODEH).

the Peruvian military and intelligence apparatus under Fujimori and Montesinos, rogue and freelance operations were not allowed; rather, the chain of command was strictly followed. The U.S. Defense Attaché is also quoted as saying this is accurate – that these kinds of operations had to be approved from the very top, including budget authority and last minute authorizations. In short, the document directly undermines the basis of Fujimori's claim of innocence.

A final example is a document that generated quite a lot of publicity in Peru, which is a report from then-Ambassador Anthony Quainton titled, "US Ambassador presses Fujimori on military role in Barrios Altos massacre," from December 1991. Quainton relates how he told Fujimori that U.S. intelligence identified the involvement of the Peruvian military in the Barrios Altos massacre and he asks Fujimori what he is going to do about it. This directly contradicts Fujimori's testimony that he did not learn of Colina's involvement in the massacre until two years later in 1993. This document was reported on in the Peruvian press on the

same day that Kate Doyle testified at the trial on behalf of the National Security Archive, again generating significant publicity.

These examples provide evidence of the ways in which declassified U.S. documents can complement documents from the region in human rights trials. Kornbluh concluded with a quote from former Supreme Court Justice Louis Brandeis that “sunlight is the best disinfectant.” Getting declassified documents out and into the hands of judges, lawyers, prosecutors and others contributes to bringing even the most powerful to justice.

The final speaker of the morning, **Viviana Krsticevic**,²² focused on civil society efforts within the Inter-American human rights system. The Center for Justice and International Law (CEJIL) played an important role in complementing the work of Peruvian human rights groups and other civil society organizations in denouncing grave human rights violations and defending democracy in Peru. In the early 1990s as political space in Peru was steadily being closed, the human rights groups began looking for international support. In addition to sustained advocacy with the U.S. and European governments, work within the Inter-American system became a pillar of their international efforts to denounce the atrocities taking place, the dismantling of democratic institutions, and the errors of the government’s anti-terrorist strategy – and to legitimize their own voice. Many human rights groups became engaged in advocacy work with the IACHR, as well as opposition politicians, journalists and owners of major media, *familiares*, and even former Peruvian military officials.

Three strategies were pursued in this work within the Inter-American system. The first was litigation, which was the most prominent. The second was political in

nature, providing the IACHR and the Inter-American Court with reports, denunciations and other basic material to better inform their decision making and international public opinion. This more political work also extended to other actors within the Organization of American States (OAS), including the Secretary General’s office, ambassadors and key staff. Third, the groups engaged in outreach to the communications media, in Peru, the United States and abroad. Krsticevic emphasized that these efforts were mutually-reinforcing. The cases being litigated, for example, reinforced international advocacy efforts.

In the early years of the Fujimori administration, the human rights groups made a series of presentations before the IACHR in its bi-annual meetings and presented specific cases, not because they thought that this would influence the Peruvian government, but rather as a platform for documenting their concerns and legitimizing their work among the Peruvian population and some sectors of government; it was a way of giving credence to their arguments. The IACHR for its part came to its own conclusions, establishing its own narrative of the human rights situation in Peru – one that was critical of the government on both human rights and democracy grounds – thereby reinforcing the voice of Peruvian human rights organizations and other actors. Issues that it focused on included the problems of the innocents in jail on terrorism charges, torture, the use of military justice, the Colina death squad, and the erosion of the rule of law.

By the mid-1990s, the IACHR’s composition and ways of operating began to change. New members were incorporated who had a strong trajectory in human rights work, such as Robert K. Goldman, Juan Méndez and Claudio Grossman. Not only were they well-versed in international human rights law, but they had a clearer sense and understanding of the role that the Inter-American system could play, particularly the Inter-American

“The Inter-American Court of Human Rights ruled that amnesty laws should be considered void. This eliminated a major obstacle for justice in Peru.”

—VIVIANA KRSTICEVIC

22. Viviana Krsticevic is Executive Director of the Center for Justice and International Law.

Court. The Commission began sending many more cases to the Court, litigating a series of pivotal cases before it.

The Inter-American Court is known for its independence, objectivity and the solid juridical backgrounds of its members. As a highly-respected institution, it too began to give credence to the voices of human rights groups, victims and others. In addition, in its decisions, the Court ordered payment of collective and individual reparations, release from jail in cases of unjust detentions, and structural reforms to prevent human rights abuses. After the initial human rights cases, the Court began hearing cases related to Peru's deteriorating democracy, including freedom of expression, electoral fraud and abuses of human rights stemming from the lack of democratic controls, such as the dismantling of the Constitutional Tribunal.

Krsticevic then turned to the two cases that resulted in unprecedented decisions from the Court: Barrios Altos and La Cantuta. In the case of Barrios Altos, the crime was so horrendous and given the subsequent amnesty law and other efforts to ensure impunity, the Peruvian human rights groups decided that the case necessitated a stronger and more unified response. Although the Coordinadora Nacional de Derechos Humanos does not normally litigate cases, it did so in the Barrios Altos case in partnership with CEJIL. The litigation process dramatically illustrated the brutality of what occurred and the almost tragic-comic way in which the government sought to ensure impunity. The case finally reached the Court as the Fujimori government fell, leading to a change in approach to the Court by the Paniagua government. The *Coordinadora* and CEJIL asked the Court to go beyond ruling for the prosecution and sanctioning of those responsible, and to be more specific on what needed to be done to dismantle the mechanisms of impunity in place in Peru. That led to the historic decision described previously, in which the Court ruled that amnesty laws should be

considered void, thus eliminating a major obstacle for justice in Peru. This decision had important repercussions for the search for justice regarding gross violations of human rights in other Latin American countries as was mentioned in the case of Argentina.

Another golden opportunity for litigation, the Cantuta case, had been before the Court for years, but it finally arrived at the Court precisely as Chile was evaluating Peru's request for the extradition of Fujimori. That provided an opportunity to shape the trial in a way that would be beneficial for the extradition request and the eventual trial in Peru. The verdict resulted in three extremely consequential decisions. First, the Court ruled on the obligation of third states to cooperate in extradition requests and applied that directly to Fujimori's situation. Second, the court developed an analysis of the structure of Colina and the role of Fujimori, determining that he was the top authority responsible for its actions. Finally, the verdict provided important juridical argumentation that buttressed the local prosecutor's arguments regarding Fujimori's responsibility. Thus, the verdict became an important reference for both the Chilean Supreme Court and ultimately the prosecutors and the Peruvian administration of justice system.

Krsticevic concluded her presentation reflecting on lessons learned by those working on human rights in Peru over these past decades. One is the importance of being attentive to and to accompany the victims, their family members and the *familiares* movement, respecting its role and leadership. Krsticevic also pointed to the value of coordinated work utilizing complementary strategies. In Peru, the diversity of alliances and strategies had a much greater impact than would have been the case if each were working on their own. Finally, she reiterated what Soberón said regarding the nature of human rights work and the importance of maintaining hope – even during the most difficult times – and stubbornness stemming from a profound

conviction with regards to certain basic principles. Human rights advocates must maintain indignation before even the most powerful and should never underestimate the capacity to mobilize that indignation that can be found in many sectors of Peruvian society.

The subsequent period for **comments and questions** was cut short for lack of time. Discussion centered again on the political climate in Peru today and its possible impact on the trial. Francisco Soberón emphasized the importance of the way in which the judges write the verdict, as sound, legal argumentation could make it harder to overturn the sentence on appeal. He also pointed out that the Peruvian government will likely request the extension of the extradition ruling to include additional human rights cases, including the Chavín de Huantar operation described previously and the massacre in the Castro Castro Prison in Lima, Peru, between 6 and 9 May 1992.²³ Finally, he noted that Fujimori is not the only powerful figure being tried on human rights grounds. Another case is underway against Agustín Mantilla, Interior Minister during the first García administration, for his alleged role in organizing the Rodrigo Franco death squad, and political opposition leader Ollanta Humala also faces charges. Nonetheless, there is a web of impunity that extends over many political actors in Peru today.

Gisela Ortiz reiterated that President García is no doubt concerned about the potential impact of the Fujimori case on the charges pending against him for atrocities that occurred during his first term. This, combined with the implicit and sometimes explicit pact between APRA and *Fujimorismo*, raises concerns about the appeal process, though she agreed that all indications point to a conviction in the first trial. She asked, however, “Is this the justice that we are looking for, when Fujimori sits in his golden prison built specifically for him – a prison that is bigger than our own houses, with furniture, rugs and hot water that we do not have? It is a luxury hotel in comparison.” In addition, unrestricted visitations have converted his quarters into the operational headquarters for planning political strategies for the 2011 elections and for the next phase of the trial.

“Is this the justice that we are looking for, when Fujimori sits in his golden prison built specifically for him – a prison that is bigger than our own houses, with furniture, rugs and hot water that we do not have? It is a luxury hotel in comparison.”

—GISELA ORTIZ

23. Although the Peruvian government initially claimed that state forces acted to quell a prison riot, on November 25, 2006, the IAHCR determined that what happened in the Castro Castro Prison was a pre-meditated massacre ordered by the highest echelons of the government.

PANEL III:

Human Rights Trials in Latin America

The moderator of the third panel, **Michael Shifter**,²⁴ noted the importance of looking at human rights trials in other parts of Latin America, outside of Peru, to address fundamental questions: what progress has been made, what are the difficulties encountered and obstacles faced that have prevented further progress, and what has been achieved to date. What is striking, noted Shifter, is that there is a lot happening in Latin America that does not get enough attention in Washington and elsewhere. This panel, therefore, is fundamental to the issues being explored in the conference.

“In contrast to Peru, there is a clear consensus among Argentine society in favor of the prosecutions; nobody is questioning that the trials should go forward.”

—GASTÓN CHILLIER

Before beginning his presentation on the situation in Argentina, **Gastón Chillier**²⁵ highlighted the role of the international community in giving visibility to the trials underway in Latin America for grave human rights abuses. These include Chile, Argentina, Peru, Uruguay in an incipient stage, and hopefully Paraguay in the future. These cases stand out because after many years societies and governments are carrying out processes of accountability domestically. Chillier pointed to two reasons why these national processes are important and should get more attention: 1) Both positive and negative lessons can be learned from national processes for transitional justice; and 2) More importantly, these processes are on-going and their resolution will depend on many variables, one of which is the international community. It has played an important role in encouraging and supporting such prosecutions, as in the case of Peru, and hence should give more sustained attention to them.

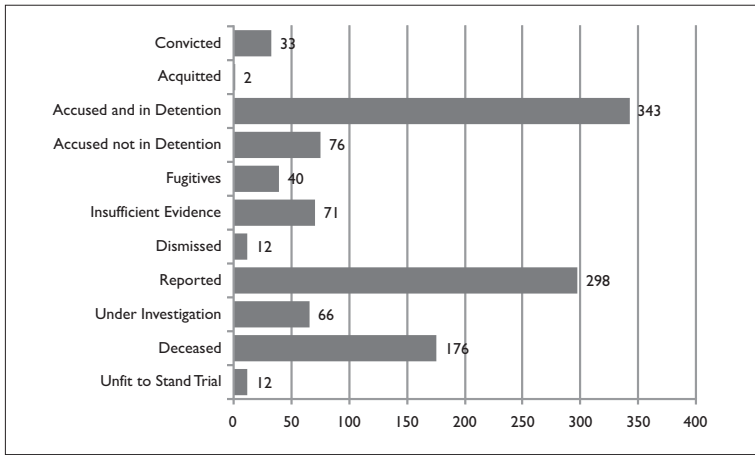
24. Michael Shifter is Vice President for Policy and Director of the Andean program at the Inter-American Dialogue.

25. Gastón Chillier is the Executive Director of the Centro de Estudios Legales y Sociales in Buenos Aires, Argentina.

Turning to the Argentine case, Chillier reminded the audience that the country has vacillated over the years, beginning with an emphasis on truth and justice when democracy was first restored, then moving into a phase of impunity, followed by a return to a focus on justice that hopefully will complete the trajectory. Both national and international factors led to the most recent developments. Pinochet's arrest in London had a ripple affect in Argentina. The following day, Emilio Massera was arrested in Buenos Aires for the kidnapping of two children during the military dictatorship and one week later, former General Jorge Rafael Videla was detained. This illustrates the globalization of justice to confront grave human rights violations.

At this point, the judicial process began to take off. After the Inter-American Court ruled on the Barrios Altos case, in 2001 the first sentence overturning the amnesty laws was issued in an Argentine court. Two years later, the Argentine Congress passed a law nullifying the amnesty laws, as was proposed by the Kirchner administration. Then in 2005, the Supreme Court – which by then had been reformed to be more transparent – upheld the application of the Barrios Altos decision in Argentina and the overturning of the amnesty laws. Although some cases had already begun moving forward before then, the situation was formally resolved with the 2005 decision.

Chillier then provided statistical information and analysis on the cases underway. As of September 30, 2008, the Centro de Estudios Legales y Sociales (CELS) had documented 1,129 cases of individuals charged with crimes against humanity in all of Argentina. (Despite the difficulty of getting information from the judiciary, CELS has developed a data bank.) Of these, 33 have been convicted and two were found innocent. Of those accused, 343 are in detention (ranging from prisons to detention centers to house arrest), 76 are out on bond, 40 are in hiding and their whereabouts has not been identified,



Status of human rights trials in Argentina

Source: Centro de Estudios Legales y Sociales, Argentina.

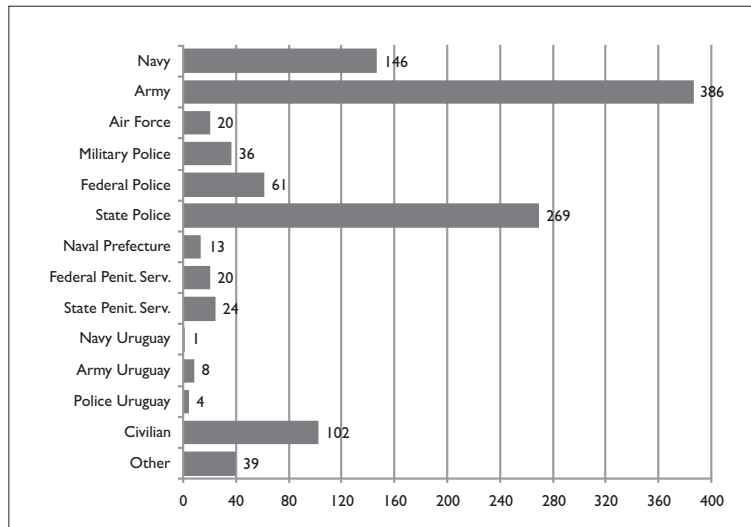
and 176 have died. Of the 33 convicted, 28 were sentenced between 2006 and 2008. Initially, the vast majority of those convicted were minor figures, primarily from the Buenos Aires and other police forces. It was only in 2007 that convictions of the first army officers were handed down and it was not until 2008 that the first high-ranking army officer was convicted.

Chillier then looked at the situation in the penitentiaries, which presently house 31 of the convicted, 343 of those on or awaiting trial, and 69 who are under investigation or waiting to give their declarations. Initially, accused military officials were kept in military installations, allegedly for security reasons. However, CELS and other human rights groups argued against this and the number slowly decreased; presently, 64 remain in military installations. Finally, he presented data on the institutions to which the accused pertain: 146 from the navy, 386 army, 20 air force, 36 gendarmerie, 61

federal police and 269 provincial police (among others).

This overview shows that cases are going forward in various provinces for a range of human rights atrocities; the judicial process is advancing. However, obstacles and difficulties have been encountered along the way. Five years since the trials were re-

initiated, the lack of an integral strategy in prosecuting the cases is evident. All of the state institutions – the executive, judicial and legislative branches – are at fault. While they worked together to adopt the measures necessary to overcome impunity, once the cases were reopened there was a clear lack of strategy for how to proceed and in particular how to prepare for the trials. For example, there are cases where an individual has been implicated in a vast array of crimes with literally hundreds of victims, but a case proceeds for only two of those many atrocities. Similarly, cases are not grouped together so that the trials can proceed more rapidly. This has a political impact as it limits the ability to prosecute more high-level officials and



Total number of individuals charged with human rights violations, by sector

Source: Centro de Estudios Legales y Sociales, Argentina.

“Since the reopening of trials in Argentina, CELS has documented 1,129 cases of individuals charged with crimes against humanity. As of September 2008, only 33 have been convicted.”

—GASTÓN CHILLIER

emblematic cases, and also leads to a drain on resources, energy and enthusiasm.

Some measures were later taken to address this. The Attorney General’s office created a special unit for coordinating cases which has had a positive impact. (The Supreme Court ultimately did the same.) However, problems persist in areas such as providing protection to witnesses – both in terms of guaranteeing their physical security and in identifying the groups operating to prevent the judicial processes from advancing – and providing an opportunity for judges to discuss problems encountered and judicial remedies for trying cases of crimes against humanity.

A related problem is the slow pace of the judicial processes. Few cases have concluded to date and there are few convictions. Of particular concern, as was evident in the statistics provided, many of the accused are now dead, either from natural causes or suicide, and there are a handful of cases of accused being assassinated or committing suicide. A related problem is that of victims dying, again because the cases are taking so long.

Chillier concluded that despite these obstacles, the overall panorama remains favorable. Twenty years after the amnesty laws were passed, cases are again moving forward in the courts and some sentences have been handed down. In contrast to Peru, there is a clear consensus among Argentine civil society and political sectors in favor of the prosecutions; nobody is questioning that the trials should go forward. Yet there is still the need to accelerate the trials process and obtain more sentences, which will enhance the legitimacy and credibility of the process. Finally, the challenge today is to use the process underway to promote meaningful judicial, security sector and intelligence reforms, and to strengthen the rule of law in general. The ultimate objective is to construct a democratic state in which there is respect for human rights, allowing for an adequate response to the past and

ensuring that respect for human rights is guaranteed in the future.

The next speaker, **Naomi Roht-Arriaza**,²⁶ began with an explanation of the “inside-outside” approach, which she defined as the different ways in which multiple kinds of pressure – legal, political, media and NGO strategies – that take place inside a country are then complemented by those that take place outside. Such processes have become more varied and complex over time. One example discussed in previous panels is the work of the IACHR, which by pushing from the outside can open up space internally to have an impact on the inside.

Before turning to Guatemala, Roht-Arriaza gave an example from Haiti, which tends to get little attention in this kind of discussion on Latin America. A massacre in Raboteau in the early 1990s led to a trial in Haiti that resulted in criminal convictions of about 40 defendants, 35 of whom were tried *in absentia*, and the awarding of several hundred million dollars in damages. One of those convicted was in hiding in Florida, when he had the terrible luck of winning the Florida state lottery and hence was shown on television holding a giant check. Some of the victims saw him and went to the Center for Justice and Accountability (CJA), which filed a suit under the Alien Tort Statute and simultaneously filed a motion before a Miami court to have the decision in the Haitian court validated in the United States, which ultimately was successful. Approximately 400 massacre victims received a substantial portion of the lottery winnings – an interesting example of a successful inside-outside strategy.

Turning to Guatemala, Roht-Arriaza stated that this was a harder case than probably any other in Latin America. The scale of the atrocities was unparalleled in Latin America, with 200,000 killed,

26. A Professor at the University of California Hastings College of the Law, Naomi Roht-Arriaza is the author of *The Pinochet Effect: Transnational Justice in the Age of Human Rights*.

40,000 disappeared and over 400 villages wiped off the face of the earth. The vast majority of the victims were Mayan peasants and a dossier has been compiled built on the work of the Guatemalan truth commission that provides a credible case for genocide. In addition, many former military and government officials have become involved in organized crime networks, which share a common agenda with former military officials to impede the work of the justice sector, which is basically dysfunctional. Not only does impunity continue, but there is also still a climate of intimidation: People are still picked up and killed or disappeared, though not on the same scale as before and without clear indications of state involvement. The few trials that have gone forward in Guatemala were long, difficult exercises that often ended with convictions overturned or the mysterious release from jail of the convicted. For its part, the prosecutor's office has never investigated the charges of genocide. In short, it is a very difficult place for doing this kind of work.

Given this situation and seeing the examples of the Chilean and Argentine cases in the Spanish courts, Rigoberta Menchú went to Spain in 1999 to seek justice. The complaint brought before the Spanish *Audiencia Nacional* alleged genocide, torture, terrorism, summary execution and unlawful detention perpetrated against Guatemala's Mayan indigenous population and their supporters during the 1970s and 1980s. Among the events underlying the complaint was the massacre of Menchú's father and 35 others in the 1980 firebombing of the Spanish embassy.

Between 1999 and 2005, the case wound its way through the Spanish courts on jurisdictional questions. Finally, in 2005, The Spanish Constitutional Court determined that when Spanish law talked about universal jurisdiction, it meant universal – no other ties to nationality or national interest were necessary. This allowed the full genocide case to go forward. CJA pulled together a legal team

that reflected the inside-outside strategy and lawyers from Guatemala, Spain, the United States and The Hague began working on different aspects of the case. They had two major tasks: 1) To prove genocide; and 2) To get the defendants extradited, as in the Spanish court system the defendant must be present for the trial. Those sought were the former leaders of the country, who were living openly in Guatemala; one was president of the congress, former General José Efraín Ríos Montt, who headed the military regime in 1982 and 1983. It was a breathtakingly ambitious task.

In July 2006, the Spanish judge went to Guatemala to take the depositions of the defendants, all of whom refused to testify and filed writs of *amparo*, claiming that testifying would violate their constitutional rights. The judge took testimonies from victims and representatives of victims groups, returned to Spain, and issued arrest warrants and eventually extradition requests for seven former members of the police and of the armed forces high command on charges of genocide, torture, extra-judicial executions and enforced disappearances. However, the arrest warrants had to be carried out by the Guatemalan police, which meant that a warrant had to be issued by a Guatemalan judge. What began as a case of universal jurisdiction evolved into a very local Guatemalan case. Surprisingly, the legal team was successful in arguing for universal jurisdiction, and in November 2006 a panel of Guatemalan judges issued arrest warrants for four of the seven accused.

This led to a full year of going back and forth in the Guatemalan courts, with writs of *amparo* being filed left and right. Although an appeal court ruled at one point that the arrest warrants were valid under Guatemalan law and met the requirements of the 1895 extradition treaty, on December 12, 2007, the Constitutional Court ruled that they were invalid and hence the defendants could not be extradited for three reasons:

“The scale of the atrocities in Guatemala was unparalleled in Latin America, with 200,000 killed, 40,000 disappeared and over 400 villages wiped off the face of the earth.”

—NAOMI ROHT-ARRIAZA

- Universal jurisdiction is not valid in a national court, but only in an international tribunal;
- Guatemala does not allow the extradition of nationals (though this is not actually true); and
- Extradition is not allowed because the crimes they are accused of are political and there is no extradition for political crimes.

In fact, the genocide convention and other treaties clearly state that charges of genocide cannot be treated as political.

Nonetheless, the Spanish judge then invited people to testify and all this year (2008), group after group of witnesses has gone to Spain to provide information. Equally importantly, this past April, a Guatemalan judge, José Eduardo Cojulún, determined that despite the Constitutional Court’s ruling, the request for judicial cooperation was still pending and he invited those listed as witnesses in the case to testify before the court, in proceedings which were televised – an unprecedented occurrence in Guatemala. The testimonies were bundled and sent to Spain, and even more amazingly, this courageous judge (who has received death threats as a result) turned over the evidence to the prosecutor’s office, stating that there was sufficient evidence of a crime to merit an investigation.

Roht-Arriaza concluded that while it is far from clear what will happen either in the Spanish or Guatemalan courts, the case is continuing to create new dynamics within Guatemala. It shows that even under the most adverse circumstances, the combination of using outside pressures to deliberately try to catalyze or move forward processes internally can have effects – often unexpected ones. These processes can also impact on lawyers and judges as they become more engaged and familiar with international law. Finally, Roht-Arriaza lamented that regardless of where the trial is taking place, the courts face the same problem of physically

obtaining the presence of the defendants; this is a serious limitation as to how far the proceedings can go. However, in the case of Guatemala, even without a full oral trial, the process is still useful in creating a detailed historical record, working with victims’ groups and lawyers, and keeping the issue on the agenda.

Cath Collins²⁷ began her presentation on the situation of human rights trials in post-Pinochet Chile by showing a series of images of the renaissance of justice activity in Chile since October 16, 1998, the day of the dramatic arrest of Pinochet in London ten years ago. This went hand-in-hand with a revival of vocal and fairly successful pressure to reopen human rights cases after an 8-year transition when the issue seemed on hold or permanently buried by a combination of political paralysis and amnesty. Pinochet’s arrest was not necessarily the cause of this revival, but it was obviously a major development that symbolized change and it accelerated the developments underway.

Between Pinochet’s arrest in October 1998 and his return to Chile in March 2000, more than 300 new criminal complaints for crimes against humanity and other human rights atrocities were filed. This was in part a response to the government’s strategy with regard to Pinochet’s arrest, which was to do what was necessary to bring him home, giving assurances that he would be tried domestically. Human rights lawyers therefore made sure that many cases would be waiting for him upon his return.

Collins referred to the “Garzón effect,” which prompted more action by the Chilean judiciary. From 2001, special judges were designated for all human rights cases. That accelerated investigations, and they increasingly

27. Cath Collins is a professor at the Universidad Diego Portales in Santiago, Chile and is author of the forthcoming book, *Post-Transitional Justice: Legal Strategies and Human Rights Trials in Chile and El Salvador*.

respected international law principles in their rulings. Pinochet extracted himself from London only to come home to face Juan Guzmán, the Chilean version of the Spanish super-judge (Baltasar Garzón). The 2004 Riggs Bank corruption scandal added to Pinochet's troubles. By the time of his death, Pinochet was actively processed²⁸ in at least two human rights cases, had seen charges in two more suspended for health reasons, and was under investigation for dozens more, including a tax fraud and corruption case.

As a result of the newly reinvigorated judicial process, as of August 2008, 686 former Chilean state agents were either charged or processed for human rights crimes. Of these, 245 have already been sentenced, including Manuel Contreras, former head of the Chilean secret police and responsible for the killing of Orlando Letelier and Ronnie Moffit in Washington, D.C. He is the star convict to date in this rogue's gallery, with many cases still pending against him and at least 300 years in sentences already piled up. Open cases now cover 1,138 victims of extrajudicial executions or disappearances, plus a smaller but growing number of torture and other survivor cases.

Collins then listed the positive tendencies underway since 1998. The first positive tendency, as just described, is the bigger case universe. Second, the cases are moving up the ranks. Although many of those accused are now retired, and military personnel who are processed in a case are now immediately sent into retirement, former officers who previously held higher and higher ranks are now being prosecuted. Two-hundred and sixty-five of the 686 agents currently processed or already sentenced are former officers, including 39 retired generals. Collins also noted that the ranks of the accused have also broadened to include civilian collaborators, which worries

28. In the Chilean legal system, the stage of a case being "processed" usually precedes the filing of formal charges.



Villa Grimaldi, a former clandestine detention center, now a Park for Peace. Taken on September 11, 2008, anniversary of the 1973 coup. (Courtesy Cath Collins)

sectors of the political right. In addition, there is a broader range of crimes now under investigation, such as illegal burial, execution and torture – these were not even recognized as crimes that could be prosecuted before. Finally, although the 1978 self-amnesty law is still in force, Chilean judges are no longer applying it in cases of crimes against humanity.

Another important impact of the surge in justice activity was belated recognition in 2003 and 2004 on the part of the armed forces of their institutional responsibility for the crimes committed during the military dictatorship. In addition, Collins described a trend of "demand inflation." New groups and, for the first time, survivor groups were formed and have had a new-found visibility, which was a key factor in the expansion of the range of crimes investigated. Although the impact in terms of social change is harder to measure, perceptions and images of both Pinochet and Allende have changed. In 2003, on the thirtieth anniversary of the coup, for the first time the government made a visible effort to rehabilitate the figure of Allende at the expense of a marginalized and officially discredited Pinochet. A statue of Allende has stood in front of La Moneda, the presidential

"The dramatic arrest of Pinochet in London in 1998 went hand-in-hand with a revival of domestic pressure to reopen human rights cases."

—CATH COLLINS



Downtown demonstration in Santiago on December 12, 2006, the day of Pinochet's funeral. (Courtesy Cath Collins)

law can be easily reversed, as in the Chilean legal system such international jurisprudence is not binding. The applicability of the Geneva Conventions to the post-1973 “internal war” situation is still disputed, and torture cases cannot be tried as such, as the specific crime of torture does not exist in the Chilean penal code.

Collins also described a growing sense of weariness with the human right trials on the part of the human rights groups, survivors, judges and public opinion. Local groups have yet to develop a good strategy for keeping the momentum moving forward. Similarly, even though the Bachelet government is considered more open to these issues, the state's attitude is often contradictory and ambiguous.

The state has acted in favor of some emblematic criminal prosecutions, but has denied civil liability in the same cases. Human rights is still seen in Chile as an ideological and partisan issue. Right-wing political forces have already said that they will not sign or ratify any more human rights treaties or instruments. Rather than being 100 percent defeated, there is a sense of a *Pinochetismo* in waiting. Residual military and right-wing political power continues to limit what can be achieved. For many Chileans, Pinochet's legacy remains intact and the symbolic gains described previously could potentially be reversed with a change of government.

In conclusion, Collins elaborated lessons learned that can be drawn from the Chilean experience:

- Absent compelling political interests, post-transitional justice is motivated by civil society groups rather than states;
- International activity cannot trigger change unless minimal domestic conditions exist;

palace, since 2000, while Pinochet was refused a state funeral on his death in December 2006.

The progress made in Chile to date, however, is also characterized by serious limitations. The actual number of cases covers less than one-half of the cohort of known victims of death or disappearance: There are no cases moving forward for a further 1,960 officially recognized victims. As the present cases are concluded, it is unlikely that there will be another push to open more. This is not a problem if the trials are seen as a way to establish institutional responsibility and cumulative justice. It is a problem, however, in terms of the rights of victims. Many individuals and families will likely remain without any form of justice.

Serious legal limitations persist. The self-amnesty law is still fully intact and an amnesty “interpretive bill” – pending since 2006 in response to an Inter-American Court ruling – has not materialized. Recently, judges have handed down excessively lenient sentences. In addition, the advances in applying international

- Towards that end, paper trails and a legally literate human rights movement help enormously; and
- Even without political will, judicial change seems to be the key in allowing processes to move forward.

Collins argued for supporting documentation and legal action even in unpropitious circumstances, recognizing that “the boring stuff works,” particularly judicial reform; and from the international community, supporting these specific dimensions of the creation of national conditions for promoting justice.

The final panelist, **Ariela Peralta**,²⁹ focused on the situation of transitional justice in Uruguay. She began by noting that in contrast to the sophisticated strategies adopted by the Peruvian human rights groups with regards to the Fujimori trial and the “inside-outside” approach described by Roht-Arriaza, civil society and victims groups in Uruguay have had less success in advancing their cause. In part, this is because of the paradoxical situation in Uruguay. For the first time, the left won the presidential elections in 2004, garnering 50.7 percent of the vote in the first round, and took office in 2005. Yet, even though most of the victims were connected to the governing *Frente Amplio*, there is still insufficient visibility to human rights trials. While seeking to remain optimistic, Peralta pondered the questions as to why Uruguay does not put greater emphasis on truth and justice issues.

During the military dictatorship from 1973 to 1985, more than 200 people – almost all from the left – were disappeared. In 1985, the military dictatorship in Uruguay came to an end, but with an “Uruguayan style” pact in which all the parties sat down at the table and came to an agreement. The political parties (including the *Frente Amplio*) negotiated with the military and

29. Ariela Peralta is Deputy Director of the Center for Justice and International Law.

worked out plans for its peaceful departure from government. This included an unwritten pact ensuring total impunity. In December 1986, an amnesty law of sorts, formally called the Expiry Law,³⁰ was passed in which all police and military personnel responsible for human rights violations prior to March 1, 1985, were granted full impunity. The imposition of a statute of limitations on crimes before that date was used to ensure that no trials would go forward. Although the law allowed for administrative investigations into the disappearances, these were entrusted to military prosecutors and quickly archived. In practice, the 1986 law prevented both truth and justice.

Popular opposition to the Expiry Law led to a campaign to hold a referendum on it. A wide coalition came together including human rights groups, organizations of *familiares*, students, workers and others. Although sufficient signatures were collected and a national referendum took place in April 1989, the law was upheld. Fifty-four percent voted to maintain the law, while 42 percent voted against it. This was in part because the law’s supporters – including the traditional political parties – launched an intimidation campaign, generating fear of military reprisals if the law was overturned. The idea that the pact needed to be maintained in order to ensure democracy and peace in Uruguay was used extraordinarily well to uphold the Expiry law and guarantee impunity.

During the dictatorship, human rights groups and *familiares* presented many complaints and cases before the United Nations and before the IACHR, which released various reports on Uruguay over the course of the 1970s and 1980s. In 1992, the IACHR concluded that the Expiry Law violated numerous articles of the American Convention on Human Rights. While it had to tread carefully at that time in criticizing national legislation, it recommended that the Uruguayan

30. *Ley de Caducidad de la Pretensión Punitiva del Estado*.

government investigate and clarify the facts of what happened and identify those responsible. Many years later, a UN report came to the same conclusion.

The human rights movement was paralyzed following the 1989 referendum. Although human rights groups and organizations of *familiares* continued to carry out some activities in search of truth and justice, these had little impact. This situation was compounded by the fear already felt by many of the *familiares* that any step perceived as going backwards from the agreements already reached would further isolate them from society.

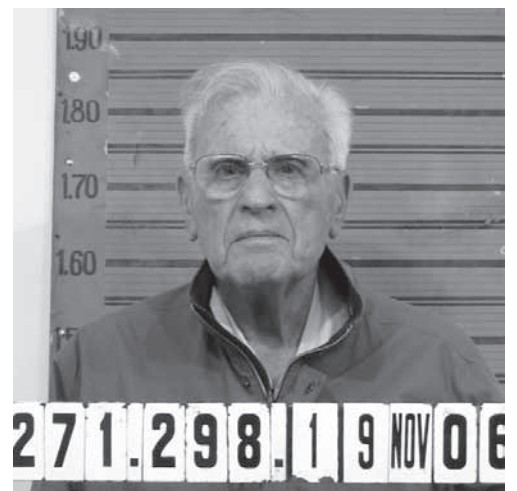
When the new government led by Tabaré Vázquez Rosas took office, officials said that they would maintain the 1986 law. However, the government did commit to use its executive powers to open up official archives to allow for investigations into the disappearances and to use a loophole in the Expiry law to pursue cases. The law establishes that a judge must first ask the Executive if a case presented before it is covered by it. Whereas previous governments almost always said yes resulting in the case being archived, the Vázquez Rosas government almost always says no, allowing the cases to go forward.

In addition, a handful of human rights lawyers along with *familiares*, human rights defenders, non-governmental organizations and the national union are seeking out and pushing for trials in cases that may be exempt from the Expiry Law. Three tactics have been adopted. The first is to take advantage of extra-territoriality, as the law does not necessarily cover cases that were committed outside of Uruguay. A second tactic is to carry out investigations despite the law; to investigate and investigate and see what opportunities arise in the future, or to present cases of crimes that were committed before the March 1, 1973, *coup d'état* supported by former president Juan María Bordaberry, who had taken office after rigged elections in 1971. A third approach is to pursue cases against civilians, as the law only

applies to military and police officials. In addition, a new interpretation of the law now accepted by some judges is that it only applies to subordinates, not the military high command. Presently, about twenty cases are going forward of which three involve prosecutions of former high-level officials: former president Bordaberry, charged as co-author of ten homicides; Juan Carlos Blanco, his Interior Minister; and General Gregorio Álvarez, who ruled for several years during Uruguay's military dictatorship and who has been charged as co-author of the enforced disappearance of more than 30 people.

The trials represent new forms of determining penal responsibility, but they are further complicated by lack of clear jurisprudence. In general, the justice sector in Uruguay has taken a cautious, rigid, and more conservative approach and has not taken good advantage of international jurisprudence. Although a few good judges and prosecutors are doing what they can under the circumstances, the investigations and trials are moving very slowly.

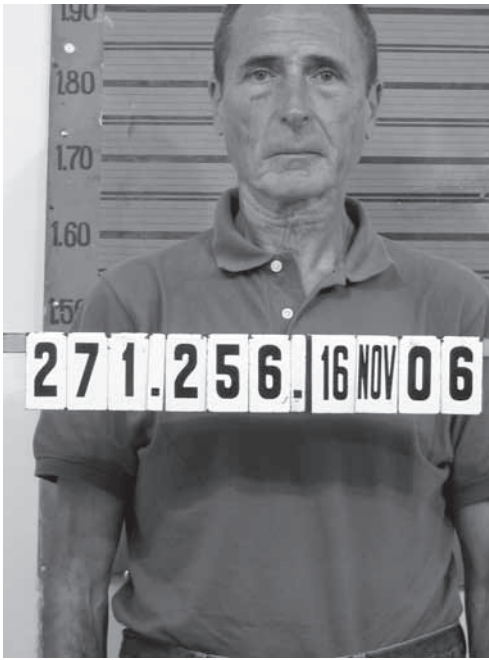
Finally, Peralta noted that a committee was formed and is gathering signatures for another referendum on the Expiry law which would allow for a constitutional reform that would ultimately overturn the law. Although fear of rocking the boat



Mug shot of former Uruguayan dictator Juan María Bordaberry taken shortly after his arrest in November 2006 for human rights violations committed during his rule in the early 1970s. (Courtesy Poder Judicial del Uruguay)

“Though justice has moved more slowly in Uruguay, today, about 20 trials for human rights violations are underway. Three of these involve high-level state officials: former president Juan María Bordaberry; Juan Carlos Blanco, his Interior Minister; and General Gregorio Álvarez, a military dictator during the 1970s.”

—ARIELA PERALTA



Former Minister of foreign relations of Uruguay, Carlos Blanco, after his arrest on human rights charges. (Courtesy Poder Judicial de Uruguay)

remains entrenched, others argue that Uruguay is in a new epoch, with a new government, and must move forward. Although the government should see this as a major responsibility, it has not taken up the banner of a referendum. Yet as long as the amnesty law remains on the books it will be a significant political trap (apart from the fact that it is in violation of international human rights agreements). If tomorrow the government changes, efforts to promote truth and justice could cease. In short, many obstacles remain for Uruguay as it slowly pursues a transitional justice agenda.

As the third panel ran late, time for **comments and questions** was extremely limited. Two key issues emerged: access to government records in Argentina and Chile and the use of universal jurisdiction in human rights-related cases. With regard to the first, Chillier explained that some archives of the Argentine dictatorship were opened up, but access was not guaranteed. In addition, a judge has to request a document; otherwise no information pertinent to the case is shared. Thus, there is still a need for the Argentine government to systematize

access to information. In the case of Chile, according to Collins, the armed forces claim that they have no files. The documentation that is available is that collected by the two truth commissions. The Rettig Commission documentation is based on the information provided by human rights groups. In the case of the second commission, which focused on torture and political imprisonment, there is a 50-year embargo on the documents and testimony provided to it. However, individuals can go forward and make their testimonies public if they wish, and many of them have done so.

With regard to universal jurisdiction, Chillier pointed out that the cases involving Argentina that went forward in Switzerland, Germany and Italy (in which people were convicted *in absentia*) were very significant in pressuring for action to be taken at the national level. The choice became extradition or national trials. Roht-Arriaza answered a question regarding efforts to use universal jurisdiction in order to open cases against U.S. officials in foreign courts. Though there are numerous examples, she cited two prominent efforts:

- Charges were eventually dismissed in Germany against former U.S. Defense Secretary Donald Rumsfeld and other high-ranking Defense Department officials for the Abu Ghraib case. The German court ruled that U.S. courts were perfectly capable of investigating and trying these cases, so there was no need for subsidiary jurisdiction; and
- In France, the Fédération Internationale des Droits de l'Homme (FIDH) filed a complaint against Rumsfeld that was also dismissed on the grounds that he has immunity as a former high-ranking minister (though this is not necessarily a sound legal argument).

Roht-Arriaza pointed out that once the Bush administration leaves office, these kinds of efforts will likely increase. There

is no statute of limitation on crimes against humanity; it will depend on the willingness of courts to take up these cases. However, the problem will continue to be the ability to obtain the physical presence of defendants in trials in other countries.

Finally, Roht-Arraiza brought up another case from Peru. Juan Rivera Rondón was the commanding army officer in the Accomarca massacre, in which an estimated 60 peasants were killed in a rural village in March 1985. After he was found to be residing in the United States, the CJA filed a civil suit against him under the Alien Tort Statute. When he became known to U.S. authorities, he was ultimately deported due to visa fraud. Once it became clear that he would be deported, the CJA began working with the Peruvian prosecutors so that upon his return, charges were immediately filed against him in Peru. Both the criminal case in Peru (using the evidence collected in the United States) and the civil case in the United States are on-going. This is another excellent example of the “inside-outside” strategy.

PANEL IV:

Implications for U.S. Policy, Global Justice, and Democracy

Joy Olson³¹ moderated the final panel of the day and got it off to a quick start. The first speaker was **Juan Méndez**,³² who began by noting that Peru’s contributions to justice, at home and abroad, are not limited to the trial of Alberto Fujimori. The work of the Truth and Reconciliation Commission stands out as a major example of a society coming to grips with its legacy of human rights violations through a fair, honest, transparent process that forces a reckoning with the root causes of the tragic violence of the 1980s and 1990s. The work of the commission led to Peru becoming an example of providing reparations to the victims of human rights abuse and to the human rights trials underway today.

Another way in which Peru is an example worth emulating is in the state’s disposition to support the Inter-American system of human rights protection, and to comply with its decisions and rulings applicable to Peru. During the government of Valentín Paniagua, Peru entered into friendly settlement procedures with the petitioners on all of the cases then pending before the IACHR and also restated Peru’s acceptance of the contentious jurisdiction of the Inter-American Court of Human Rights. (Méndez pointed out that he was a Member of the IACHR at that time.) It would be a major setback for Peru’s standing in the Americas if the current government were to heed the ill-advised voices in the country that are again calling for a withdrawal from the system. Méndez concluded that Peru is not yet at a stage in which it can be said that commitment to human rights and to accountability for

31. Joy Olson is Executive Director of the Washington Office on Latin America.

32. Juan Méndez is President of the International Center for Transitional Justice and is a former UN special adviser on the prevention of genocide.



President of the International Center for Transitional Justice Juan Méndez speaks at international symposium. (Courtesy Tristan Golas)

their violation is a “state policy,” adhered to and supported by all political parties and sectors of society.

Méndez then turned to assessing the trial itself. Success should not be measured by whether or not Fujimori is found guilty, but by whether such a complex and politically charged trial can be conducted in full compliance with the highest standards of due process and fair trial guarantees, and at the same time reach a convincing and undeniable statement of the relevant facts.

As noted in the morning, it is definitely unprecedented that the defendant on trial is a former elected head of state. The other examples in Latin America – Videla in Argentina, Bordaberry in Uruguay, and Pinochet in Chile – were all dictators who grabbed power in *coups d'état*, whereas Fujimori exercised power dictatorially but initially arrived at the presidency through fair elections. In that sense, Fujimori’s trial should be compared at the international level to those of Charles Taylor, Slobodan Milosevic and Omar Al-Bashir. The difference, however, is

that all of these cases are being tried by internationally constituted courts, whereas in Peru, the state is trying to live up to its own obligations. It is important for the international community to support such efforts.

A judgment on the trial must wait until there is a final decision and every aspect of the case can be fully appreciated. However, the trial has gone on now for ten months and up until now it is clear that the Supreme Court tribunal hearing the Fujimori case is scrupulously organizing the proceedings so as to respect the rights of the defendant to a fair trial, while at the same time allowing participation by the victims under their own right of access to justice. In that sense, this is already a lesson to the world.

Méndez then turned to some specific aspects of the legal case itself, noting that it is important to understand that this is a difficult case – not because of Peru, but because it is a “system crime,” in which the accused was not necessarily at the scene of the crime, and courts in Latin America are generally not set up to deal with these. Given what we know about the

“Fujimori’s trial should be compared at the international level to those of Charles Taylor, Slobodan Milosevic and Omar Al-Bashir. Each of these cases is being tried by internationally constituted courts, whereas in Peru, the state is trying to live up to its obligations.”

—JUAN MÉNDEZ

evidence that has been presented, there are many ways by which the court can assess that evidence and determine criminal liability. Those doctrines of liability can be summarized as follows.

Someone can be clearly responsible for a crime by planning it. The act of planning by itself, without any other action or omission is sufficient to determine individual criminal liability.

Commission is the direct perpetration of the crime or the omission of an action that is required, in other words when you are legally mandated to act and you do not. In determining who the perpetrators are, the Rome Statute adopts the concept of “control over the event.” Authors include all persons who, even if they are physically removed from the crime scene, control or mastermind its commission. There can also be a joint control shared by several persons when the contribution of each one is essential to the commission of the act. The Rome Statute also contemplates perpetration through an organized power apparatus.

A third possibility is ordering, inducing and instigating a crime. This principle had already been accepted in the Nuremberg judgments with regards to persons who had ordered atrocities against civilians or had approved measures that resulted in those atrocities. It is not necessary for the order to be in writing or for it to be directly transmitted to the direct perpetrator.

Another form of liability is command responsibility. Though this is most often applied to the military, in certain circumstances, it can also be applied to civilians because what matters is not the hierarchical position in the chain of command, but the effective control over the actions of those who perpetrate the crimes. Three requirements are necessary to establish the command responsibility: 1) A relationship of subordination between the defendant and the perpetrator of the crime; 2) The superior must have

known – or should have known – that the subordinate committed or was about to commit the crime; and 3) The superior failed to adopt the necessary and reasonable measures to prevent the acts of the subordinate or to punish the crime.

Méndez noted that he and his colleagues have closely observed the trial. “On my own visits to Lima,” recounted Méndez, “I was struck by how the media and the public tended to react to each session with the impatience of one who expects a testimonial revelation that will operate as a ‘smoking gun’ establishing Fujimori’s guilt beyond the need of anything further.” It is regrettable that the commentary over the trial is reduced to quite pedestrian matters and that – with some honorable exceptions – the trial is reported as a television court room drama, with little attention to the admirable efforts to uphold the rule of law and due process that the court is engaged in, to the tragic nature of the events unfolding in court, or to the suffering of victims whose plight has been ignored for far too long.

As with other transcendental judgments on accountability for mass atrocities, some will expect the verdict to settle the differences between conflicting interpretations of recent Peruvian history. In Méndez’s view, the final decision should not be expected to do that. Whether Alberto Fujimori is ultimately found personally responsible for the commission of crimes, these proceedings will demonstrate some of those facts, the existence of which was denied or disguised at the time and sometimes even today.

As noted by Burt earlier, it is now undeniable that a clandestine group named Colina was organized within the state military and security apparatus; that the Colina group was created for the purpose of conducting “dirty war” methods against those perceived as undermining the authority of the state, and that those methods were to be denied or at least not attributed to the state. It is also clear that the victims of Barrios Altos and Cantuta

were killed when they were defenseless and vulnerable. Whether any one of them was responsible for crimes related to the insurgency is something that we will never know, because no attempt was made to investigate, prosecute and punish them under the law, as was the duty of government to do. Instead, the Colina group, acting under the inspiration and guidance of its masters, decided to apply a vigilante form of justice and eliminate them with extreme cruelty. It has also been extensively established that the government authorities who should have investigated these crimes chose instead to hide and deny them. In addition, when a few brave journalists and magistrates did their duty and started to pierce the veil of secrecy, the power of the state was used to interfere with judicial investigations and to enact legislation to ensure impunity and deniability. In that sense, concluded Méndez, the trial of Alberto Fujimori is already a success – one that would not have proceeded were it not for the exemplary role played by the Peruvian human rights movement and civil society.

The next panelist, **Eric Schwartz**,³³ addressed the issue of U.S. human rights policy, posing the question: How can a new U.S. administration help to create a climate that is conducive to the promotion of human rights and in fostering these principles?

He began by pointing out that the United States has dug a bit of a hole for itself. The world knows – and can even be charmed – by the idealism of U.S. citizens and their public officials; our belief in the perfectibility of mankind, and our can-do attitude. But especially in the case of Latin America, and even in the case of more liberal U.S. administrations of the past, the United States has suffered from arrogance and presumptuousness in its approaches

33. Presently Executive Director of Connect U.S. Fund, Eric Schwartz served as Special Assistant to the President and Senior Director for Multilateral and Humanitarian Affairs at the National Security Council during the Clinton Administration.



Santiago Martín Rivas, a major in the Peruvian Army and leader of the Colina Group death squad, testifies at the Fujimori trial. (Courtesy Poder Judicial del Perú)

toward human rights and democracy. The United States may indeed have much to offer the rest of the world, but if it is too full of itself, then its efforts to encourage the rule of law and democratic reform are liable to backfire.

If style were the only problem confronting U.S. overseas human rights policy in 2008, however, the country would be in much better shape than it is just now. The reason is simple: Much of the world has seen U.S. policy to promote democracy and human rights as regime change by another name – that is, a thinly veiled pretext for imposing the United States' will on the rest of the world. Even for friends of the United States who are more generous in their assessment of U.S. intentions, there is great concern that U.S. officials preach abroad principles and values that are not really practiced at home. Perhaps the biggest initial challenge U.S. policy makers will face is closing this credibility gap. Moreover, if U.S. officials attempt to do this, they must engage a set of new realities in 2008 as the ability of the United States to dictate world events has dramatically altered over the past eight years.

Noting he was paraphrasing the mission statement of his organization, the Connect U.S. Fund, Schwartz stated that the United States will only succeed, whatever the definition of success, if the U.S. government exercises power and influence

in a manner that is widely perceived as legitimate by friends, allies and other major stakeholders in the international community; if U.S. actions demonstrate foresight and responsibility to future generations; and if the United States emphasizes international cooperation. Schwartz then proposed a set of ten action items that could be initiated by a new president and that advocates might consider pressing a new president to take.

First, in his inaugural address, a new president must let the world know that the United States is affirming its respect for human rights, in general, as well as a commitment to practice at home what the United States preaches abroad: That we will not torture, and that we will not parse our terms – the practices condoned by the prior administration were abhorrent and will not be repeated. The new president could consider issuing an Executive Order to prohibit torture, and announce that he will close the facility at Guantanamo. A presidential declaration is very important because it sends a signal to the rest of the world and sets the tone for the new administration.

Second, expressions of presidential support for and solidarity with human rights activists in our hemisphere are critical. The United States must make clear that it strongly supports accountability and human rights trials underway in Peru and elsewhere. When civil society representatives – including victims of abuses – visit Washington, they should not only be seen on Capitol Hill, but also engage with the most senior Administration officials, which sends a powerful signal of support.

Third, the United States ought to support, financially and otherwise, institutions of accountability in Latin America. This could include efforts to promote compensation for victims of human rights abuses, to establish mechanisms to monitor prisoner mistreatment, and to bolster the effectiveness of ombudsman offices and national human rights commissions.

Fourth, the United States should be prepared to work with local and national officials in the hemisphere as necessary to provide information that may be useful for some of the prosecutions underway in the region. This may require declassification of material, which could be legislated through a human rights information act.

Fifth, beyond U.S. support for domestic human rights accountability, the United States should enhance its commitment to the regional human rights system. For example, the next president should recognize that if the United States can ratify the Inter-American Convention Against Terrorism less than three and a half years after its adoption by the OAS General Assembly, then it ought to be able to ratify the American Convention on Human Rights, some 40 years after its adoption and some 30 years after its signature by President Jimmy Carter.

Sixth, even before ratification of the American Convention on Human Rights, a new Administration should make clear its determination to work closely with regional human rights institutions, including the IACHR, sharing information and advice.

Seventh, a new Administration must state its determination to ensure that our foreign assistance to Latin America is not viewed exclusively, or even primarily, through the prism of the war on terror, counternarcotics or counterinsurgency. For one thing, by failing to promote more of a basic human needs and developmental approach, we miss opportunities to better the human condition in parts of the region. And, in the worst of cases, the United States risks becoming complicit in human rights abuses.

Eighth, a new Administration should commit itself to trying to ensure that attempts to extradite narcotics traffickers do not frustrate efforts either to hold such traffickers to account for human rights abuses in their own countries, or frustrate efforts to compel their testimony in human rights cases.

Ninth, the United States must not permit its support for domestic tribunals in Latin America or elsewhere to obscure the importance of a standing international tribunal such as the International Criminal Court to deal with gross abuses in circumstances where governments are unwilling or unable to act. It may be too much for a new U.S. administration to endorse ratification of the Rome Statute early in its term, but a change from the current U.S. approach and a new commitment to a “good neighbor” policy to this new institution should certainly not be too much of a stretch.

Lastly, working with Latin American friends and allies, the United States should be more actively engaged in promoting new norms related to human rights. Countries such as Argentina, Chile and Costa Rica have played an important role and the United States should look for opportunities to work with them on issues where the Bush Administration has really been missing in action, whether that is cluster munitions, land mines, the protection and compensation for civilian victims of conflict, or the responsibility to protect the rights of internally displaced persons (an issue that is of great concern in Colombia).

In conclusion, Schwartz noted that “it is an ambitious list – we have a lot of work to do, and these suggestions are probably only a start.” But, he stated, “it is a reasonable list, if our goal is to place the U.S. government and its people firmly on the side of the defenders of human rights in the hemisphere and throughout the world.”

Moving from the United States back to Latin America, the next panelist, **Ricardo Gil Lavedra**,³⁴ reflected on the evolution and role of transitional justice in the region, drawing from his experience as one of the members of the tribunal

34. Presently at the University of Buenos Aires Law School, Ricardo Gil Lavedra is a former member of the Argentine Supreme Court, former Minister of Justice, and member of the tribunal that prosecuted the military junta in 1985.



The courtroom in which Fujimori is being prosecuted. To Fujimori's right are lawyers representing the victims of human rights violations, Gloria Cano, Ronald Gamarra, Carlos Rivera, and Gustavo Campos (left to right). (Courtesy of Poder Judicial del Perú)

that prosecuted the military junta in Argentina in 1985. He began by asking: What is the impact of transitional justice processes in more general terms, in terms of supporting democracy and efforts to consolidate democracy? Gil Lavedra noted that he has “more doubts than certainties” as to the impact to date of human rights trials on democratic developments in Latin America, but before addressing that point he described the context in which these processes are taking place.

Democracy in Latin America today is paradoxical. On the one hand, the majority support a democratic form of government. Polls done by *Latinobarometro* show 65 percent support for democracy. Yet these polls also show that Latin Americans support a system that does not work for them, as lack of satisfaction with democracy runs very high. “We want democracy,” Gil Lavedra stated, “but we are not very satisfied with its results.” In addition, surveys of confidence levels show that political leaders and political parties are the least trusted; people have little confidence in them. With regard to attitudes about citizenship, the importance of voting ranks first and respect for the law second; yet the latter is one of the greatest deficits in the region.

“Even for friends of the United States, there is great concern that U.S. officials preach abroad principles and values that are not really practiced at home.”

—ERIC SCHWARTZ



Argentine jurist Ricardo Gil Lavedra, a member of the tribunal that prosecuted the members of the military junta that ruled that country from 1976 to 1983, speaks at international symposium. (Courtesy Tristan Golas)

Other indicators are also disturbing. In the index of global competitiveness and in Transparency International's corruption rankings, Latin America fares very poorly. In short, Latin America suffers from a lack of respect for the law, institutional weaknesses, and lack of macroeconomic stability, among other traits. As a result of this democratic deficit, it is the most unequal and violent place on the planet, plagued with poverty and insecurity.

Gil Lavedra then turned to efforts to deal with massive human rights violations, in which several stages can be discerned. The first stage was the recuperation of democracy itself in the 1980s, when almost all dictatorships in the region came to an end. This was the stage of "democratic survival" and the first issues to be faced by the new governments were what to do with the dictatorship and the events of the past. A great number of variables had to be taken into account. Argentina was the first country to recover its democracy – dictatorships continued in Brazil, Chile, Uruguay and Paraguay – and transitional justice precedents did not exist (apart from very historic examples). Moreover, the international human rights system was still nascent, particularly with regards to the Inter-American system.

The Argentine response was a combination of ensuring survival (keeping the military in the barracks) while not denying certain basic democratic principles and the rights of victims. A truth commission was launched, but justice was limited to those in charge. Gil Lavedra stressed that in such transitions, when you still have those responsible for the repression in the armed forces and in society more broadly, the government has limited capacity to act. In Argentina's case, the trial of the military commanders was successful, but afterwards the armed forces responded forcibly, as Chillier described previously. Argentina then passed into the second stage of "the search for reconciliation" and a policy of "forgive and forget," which took on a very political connotation.

Other countries in the region responded differently perhaps, as Burt suggested previously, in response to the Argentine case. Prospects for investigations and trials were closed, and amnesties prevailed in Brazil, Uruguay and Chile. Then a new stage in responding to massive human rights violations emerged, which is best characterized as *paz pactada*, or agreements for peace with impunity. In Central America, civil wars came to an end but at the cost of impunity; the alternative was seen as continuing armed conflict. In these cases, truth was allowed but not justice. Perhaps the best example is South Africa, which had "conditioned amnesties," such that the truth commission heard testimonies of those who confessed to their crimes, but in exchange for immunity from prosecution.

Starting in the 1990s, however, a distinct phase in transitional justice processes was initiated. The international human rights system was consolidated. This came about for a variety of reasons. In response to the atrocities committed in the former Yugoslavia, the international community decided that trials were necessary. A tribunal was also set up for Rwanda, and the International Criminal Court came into being. In addition, the Inter-American human rights system began to operate

more vigorously and had much more impact within countries. The international system was taking great leaps forward. According to Gil Lavedra, a “dogma” was established which, stated simply, is that “crimes that are so grave that they offend the conscience of the community must always be tried.” Moreover, there should be no obstacles to such trials – no amnesties or pardons and the like. All States have the obligation to assume this responsibility: to investigate, establish the truth, prosecute and convict.

The influences of this new dogma impacted each country differently. Argentina was perhaps most notable. As described by Chillier, a strong movement for justice emerged, amnesty laws were overturned, and cases began to be re-opened. Tribunals and judges began to accept the doctrine of international human rights organs and treaties, and eventually these came to be accepted as obligatory. An amendment was approved that incorporated international human rights treaties into the nation’s constitution. In Chile, cases were initiated against Pinochet and others implicated in atrocities. The Inter-American system began to impact directly in countries, particularly with regard to Peru and the cases described previously.

This was not, however, only a result of international factors; internal factors influenced each country. First, repressive forces began losing political influence over time and many who were involved in previous military dictatorships began retiring. This gives civilian governments more space within which to act. Second, societies themselves became more aware of their rights. In such circumstances, the pending debt – the demands for truth and justice – at some point explodes and hence human rights trials are underway in various countries.

Gil Lavedra asserted that these trials are a necessary element of democratic consolidation. Perhaps most importantly, they allow for a basic requisite in any

society: equality before the law, which in turn allows society to break with impunity, promote accountability and empower society to repudiate crimes. In addition, in western societies, the law is a means of resolving conflict. When a sentence is handed down, a judge is not only absolving or convicting the defendant. He or she is acting in the name of the people. A conviction of a human rights violator represents society’s moral repudiation of what happened. It determines a certain truth and this has an enormous impact on society.

In conclusion, transitional justice is the civilized response to all of these questions. In a region with such enormous problems, as described at the beginning of the presentation, respect for the rule of law is primordial. It is the correct path for the construction of a more just society.

The final speaker of the day, **Ernesto de la Jara**,³⁵ returned to the issue of the Fujimori trial in Peru and the expectations of Peruvian society and the international community. According to de la Jara, all of the elements are there to win the trial: “We have the power of reason, the truth, justice, national legislation and well-developed international jurisprudence on our side and we are doing all that we can to win.” Nonetheless, much depends on what happens nationally and internationally. The support of the international community is very much needed and given that this is a human rights case, international actors have every right to demand respect for the law. The role of international observers to date has been very important, but they should also be present when the verdict is read and for the appeal process. Continued and greater international support is crucial, as while all seems to be going well now, the outcome is far from certain.

“Human rights trials are a necessary element of democratic consolidation. Perhaps most importantly, they allow for a basic requisite in any society: equality before the law, which is crucial to break with impunity.”

—RICARDO GIL LAVEDRA

35. Ernesto de la Jara is the Founding Director of the Instituto de Defensa Legal and is the Director of Consorcio Justicia Viva in Lima, Peru.

De la Jara then asked, “What would be a good result of this trial?” Of course, a conviction is the desired outcome, but the sentence must be proportional to the crime committed. Fujimori should not be convicted of crimes of omission, but of commission; the first would be a political victory for Fujimori. Moreover, it would be a weak sentence and easy to overturn on appeal. The sentence must be a significant one, and it needs to be a well substantiated and documented sentence.

Finally, the trial must obviously proceed with full due process guarantees, as is presently the case. Much has been said about this already and need not be repeated; however, there is an additional point that should be considered. Fujimori’s lawyers also say that the trial is impeccable, which means that they still believe that they have a good chance of a ruling in their favor.

This is not just a judicial battle. Rather, it is being carried out on three fronts in the judicial, political and media spheres. All three must be won or at least be competitive. What is Fujimori’s strategy in the judicial sphere? He has not tried to defend himself by saying that he defeated terrorism and unfortunately, some unintended consequences occurred. Instead, he has opted to deny everything, to say that he did not know of any of this, that he was dedicated to other things. He is banking on the judges deciding that there is insufficient proof – no weapon, no written order – to convict him. This may not be a sound strategy given international and national law, and everyone knew that he concentrated power and was involved in all aspects of government, so his rationale just does not hold up.

Much has already been said on existing international jurisprudence relevant to the Fujimori trial, so rather than repeating that, de la Jara focused on the evidence supporting a conviction that can be found in the international handling of the cases for which he is being prosecuted. Of particular significance is the extradition

from Chile itself. In previous cases involving Peruvians, Chile has refused extradition for lack of evidence; the fact that Fujimori was extradited indicates that the Chilean Supreme Court was convinced by the evidence of his guilt. In its ruling, the Chilean Supreme courts cites the decisions of the Inter-American Court of Human Rights and the evidence of *autoría mediata* – they concluded that there was clear evidence of the concentration of power in Fujimori’s hands, including over the armed forces, intelligence services and the Colina death squad.

In addition, various sentences in cases before the Inter-American Court of Human Rights bolster the prosecution’s case. While the Court establishes state responsibility, rather than attributing crimes directly to individuals, their rulings have linked Fujimori to the crimes committed. The Barrios Altos ruling specifically stated that during the Fujimori government systematic human rights violations occurred and that the government sought to foment impunity. In the Cantuta ruling, the Court stated that this atrocity could not have occurred without Fujimori’s knowledge and subsequent efforts to cover up what happened.

Apart from these two cases, there is also the Castro Castro prison case described previously. This case was not included in the extradition and hence Fujimori cannot be tried for it at this time (though it could be a possibility in the future); however, the judges can take into account the ruling. In this case, the Court determined that there was a pre-meditated attack on prisoners; in other words, a political decision was made to exterminate Shining Path prisoners. Finally, in numerous other rulings, the Court determined that components of the anti-terrorist legislation adopted after the April 1992 *autogolpe*, or self coup, violated the American Convention on Human Rights. In short, there are a series of Court rulings that bear directly on the issue of Fujimori’s responsibility for human rights violations.



Public Prosecutor José Peláez Bardales delivers his closing arguments at the Fujimori trial. (Courtesy Poder Judicial del Perú)

De la Jara then turned to the political realm. The accord between APRA and *Fujimorismo* described previously is part of larger alliance that includes the most powerful economic elites (known in Peru as the “elites of the elite”), important sectors of the military, a very conservative sector of the Catholic Church (Opus Dei), and a series of major communications media. While the overall economic situation in Peru has remained relatively stable, the political situation has deteriorated rapidly and is now characterized by an authoritarian and intolerant government. This is expressed in the direct support for Fujimori, such as the change in his prison conditions, the appointments to congressional committees given to Fujimori supporters, and a campaign against those who defend the victims of human rights violations, such as APRODEH, IDL and the Coordinadora Nacional de Derechos Humanos. The García government has used various means to attempt to restrict the work and role of the human rights groups.

Finally, the government is also encouraging the appointment of individuals who are sympathetic to Fujimori or APRA to key judicial posts.

For example, a new head of the Supreme Court will be chosen in December and that person will name the tribunal to hear Fujimori’s appeal. The government is quietly promoting a judge who lacks the desired qualifications and is critical of human rights cases and clearly sympathetic to Fujimori. It would be a serious setback if he were put at the helm of the Supreme Court.³⁶

With regard to the media, de la Jara pointed out that unfortunately a significant sector of the Peruvian media is biased toward the former president and his political allies. Three newspapers consistently offer unconditional support to the political alliance just described, operating in favor of Fujimori and waging a constant campaign against human rights groups, journalists and others who are promoting a fair trial and just sentence in the Fujimori case. Television channels are again negotiating with the government and constantly put forward three ideas in

36. In fact, in early December, Javier Villa Stein – who is accused of having close ties to the Fujimori forces and of involvement in the judicial corruption orchestrated by Montesinos in the 1990s – was elected Chief Justice of the Supreme Court.

“We have the power of reason, the truth, justice, national legislation and well-developed international jurisprudence on our side and we are doing all that we can to win.”

—ERNESTO DE LA JARA

Fujimori's defense: 1) There is no proof against Fujimori; 2) He was responsible for defeating terrorism; and 3) Those who are "persecuting" him are terrorists.

In conclusion, de la Jara reiterated the support needed from the international community to ensure a fair trial, the independence of the Peruvian judiciary, application of international jurisprudence, and respect for international treaties. This is not only relevant for Peru, but for the worldwide defense of human rights. It is a battle that national and international actors must wage together.

In the very short time left for **comments and questions**, the discussion returned to the role of the U.S. government. Méndez agreed with Schwartz that in order for the United States to play a positive role with respect to human rights, it must clean up its image of the last eight years, as it presently has no moral authority. He also underscored the urgent need to dismantle the repressive apparatus created and to get to the bottom of all that is still not known. There does not necessarily need to be a truth commission, but there does need to be a major effort to investigate – and this could serve the purpose of furthering the role of judicial investigations more broadly. Finally, Méndez pointed out that if the Bush administration ends its term in office with collective pardons, that would be as bad as the amnesty laws in Latin America being discussed in the conference.

Gil Lavedra added that for the United States to intervene on behalf of human rights, there needs to be an understanding that rights are universal and support for basic democratic values: liberty, access to information and respect for the rule of law. De la Jara pointed out that in Peru's case, in the past the U.S. government has played an important role in supporting the human rights groups and providing protection from threats. Perhaps a new administration will allow the United States to act on behalf of human rights again in the future.

Biographies of Participants

Jo-Marie Burt teaches political science at George Mason University. She is author of *Silencing Civil Society: Political Violence and the Authoritarian State in Peru* (Palgrave Macmillan, 2007), which will be published by the Institute of Peruvian Studies in Spanish in February 2009. She has attended over 20 sessions of the Fujimori trial as observer for WOLA. Dr. Burt has been a visiting lecturer and researcher at the Catholic University of Peru, and she was a researcher for the Peruvian Truth and Reconciliation Commission. She has published widely on human rights, state violence, as well as democracy and civil society in Latin America.

Gastón Chillier is Executive Director of Center of Legal and Social Studies (CELS). Dr. Chillier obtained his law degree from the University of Buenos Aires (UBA) and an LLM in International Law at the University of Notre Dame Law School. Previously, he was Senior Associate in Human Rights and Security at WOLA. He has taught courses on human rights at the University of Buenos Aires Law School, and has written widely on international human rights law and democracy.

Cath Collins teaches political science at the Universidad Diego Portales, Santiago de Chile. She is author of the forthcoming *Post-Transitional Justice: Legal Strategies And Human Rights Trials In Chile And El Salvador* (Penn State Press). Dr. Collins is a Research Associate at Trinity College Dublin, working on the exchange of experiences between Northern Ireland and Latin America in peace processes and transitional human rights settlements, and has lectured at the University of London, where she completed a doctorate in 2004.

Ernesto de la Jara Basombrío is a lawyer and one of the founding members of the Institute of Legal Defense (IDL). He is director of IDL's publication, *la revista ideéle*, and is Director of Justicia Viva, a collaborative project between IDL and the Law School at the Catholic University of Peru. Dr. de la Jara has provided legal counsel in major human rights cases. He is the author of many articles and publications, including: *Memoria y Batalla en nombre de los Inocentes: Perú 1992-2001* and *Ensayos sobre Justicia y Derechos Humanos*.

Ronald Gamarra Herrera is Executive Secretary of the National Coordinator for Human Rights and one of the lawyers representing the civil parties in the proceedings against former President Alberto Fujimori. Between 2001 and 2004, he served as Ad hoc Deputy Attorney General for corruption cases and human rights violations attributed to former president Alberto Fujimori and his principal adviser Vladimiro Montesinos and all those who were part of his criminal organization. From 1988-2000, he was the Director of the Justice Program at the Institute of Legal Defense. Dr. Gamarra writes a weekly column in the Lima daily *La República*.

Ricardo Gil Lavedra is a lawyer and professor at the University of Buenos Aires Law School. Dr. Gil Lavedra was a member of the Supreme Court tribunal that prosecuted the military junta that governed Argentina during the 1976-83 military dictatorship. He has served as Vice-Chairman of the United Nations Committee against Torture and ad-hoc Judge of the Inter-American Court of Human Rights. Dr. Gil Lavedra has served as Minister of Justice and Human Rights and Associate Supreme Court Justice, and as Judge of the Federal Chamber of Appeals of the City of Buenos Aires. He has published several articles in criminal and constitutional law and has lectured on criminal and constitutional law and human rights in Argentina and abroad.

Gustavo Gorriti is an award-winning journalist who writes a column for Peru's leading weekly magazine *Caretas*. He has published widely, including *The Washington Post*, *The New York Times*, *The Atlantic Monthly*; his 1990 book on the Shining Path insurgency was translated and published as *The Shining Path: a History of the Millenarian War in Peru* (University of North Carolina Press, 1999). Mr. Gorriti was arrested in the aftermath of Fujimori's 1992 coup d'état; after his release he left for Panama where he worked as editor at *La Prensa*. Gorriti's detention is one of the cases for which Fujimori was extradited to Peru and currently stands trial.

Peter Kornbluh is a senior analyst at the National Security Archive where he coordinates the Peru Documentation Project and directs the Chile

Documentation Project. He is the author of the *Pinochet File: A Declassified Dossier on Atrocity and Accountability* (The New Press, 2004). The Archive is a public interest research center specializing in declassified documents and freedom of information. The Peru Documentation Project supplied dozens of declassified U.S. records for use as evidence in the prosecution of Alberto Fujimori.

Viviana Krsticevic is the Executive Director of the Center for Justice and International Law (CEJIL). She has litigated numerous cases in defense of victims of human rights violations before both the Inter-American Commission and Court for the Protection of Human Rights. She is the author of many publications on international human rights and has taught at Stanford and American University. She received her law degree from the University of Buenos Aires in Argentina, a master's degree in Latin American studies from Stanford University, and an LLM from Harvard University.

Juan Méndez is President of the International Center for Transitional Justice. Between 2004 and 2007, Mr. Méndez was appointed the United Nations Special Adviser to the Secretary-General on the Prevention of Genocide, a post he held until 2007. He was as a member of the Inter-American Commission on Human Rights of the Organization of American States between 2000 and 2003, and served as its President in 2002. He has worked with other noted international human rights organizations, including Human Rights Watch, and has taught at numerous U.S. and international universities. Mr. Méndez has published widely on international human rights law, accountability, and impunity.

Gisela Ortiz Perea is Communications Director at the Peruvian Forensic Anthropology Team. She has been the spokesperson of the relatives of the victims of the Cantuta massacre since July 1992. On that date, her brother, Enrique Ortiz, along with eight other students and a university professor, was kidnapped from the Cantuta campus, and later murdered and disappeared by the Colina Group, a paramilitary organization operating during the Fujimori administration. She was twice awarded the National Prize for Human Rights, in 1993 and 2007, from Peru's Coordinadora Nacional de Derechos Humanos.

Ariela Peralta is the Deputy Director of the Center for Justice and International Law (CEJIL). Previously,

she was a human rights lawyer and Executive Secretary of Servicio Paz y Justicia, a non-profit organization that defends human rights in Montevideo, Uruguay. She has published numerous articles and book chapters on human rights, international law, and the inter-American system.

Naomi Roht-Arriaza is Professor of Law at the University of California Hastings College of the Law, where she teaches International Human Rights law. She is author, most recently, of *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (Penn State Press, 2005), and co-editor of *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (Cambridge University Press, 2006). She has been an expert witness in cases filed under the Alien Tort Statute, and a project adviser for the International Center on Transitional Justice. She has taught in the human rights programs of Oxford University, American University and the University of San Francisco, among others.

Eric Schwartz is the Executive Director of the Connect U.S. Fund, a multi-foundation collaborative that promotes responsible U.S. global engagement, and a visiting faculty member at Princeton University. Until early 2007, he served as Deputy to the United Nations Special Envoy for Tsunami Recovery, former President Bill Clinton. In addition to numerous other key advisory positions, from 1993 to 2001, he served at the National Security Council, ultimately as Senior Director and Special Assistant to the President for Multilateral and Humanitarian Affairs.

Francisco Soberón, a trained sociologist, is Founder and current Director of Institutional Projection of the Pro Human Rights Association (APRODEH). He was the Executive Secretary of the la Coordinadora Nacional de Derechos Humanos, a coalition of 63 human rights organizations throughout Peru, between 2002 and 2006. He served as a Vice President of the International Federation of Human Rights (FIDH), between 1997 and 2001 and is a member of International Directory of the Swedish Foundation for Human Rights, the International NGO Coalition for an International Criminal Court and current Chairman of the Red Científica Peruana. He and APRODEH have received numerous international awards for their human rights work.

MODERATORS AND OTHERS

Cynthia J. Arnson is director of the Latin American Program at the Woodrow Wilson International Center for Scholars. She has published widely; extensively, including the edited volume *Rethinking the Economics of War: The Intersection of Need, Creed, and Greed* (The Johns Hopkins University Press, 2005). Arnson has an M.A. and Ph.D. in international relations from The Johns Hopkins University School of Advanced International Studies.

Cynthia McClintock is Professor of Political Science and International Affairs at George Washington University and Director of GWU's Latin American and Hemispheric Studies Program. Dr. McClintock's has published widely on Peruvian politics; her most recent book (co-authored with Fabián Vallas) is *The United States and Peru: Cooperation--at a Cost* (Routledge, 2003 and Spanish edition, Instituto de Estudios Peruanos, 2005).

Joy Olson is Executive Director at WOLA. She is a Latin America human rights expert who has directed non-governmental human rights organizations for more than a decade. A published author in the Latin American human rights field, Ms. Olson completed her graduate studies at the National Autonomous University of Mexico.

Michael Shifter is vice president for policy and director of the Andean program at the Inter-American Dialogue. He teaches at Georgetown University's School of Foreign Service, and he writes and comments widely on U.S.-Latin American relations and hemispheric affairs. He is co-editor of *Constructing Democratic Governance in Latin America* (Johns Hopkins University Press, 2003). He has a Master's degree in sociology from Harvard University.

John M. Walsh is Senior Associate for the Andes and Drug Policy at WOLA. Previously, Mr. Walsh served as director of research at Drug Strategies, a policy research group that builds support for more pragmatic and effective approaches to U.S. drug problems (1995-2003). Mr. Walsh holds a masters degree in public policy from the Johns Hopkins University.

Coletta A. Youngers is an independent consultant, Senior Fellow at WOLA and Associate at the International Drug Policy Consortium. She is the author of *Violencia Política y Sociedad Civil en el Perú: Historia de la Coordinadora Nacional de Derechos Humanos* (Lima, Peru: Instituto de Estudios Peruanos, May 2003) and co-editor of *Drugs*

and *Democracy in Latin America: The Impact of U.S. Policy* (Boulder, Colorado: Lynne Rienner Publishers, 2004). She writes and speaks widely on human rights and political developments in the Andes and of U.S. foreign policy toward the region. Ms. Youngers directed WOLA's Drug Policy Project and was a Senior Associate at WOLA. She has a Masters in Public Affairs from the Woodrow Wilson School at Princeton University.

About the Organizations

Founded in 1972, **George Mason University** has become a major educational force and earned a reputation as an innovative, entrepreneurial institution that has gained national distinction in a range of academic fields. In its 2008 annual report of U.S. colleges, U.S. News & World Report ranks George Mason University first in its new list of 70 "up and coming schools." The **Center for Global Studies (CGS)** at George Mason University promotes multidisciplinary research on globalization and international affairs, and has over 100 faculty affiliates from across the social sciences and humanities.

The **Washington Office on Latin America (WOLA)** promotes human rights, democracy, and social and economic justice in Latin America and the Caribbean. WOLA facilitates dialogue between governmental and non-governmental actors, monitors the impact of policies and programs of governments and international organizations, and promotes alternatives through reporting, education, training and advocacy. Founded in 1974 by a coalition of civic and religious leaders, WOLA works closely with civil society organizations and government officials throughout the Americas.

The **Instituto de Defensa Legal (IDL)** is a nonprofit organization that was founded in 1983 and today is a leading institution of Peruvian civil society whose principal objective is to promote and defend human rights, peace, and democracy in Peru and Latin America. Its activities focus on monitoring government compliance with the recommendations of Peru's Truth and Reconciliation Commission, judicial and security sector reform, citizen security, and the promotion of transparency in government. IDL is a member of the Coordinadora Nacional de Derechos Humanos, Peru's umbrella human rights institution.

On December 10, 2007, former Peruvian president, Alberto Fujimori, went on trial for grave abuses of human rights committed during his rule from 1990 to 2000. Though there has been growing clamor internationally for the prosecution and punishment of state officials who commit or order the commission of grave violations of human rights, it is extremely rare for a domestic tribunal to try a former head of state—particularly an elected head of state—for such abuses.

The Fujimori trial is taking place at a time when hundreds of other trials of human rights cases are underway in Peru and elsewhere in Latin America, most notably Chile, Argentina and Uruguay. Through these human rights tribunals, important strides are being made in Latin America in the effort to combat impunity and promote justice, accountability and the rule of law.

The Center for Global Studies at George Mason University, the Washington Office on Latin America (WOLA) and the Lima-based Instituto de Defensa Legal (IDL) convened an international symposium to draw attention to these important developments. During the symposium, which took place in Washington, D.C. on October 2, 2008, fifteen distinguished speakers from Latin America and the United States evaluated the efforts of governments, human rights organizations and civil society groups more broadly, as well as international actors, to promote justice and accountability through the judicial process with a view to assessing their significance for efforts to end impunity and promote democracy and the rule of law. This rapporteur's report highlights the key debates and discussions raised during the symposium and is a key tool for evaluating the impact of human rights tribunals toward ending impunity and promoting truth, justice and reconciliation in Latin America.

Center for Global Studies
George Mason University
3401 Fairfax Dr MS 1B9
Arlington VA 22201