

INITIATIVE REPORT

**ROUND TABLE DISCUSSION ON GUATEMALAN INTELLIGENCE:
INTERNATIONAL PERSPECTIVES ON INTELLIGENCE REFORM
AND CREATING DEMOCRATIC CONTROLS**

GUATEMALA CITY, GUATEMALA
November 29 - December 2, 2000

From November 29 to December 2, 2000 the Project on Justice in Times of Transition of Harvard University jointly organized a *Round Table Discussion on Guatemalan Intelligence* with the Latin American Faculty of Social Sciences Guatemala. This event, which took place in Guatemala City, served as a follow-up program to the successful round table held at Harvard Law School from March 31 to April 2, 2000 during which four Guatemalan ministers and deputy ministers in charge of intelligence and security issues met with experts from around the world to gain practical knowledge about the roles of intelligence-gathering, formal rules and powers, and organizational systems of intelligence. This second round table discussion, which was developed at the request of Guatemalan policy-makers and civil society activists, brought together approximately 75 officials and private individuals who play an active role in the Guatemalan intelligence community with nine intelligence experts from around the world. The meeting focused on international perspectives about intelligence reform and creating democratic controls to monitor intelligence abuses.

The purpose of the three-day program was to provide international support for a previously-established, Guatemalan-run reform effort called *Towards a Security Policy for Democracy* and through the exchange of experiences of intelligence reform in Argentina, Canada, Spain, South Africa, Poland, and the United States provide additional momentum for the development of a coordinated, civilian intelligence structure in Guatemala. The ambitious agenda included presentations and discussions about systems and priorities for intelligence gathering in the current post-Cold War era, experiences of reform in both "modern" democracies and countries in transition, and various types of oversight essential for limiting

the powers of intelligence agencies. The topics for the conference were selected by a group of the Guatemalan participants to assist them in their efforts to develop the framework for a new intelligence law in Guatemala.

International Speakers

The international speakers who participated in the round table discussion were individuals with extensive knowledge about the structures and controls of intelligence agencies in their countries. While some individuals had professional experience working inside intelligence agencies, others had worked on internal security and intelligence issues in non-governmental organizations or as advisors to congressional committees on oversight. The wide array of experiences helped to enrich discussion and present many, often distinctive, perspectives to the Guatemalans. The following individuals made presentations and contributions to discussions during the program:

- **Sandy Africa**, General Manager of the South African Intelligence Academy, South Africa
- **César Balguerías**, Analyst of Political and Strategic Affairs for Latin America, Higher Center of Defense Information (CESID), Spain
- **James Dempsey**, Center for Democracy and Technology, United States
- **Philip Heymann**, James Barr Ames Professor of Law at Harvard University, former US Deputy Attorney General, United States
- **Kate Martin**, Director of the Center for National Security Studies, United States

- **Oliver Revell**, former Deputy Director of the Federal Bureau of Investigation, United States
- **Peter Russell**, Professor Emeritus, University of Toronto, Canada
- **Andrzej Rzeplinski**, Helsinki Foundation for Human Rights, Poland
- **José Manuel Ugarte**, Advisor to the Senate National Defense Commission, Argentina

Guatemalan Participants

Approximately 75 Guatemalans representing a wide range of affiliations and perspectives participated in the round table meeting. Twenty-three of these individuals were members of a working group on intelligence reform, one of the five working groups which form part of the *Towards a Security Policy for Democracy Project*, a program which is housed at the Latin American Faculty of Social Sciences (FLACSO) and supported by FLACSO, the War-Torn Societies Project, the United Nations Development Program, the United Nations Office for Project Services, and the Guatemalan Institute for Peace and Development.

This multi-sectoral intelligence working group is comprised of government officials (including representatives of the armed forces), civil society activists, and individual experts. Since October 1999, the group has met bi-weekly to research, discuss, and reach consensus on the outline of a new intelligence law which will include the various elements necessary for creating a coordinated, civilian intelligence structure that is reflective of the needs of a democratic society and the true threats to the Guatemalan state.

In addition to the members of the intelligence working group, over 50 additional individuals from relevant government institutions and non-governmental organizations were invited to participate in the round table. Representatives of the Secretariat of the Peace, the Secretariat of Administrative and Security Affairs for the President, the Ministry of Defense, and the Ministry of the Interior were active in the discussions. Civic

organizations with one or more representatives included: the Association for the Study and Promotion of Security and Democracy (SEDEM), the Central American Institute of Political Science (INCEP), the Latin American Faculty of Social Sciences, the Institute for Teaching Sustainable Development (IEPADES), the Center for National Economic Studies (CIEN), the Mirna Mack Foundation, and the Institute of Comparative Legal Studies in Guatemala (ICCPG). A number of representatives of foreign embassies and the United Nations Development Program also took part in the event.

Program Structure

The three-day program was divided into 10 working sessions, during which two or three international speakers gave 15-minute presentations. After each working session, a period of discussion ensued, when Guatemalan participants and international speakers were given an opportunity to comment on the issues raised and think about the given themes within the Guatemalan political context. The following panels, which focused on oversight and experiences of intelligence reform around the world, created the foundation for discussion and analysis during the round table:

- Intelligence in Today's World: Systems and Priorities
- Experiences of Reform in South Africa and Argentina
- Experiences of Reform in Spain and Poland
- Experiences of Reform in Canada and the United States
- Foundations of Control Over Intelligence Services in a Democratic Society
- Controls Over Secrecy
- Parliamentary Controls
- Internal Controls
- Judicial Controls
- Oversight by Civil Society

An additional working meeting on the third day provided an opportunity for discussion about the future of Guatemalan intelligence, and it allowed the international experts to comment on the Guatemalans' recommendations and suggest

specific modifications to their work. Lunches, coffee breaks, and cocktail receptions for the group provided ample time for Guatemalan and international participants to discuss topics raised in the sessions in greater detail, as well as to make contacts that could be useful to the Guatemalans in the future.

Written Materials on Intelligence Services

Under the direction of Professor Philip Heymann, the Project on Justice in Times of Transition compiled over 200 pages of documents on internal security reform and creating democratic controls. These materials were translated into Spanish and provided the Guatemalan participants with additional background on issues which would be raised during the meeting, as well as information to assist them in their work after the conference. The compilation included papers about experiences of reform and oversight mechanisms in Argentina, Canada, China, Great Britain, Germany, Russia, South Africa, and the United States. The Project plans to publish these materials and create a book which will be useful not only to the Guatemalans, but also to other countries in Latin America and elsewhere that are navigating similar transitions.

Briefing for International Participants: Background on Guatemalan Intelligence

A briefing meeting was held on the morning of Wednesday, November 29 to provide international speakers with background about the political situation in Guatemala, the challenges confronting the intelligence community, and the specific goals of the FLACSO intelligence working group. Although most speakers had prior knowledge about the intelligence reform process in Guatemala, this session provided additional information which was useful for ensuring that the international experts understood the intricacies of current Guatemalan politics, allowing them to make their presentations as relevant and helpful for the Guatemalans as possible.

Bernardo Arévalo de León, Director of the *Towards a Security Policy for Democracy Project*, provided the group with historical background about intelligence in Guatemala, beginning with the

1950s, when military intelligence first became the focus of state power in Guatemala. Throughout the 36-year civil war, army intelligence was regarded as instrumental in the development of counterinsurgency policy and the collection of information on Guatemalan citizens, which resulted in massacres, extrajudicial executions, disappearances, and torture. It was not until the 1996 Peace Accords that the military was mandated to discontinue its role in internal security matters and limit its powers to defending Guatemala's sovereignty and territorial integrity. The accords call for the creation of a Civilian Intelligence and Information Analysis Department within the Ministry of the Interior, a Strategic Analysis Secretariat with authority to inform and advise the president about potential threats to the state, and parliamentary and executive oversight.

Arévalo noted that Guatemala is currently at the very difficult stage of trying to implement the peace accords and is faced with the challenge of making the transition to a democracy, creating a new civilian intelligence apparatus, and reforming the armed forces. He added that the absence of a functioning judicial system to enforce the rule of law and structural impunity make these goals difficult to realize.

Manolo Vela and Iduvina Hernández, members of the intelligence working group, described the methodology, goals, and participants involved in their working group. They noted that the multi-sectoral participation, which brings together Guatemalans from both sides of the armed conflict, and the consensus-building process utilized in this project are ground-breaking for Guatemala. Through a process of investigation, analysis, and discussion, the group has already approved two documents which provide an analysis of state intelligence in Guatemala and lay out the general criteria for intelligence reform in Guatemala. All international experts who attended the seminar were given the English translation of these documents.

Opening Address

Bernardo Arévalo began the opening session with a welcome to all participants on behalf of FLACSO and the Project on Justice in Times of Transition of Harvard University. He explained

that the practical nature of the event, which would facilitate the sharing of experiences from around the world about intelligence reform, would help the Guatemalan intelligence working group to develop a new national security agenda and assist with the creation of a new law on intelligence.

Professor Philip Heymann of Harvard Law School also extended a warm welcome to the audience and congratulated the working group for its success in outlining the general framework for intelligence legislation and controls needed in Guatemala, as well as for its dedication to a multi-sectoral, consensus-building process. He noted there are common characteristics among internal intelligence agencies around the world, including a need for controls over secret, armed internal intelligence. According to Heymann, key questions for Guatemala to think about are what, if any, needs and threats justify the existence of intelligence agencies and how the state should control the internal security apparatus.

Ramiro Ordonez, Guatemalan Deputy Foreign Minister, stated that the *Towards a Security Policy for Democracy Project* and this three-day seminar were evidence of great progress in Guatemala. He stressed that support from the international community was essential for helping Guatemala accomplish its goals and that this seminar's focus on developing oversight and internal controls on intelligence would be very useful for the Guatemalans. Víctor Galvez Borrell, Director of FLACSO Guatemala, added that the comparative analysis of different intelligence structures would be an enormous asset to the intelligence working group.

Intelligence in Today's World: Systems and Priorities

Philip Heymann and Sandy Africa, General Manager of the South African Intelligence Academy, provided a basic framework for looking at the role of and need for intelligence agencies in the post-Cold War era, a period during which most countries have undergone a tremendous shift in priorities and a re-thinking of national security threats. Africa said that intelligence agencies continually have to assess and react to the world around them, and in the past 20 years these agencies have experienced many changes due to both the

external forces of global political change and technological development, as well as internal forces specific to each individual country. Because the world is becoming increasingly interconnected, the forging of alliances between countries has become essential. She noted that, although no two countries' experiences are completely parallel, many of the problems and challenges confronting intelligence agencies around the world are analogous. Thus, the sharing of experiences among countries, the focus of this seminar, is very useful.

Sandy Africa pointed to the lack of coordination between agencies of the same country as one of the universal problems of intelligence agencies. Rivalries often exist between agencies, which are unwilling to cooperate and share intelligence. In South Africa, coordinating mechanisms have been developed within the executive branch to ensure that tactical information is shared and training is carried out in a standard fashion. Based on her experiences in South Africa, she recommended that Guatemalan intelligence strive to be non-partisan, subject to the rule of law, accountable to civil society, and flexible and responsive to a changing political environment.

Philip Heymann called attention to the revolution of change in intelligence agencies around the world that has taken place in the past decade and pointed to a number of important factors which have instigated this change, including global power shifts, a new perception of dangers and threats, an absence of international military competition, a reduction of security threats in many areas, and an increased responsiveness to human rights issues and the promotion of democracy. Heymann noted that at the end of the Cold War, the US intelligence community was unsure about how to redefine their objectives or how to utilize their staff and resources. In recent years, there has been a decrease in the budget, a reduction of staff, and a development of new priorities and strategies to reflect a different set of threats and dangers. A sharper definition of the powers of intelligence agencies has also emerged, which is clearly outlined by statute. Greater legislative oversight, as well as the use of courts and judicial warrants, have helped to limit abuses by intelligence services around the world. As well, the success of NGOs in helping to pass legislation on access to information is evidence

of the powerful role of civil society in overseeing intelligence agencies.

During the discussion, Rachel Garst, Director of the Association for the Study and Promotion of Security and Democracy (SEDEM), raised an important issue that would be discussed at various times throughout the conference. Garst asked Heymann if, given the fact that Guatemala does not have to deal with the problems of espionage and terrorism, there was a need for an internal intelligence agency in Guatemala today. Heymann stated that he did not think there was a need for an internal intelligence agency in Guatemala. However, he said that if the decision about the country's future intelligence apparatus was left to those individuals currently in power, it was likely that justification would be made for maintaining internal intelligence structures. Threats such as narco-trafficking and organized crime would be called serious national security threats justifying one or more internal security agencies.

Africa added that South Africa was engaged in similar discussion about how to deal with internal security issues, and special prosecution units known as the Scorpions had been established to combat organized crime. These elite task forces with investigative capabilities were run by highly competent individuals, and they were respected and trusted by a public wary and distrustful of police forces. Africa added that Guatemala should consider developing an organization like the Scorpions.

Experiences of Reform in South Africa and Argentina

Sandy Africa, General Manager of the South African Intelligence Academy, and José Manuel Ugarte, Advisor to the Senate of Argentina, spoke about the challenges and accomplishments they witnessed in their countries during the period of transition from military to civilian intelligence services. Africa began the session by noting similarities between South Africa and Guatemala: both countries have had the majority of their population excluded and controlled by a small political elite, and both have been engaged in long struggles for political equality. She explained that the transformation of the intelligence apparatus took place at the end of apartheid, and she noted the

methods which were used to facilitate a successful transition as well as the key issues that were raised during the process.

The Transitional Executive Council was established in the interim period before the transition to a democratic government, and this body was comprised of members of both the liberation movement and the apartheid regime. Africa served on the council's subcommittee on intelligence, which developed a policy framework for the new, coordinated intelligence apparatus. During the subcommittee's discussions, it was emphasized that national security should respect South Africans as citizens and allow them to live free from fear; parliamentary oversight committees, under the leadership of an inspector general, should monitor the agencies; and coordinating mechanisms should exist to consolidate efforts and prevent competition among agencies.

Africa explained that, as in Guatemala, the most critical subject of debate in South Africa was how to deal with military intelligence structures. Prior to 1994, the military dominated many facets of life in South Africa, and military intelligence fought the "threats to the government," which were actually the oppressed victims of the apartheid regime. Despite some opposition, the role of the military was substantially reduced, and its function was redefined and limited to territorial protection.

Ugarte noted that Argentina also faced the challenge of dismantling a military intelligence structure which had held authoritative power since the military junta of 1975 and had exercised repressive tactics on all groups or individuals that were seen as opponents of the military regime. During the civilian administration of President Alfonsín, steps were taken to limit the power of the military and increase the role of the Civilian Secretary of State Intelligence, which had existed since 1948 without any real power or authority. The 1988 National Defense Law, which stated that the military could no longer interfere in domestic matters, was influential in beginning to regulate the activities of the intelligence community and restrict the previously unchecked powers of military intelligence.

He explained that a broad concept of national security and the failure to pass many bills which

have been submitted has made intelligence reform a tedious process in Latin America. Ugarte said that internal intelligence was no longer needed in countries like Guatemala and called for the creation of a joint military-civilian external intelligence agency with limited authority. He emphasized the importance of having a coordinating body to centralize intelligence collection and analysis. The National Intelligence Center was established in Argentina to coordinate the activities of the Argentine intelligence community. This national strategic body is comprised of delegates from the ministries of Defense, Interior, Foreign Affairs and Economy, as well as the chiefs of the intelligence agencies of the Armed and Security Forces, and it is presided over by the chief of the State Intelligence Agency (SIDE).

During the discussion period which followed, Bernardo Arévalo asked the panelists what they considered to have been the biggest impediments to progress during the transition to a new intelligence apparatus. Africa said that in South Africa, individuals from a wide range of backgrounds and experiences were involved in the process, and, though this ultimately proved to be an asset, consensus-building was challenging at times. Ugarte pointed to the armed forces' strong opposition to institutional change, as well as Argentina's difficulty in achieving political consensus, as significant challenges throughout the process.

A Guatemalan participant noted that the transition process in Guatemala was different from that of South Africa, because South Africa experienced a revolutionary change in regime after apartheid that allowed for a systematic replacement of old institutions. Given that Guatemala has not gone through a similar period of political transformation, he wondered what could be done to enhance the transition process in Guatemala. Africa noted the significance of civil society participation and urged Guatemala to include all groups, especially marginalized indigenous populations, in the discussion.

Experiences of Reform in Spain and Poland

César Balguerías, Analyst of Political and Strategic Affairs for Latin America at the Spanish

Higher Center of Defense Information (CESID), and Andrzej Rzeplinski, of the Helsinki Foundation for Human Rights in Poland, gave the Guatemalan participants insight into the reforms of intelligence and security services that took place in their countries.

Balguerías gave a historical background about the Spanish transition, noting that after the death of President Francisco Franco there was political consensus that many changes were necessary. Under Franco, Spanish intelligence had a purely military mandate to counteract subversion against the state; however in 1977 the mission of Spanish intelligence was reformed and a central intelligence agency known as the CESID was created. Balguerías called consensus-building one of the key elements for institutional reform, and he said that the increase in consensus and cooperation between political parties which occurred during the 1990s was beneficial for the country.

According to Balguerías, Spain has a long tradition of working with countries in Latin America that are undergoing political transitions and restructuring their intelligence agencies to reflect a new political environment. He said that each case that he has observed has been distinct, but Balguerías was impressed by the efforts being made in Guatemala to reform intelligence and the depth of work being done by the FLACSO intelligence working group. He added that the working group's commitment to the participation of individuals from distinct sectors of society was a significant achievement.

Andrzej Rzeplinski discussed the transition which has taken place in Poland since 1989 and focused his presentation on the structural changes made to the secret services after communism was dismantled. He said that Central and Eastern European countries have chosen to deal with the reform of secret services in a variety of ways. For example, while Czechoslovakia permitted some former secret service officials to remain, Germany passed a law which prohibited these officials from continuing to hold office. In Poland, all secret service agents were dismissed during the year following the first free election. A commission of 140 deputies and senators was formed to assess whether or not members of the former secret services would be reassigned to their posts. Of

those who applied, over half were disqualified and a mere handful were accepted by the commission. Rzeplinski played a significant role in the process of shaping new laws on secret services in Poland. One important change which occurred was the termination of internal intelligence activities, which made it illegal to collect information about Polish citizens, regardless of their organizational affiliation.

Experiences of Reform in Canada and the United States

Peter Russell, Professor Emeritus of the University of Toronto, and Kate Martin, Director of the Center for National Security Studies, gave presentations about reforms that took place in Canada and the United States during the 1970s in response to scandals and improper domestic intelligence activities. Russell explained that after World War II, the Canadian Royal Mounted Police (RCMP) was mandated to deal with political subversion and Quebec separatism. However the RCMP made no distinction between surveillance of groups utilizing democratic means and those using terrorist tactics. Thus, the security services were interfering with the democratic life of Canada, and this was made public. A parliamentary debate arose over how to best deal with the RCMP scandal, and the Royal Commission on Certain Activities, of which Russell was appointed Director of Research, was established.

After months of research and public hearings, the commission published a report which made recommendations for a security intelligence service which would exist outside of the RCMP. These recommendations were the basis for the Canadian Security and Intelligence Act, which outlined the country's national security threats, as well as the responsibilities and restrictions of the intelligence services. The report explicitly stated that the collection of intelligence about Canadian citizens was unlawful, unless the individual was associated with foreign terrorists. The Security Intelligence Review Committee (SIRC), which was composed of five individuals selected by the Prime Minister to oversee intelligence activities, was also established as a result.

Kate Martin explained that the experience of the United States was in many ways analogous to

that of Canada. The 1960s were marked by widespread political spying by US intelligence agencies on individuals involved in the civil rights and anti-war movements. In 1975, as a result of allegations and public concern over abuses, the US Senate set up a Select Committee to Study Governmental Operations with Respect to Intelligence Activities (known as the Church Committee, after Senator Frank Church).

Martin said that after months of investigations and public hearings, the Church Committee found that the Federal Bureau of Investigation had maintained files on the political activity of individuals, conducted investigations into domestic political groups, and conducted surveillance on the groups without legitimate criminal investigative purpose. The Committee concluded that, while domestic intelligence activity in the United States was necessary, it needed to be lawful and should be monitored by all branches of the government.

According to Martin, there was an attempt during the Reagan administration to roll back many of the reforms which had been enacted, due to a feeling that the changes had negatively affected the intelligence community. During this period, national security needs were given priority over strict adherence to the rule of law. Martin said that most Americans now view the intelligence reforms that took place in the 1960s in a positive light and see them as necessary for the protection of their democratic rights.

During the discussion, a Guatemalan participant asked Russell why Canada does not have a foreign intelligence agency. Russell explained that the Canadian national identity is that of a people who remain neutral and do not collect information on the citizens of other countries. In addition, Canada has an information-sharing partnership with Great Britain, the United States, and Australia.

Foundations of Control Over Intelligence Services in a Democratic Society

The panels which followed were dedicated to looking at various types of oversight used to monitor abuses of intelligence services, including parliamentary controls, judicial controls, and oversight by civil society. José Manuel Ugarte and

Andrzej Rzeplinski introduced the topic and discussed reasons why oversight of intelligence services was essential for the protection of liberties in a democratic society. Ugarte explained that covert operations form part of the concept of intelligence; however these activities, if unchecked, can result in abuses of power and negatively affect the economic and political environment of a country. Oversight mechanisms should help ensure that the objectives of an intelligence agency are beneficial for the society as a whole, rather than for a specific political party or an elite group of individuals. Controls over intelligence should be constant, rather than reactive, and they should be neither adversarial nor co-opting with the intelligence agencies. Ugarte stated that oversight improves the legitimacy and efficiency of intelligence services, and budgetary controls help ensure that agencies are adequately utilizing resources to get the best product at the least cost.

Although the structures designed to oversee intelligence agencies may be different in each country, Ugarte named some components which he viewed as critical. Legislative commissions which emphasize the rights of individual citizens and an inspector general appointed by the president are very important types of oversight. Additionally, coordination through the executive branch and a central budget can unify all collection and analysis activities.

Rzeplinski noted that developing systems of oversight is a very challenging task, because members of the services are protective of information and often fearful of the consequences of declassifying information. He explained that both internal and external supervision of intelligence services was needed and discussed the mechanisms Poland had designed to monitor abuses while also protecting information critical to national security.

The Office of Inspectors has the authority to check on highly sensitive information and report directly to the Prime Minister of Poland. Retired security services officers with personal integrity are often selected for this office. In addition, a group of inspectors under the director of the security services acts as an internal control device by providing the director with information about the goals and activities of the agency which are not published in

daily reports. The Office of State Protection, headed by a minister who is selected by the Prime Minister, is another important body in Poland with overseeing capabilities. This office is responsible for the coordination of the security services and the military police, and its primary duties include the appointment and dismissal of intelligence officials, as well as the drafting of budgets.

A lengthy discussion followed, and Guatemalan participants raised many issues related to the development of controls in Guatemala. Iduvina Hernández, Director of the Association for the Study and Promotion of Security and Democracy, asked the speakers to say more about budgetary oversight. In Guatemala, Hernández explained, many costs of potentially illegal transactions are kept secret, and there is no legislation outlining the standards or protocol.

Another individual asked about ways to limit the powers of dangerous groups involved in intelligence gathering. Ugarte said that there must be a strict hiring process of intelligence agents to ensure that the services are made up of people who are competent, respect the rule of law, and do not have previous human rights violations on their record. In addition, parliamentary committees with investigative powers can be useful in controlling these groups.

Controls over Secrecy

Creating a balance between secrecy and openness is a dilemma which all intelligence agencies in democratic societies are forced to confront. Thus, a session was dedicated exclusively to the discussion of controls over secrecy. Kate Martin explained that maintaining a degree of transparency of intelligence activities is the best way to assure democratic accountability and control, which are necessary for building public awareness and support for the intelligence services. A delicate balance must be struck protecting national security interests and keeping the public informed.

Martin said that every year the head of the Central Intelligence Agency testifies publicly about the activities and resources of the CIA and other US intelligence agencies. She gave two examples of how information was made public in the United

States. In the first case, the CIA issued a detailed report about its activities in Chile during the 1970s, which included information that showed that the CIA was aware of many of the human rights violations being committed. Thousands of documents were declassified and made available to the public on the State Department website. In the second case Martin described, pressures outside of the US government were responsible for the release of previously classified information. In its attempt to prosecute Chilean General Pinochet, the Spanish Magistrate and various human rights groups in the US and abroad put pressure on the CIA to declassify information. According to Martin, claims to secrecy need to be supported by a justification for why it will be harmful to have the information disclosed.

James Dempsey added that, like the CIA, the Federal Bureau of Investigation and other criminal intelligence agencies also must ensure that a level of transparency exists and that the public is informed about its activities. He discussed a way that information is routinely made public, pointing to wiretap reports which are published on the Federal Judiciary homepage. On this website details are published about every wiretap conducted, including: the number of individual conversations intercepted, how much it cost to maintain the wiretap, the prosecutor and judge in charge of the case, and the outcome of each case, including arrests and convictions.

Philip Heymann stressed the need for protecting human rights and other liberties of citizens who are suspects while at the same time establishing protection against grave dangers to other citizens who are likely to be victims. He said that it was important to examine the reasons why the agencies want to keep information classified. Heymann noted that often the threats which intelligence agencies use to justify secrecy are overstated, and the public's right of access to information is understated. Heymann said that the Privacy Act, which forbids agencies from keeping certain types of information, is an important piece of legislation.

During the discussion, a representative of a Guatemalan non-governmental organization asked the panelists if judges had a right to classified information. Heymann explained that judges have

full access to classified information, as long as the information is relevant to the question of guilt or innocence in the given case. Dempsey added that in the United States, background checks and the congressional procedure of confirming federal judges is viewed as the equivalent of security clearance. The powerful tension which exists between the law and secrecy was also discussed, and Heymann noted that in certain circumstances national security has taken precedence over the rule of law. He said that it is extremely rare in most countries for an individual who has acted in the interest of protecting national security to be prosecuted for violating the law.

Parliamentary Controls

After an overview about various types of oversight and the significance of establishing controls, as well as discussion about the underlying challenges which this process can present, James Dempsey and José Manuel Ugarte spoke to the Guatemalans about specific issues related to legislative control and supervision. Ugarte gave an historic perspective, explaining that during the 1980s and '90s, there was an explosion in the development of parliamentary control mechanisms in many countries. In the United States, the Church Committee findings resulted in the development of Permanent Select Committees of Congress, which thereby contributed to the creation of parliamentary commissions in other areas of the world. These commissions have the power to investigate irregularities and abuses, and they also work to ensure that the laws give other branches of government and civil society sufficient powers to oversee intelligence activity. He said that Argentina has utilized this type of legislative oversight; however the power of these commissions has not been fully realized.

James Dempsey explained that in the US there are three sets of congressional oversight committees which are responsible for oversight of the Federal Bureau of Investigation. The Judiciary Committees in each chamber have the responsibility of writing federal criminal statutes, which define the rules for techniques such as wiretapping. Second, the Appropriations Committees outline the budget for the FBI, one of the most critical components. The Intelligence Committees oversee the FBI's foreign counterintelligence, which includes activities

directed against the intelligence gathering of foreign governments and international terrorist groups.

Dempsey said that the congressional committees responsible for supervision are entitled to complete access to information from the FBI. Although the proceedings of the committees are generally secret, much of the information is disclosed to the public through annual reports. Dempsey noted that rivalry often exists between the various committees but that this competition can have a positive effect.

A representative of the Guatemalan Secretariat of Strategic Analysis, the body designated by the peace accords to analyze information and make recommendations to the president about national security threats, noted that the issue of parliamentary oversight was extremely relevant and timely for Guatemala. He explained that two bills had recently been submitted to congress, and there would be a meeting within the next 15 days to discuss plans for the creation of a parliamentary oversight committee. His question to the international panelists was what criteria should be used to select the committee members, and what political party composition should be required. Dempsey said that it was important to look at the background of individuals, such as their previous involvement in the intelligence services and record of human rights abuses. However, he noted that often the résumé of an individual was less important than their actions; former members of the military and police have historically been some of the most vigorous watchdogs in the US Congress. Ugarte added that in Argentina party representation within the committees was proportional to the number of seats each party held in congress.

Internal Controls

The extent to which nations utilize internal control mechanisms to monitor intelligence activities varies greatly between nations. Spain and the United States represent opposite sides of the spectrum; while the United States has a very elaborate system of internal controls on intelligence, Spain has very few. The presentations by César Balguerías and Oliver Revell, former Deputy Director of the Federal Bureau of Investigation, gave two distinct perspectives about

establishing internal controls, providing a balanced perspective for the Guatemalans as they assess what type of internal controls should exist within their own intelligence apparatus.

Balguerías explained that the controls within the Spanish services are much less significant than those of other nations represented at the conference. He said that members of the Spanish Higher Center of Defense Information (CESID) are expected to act according to the policies and laws of the Spanish government, with a high respect for the rights of Spanish citizens, as well as people from other nations. He emphasized that Spain does not make a distinction between the violation of the rights of its own citizens and those of other countries; both are viewed with equal concern. Balguerías said that Spain does not have an Inspector General, but he pointed out that the Office of the Director General, within the Ministry of Defense, has the ability to look into activities of the CESID and act as an overseer of the services.

Balguerías discussed a scandal in the 1990s which involved members of the CESID performing illegal wiretaps. This case marked the largest invasion of the rights of Spanish citizens by the intelligence services, and because of the lack of existing regulations and controls, the judicial, legislative, and executive branches of government were forced to decide the outcome of the case. According to Balguerías, many Spaniards are proponents of creating more controls and supervision, yet there has been little change in this regard.

Before describing the internal controls used in the United States, Revell provided an overview of the diverse US intelligence, counter-intelligence, and law enforcement agencies. He said that although the Federal Bureau of Investigation (FBI) is the most famous law enforcement agency, it has limited jurisdiction and 17,000 other law enforcement agencies exist throughout the country, each operating with a degree of autonomy within its own state and county. The federal government has responsibility for all intelligence, counter-intelligence, and international terrorism, and the Central Intelligence Agency, established in 1948, centralizes intelligence collection. Defense and military intelligence agencies have a mandate to collect information outside of the United States.

Revell, who spent 30 years working for the FBI, noted that the United States tightened up regulations and increased supervision of the FBI's law enforcement intelligence investigations after allegations of intelligence abuses during the 1960s and 1970s. "The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations," published in 1983, outlined control mechanisms which would allow the FBI to provide more effective law enforcement intelligence while at the same time protecting the rights of American citizens.

Revell said that the Inspection Division, a professional unit of inspectors who report to the Chief Inspector (who is also the Assistant Director of the FBI), are responsible for routine inspections and audits within the FBI. In addition, the Office of Professional Responsibility looks into allegations of misconduct and oversees criminal investigations short of prosecution. According to Revell, internal policing is viewed as an inextricable part of the FBI, and it promotes accountability, responsibility, and a high code of ethics. He said that the Office of the General Counsel, the Office of Policy and Review (at the Department of Justice), the Inspector General, and the Attorney General are also important overseers of the FBI.

A representative of the Institute of Comparative Legal Studies in Guatemala noted that a discussion of the Watergate scandal which erupted in the US during the Nixon administration would be useful for understanding how intelligence can be abused and why controls and supervision were necessary. Revell explained that President Nixon used an autonomous unit within the White House to carry out intelligence and counter-intelligence during his election campaign, and these "dirty tricks," which included fictitious mailings and harassment at conferences, were employed to disrupt the campaign of his opponent. Revell said that the press played a key role in creating public and congressional concern which pushed the prosecution forward after the illegal activities were uncovered. He noted that Philip Heymann acted as Associate Prosecutor and Consultant to the Watergate Special Force.

Judicial Controls

In the next session, Philip Heymann, Oliver Revell, and Peter Russell discussed the role of the judicial branch in overseeing intelligence services. Revell explained that judicial oversight in the United States is a continuous process involving the courts, the Department of Justice, and the FBI. Various levels of approval are necessary before an FBI agent can undertake an extra-ordinary activity, such as electronic surveillance. He said that notice must be submitted to the Office of Policy Review at the Department of Justice, and there must be authorization from the FBI Director, the Attorney General, and the Foreign Intelligence Surveillance Act (FISA) court. For continued surveillance, periodic reports must be submitted to the FISA court.

In Canada a judicial warrant must be obtained before investigative actions are carried out by the intelligence services. Russell said that this procedure was established as a result of the unlawful investigations, which included opening mail and surreptitious entry into homes during the 1970s. The federal judge must be persuaded that the target of the investigation is a threat to the security of Canada, and that other techniques have been useless in gaining the necessary information. Russell said that the Security Intelligence Review Committee provides additional assurance that the warrant is justified by assessing the case and giving a public report. Judicial warrants are good for only one year, at which time reapplication is necessary if the investigation is to continue. Russell noted that giving judges the power to authorize intrusion and investigation is a very unusual thing for a democratic society to do. Although he said he was worried about giving judges so much power, he did not think there was an alternative body which could be trusted with such a delicate matter.

Heymann said that prosecuting intelligence agents who have misbehaved can be difficult, and he pointed to a number of reasons why these prosecutions were often unsuccessful. First, it is very difficult to gain access to classified information and to use this information in a trial.

Bribery and intimidation are often deterrents to prosecution, sometimes forcing individuals to flee the country to save their lives. Heymann also said that it is difficult to prosecute if there is evidence that the individual was acting patriotically to protect national security interests. During tenure as Deputy Attorney General, two high-ranking officials were investigated and brought to trial, however Reagan pardoned them when he took office because their actions were considered to be patriotic.

During the discussion, Bernardo Arévalo commented on the difficulty of carrying out prosecutions in countries like Guatemala, which are characterized by a volatile political environment and a judiciary which does not function properly. The issue of international prosecution was also raised, and Russell stressed the importance of the international criminal court in prosecuting individuals who have committed war crimes. Heymann added that international prosecution, such as the case brought by Judge Garzón against former Chilean President Pinochet, will make it difficult for officials of security and intelligence services to leave their country without fear of action being taken against them in other areas of the world.

Oversight by Civil Society

The last session during the program focused on the role that non-governmental organizations, the press, and individual citizens can play in monitoring intelligence agencies. Andrzej Rzeplinski and Kate Martin shared their experiences of working for human rights organizations that have played a supervising role over intelligence agencies.

Martin is currently the Director of the Center for National Security Studies, a private organization based in Washington DC that was established in the 1970s to deal with issues of freedom of speech and the press, the right to individual privacy, and due process. Martin said that her organization interacts with congress on a regular basis and works to ensure that the activities of US intelligence agencies are adequately scrutinized. After extensive public hearings in 1976 about what types of congressional oversight committees should be established, the Center for National Security Studies analyzed all of the proposals and made a set of recommendations.

According to Martin, it is important to have the rights, responsibilities, and restrictions of intelligence agencies clearly defined and protected by law. She noted that she and Rzeplinski had worked together to draft a statement outlining the universal principals for intelligence organizations.

Rzeplinski, who is affiliated with the Helsinki Foundation for Human Rights in Poland, said that human rights organizations can effect change to intelligence services through litigation, the drafting of new laws, and efforts to educate the public about intelligence issues. In 1977, Rzeplinski drafted legislation which provided victims of the Polish security services with access to information from security files. This law also called for the disclosure of information to the public about the former security services and the establishment of a new institution to deal with war crimes. Rzeplinski said that it is crucial that human rights groups work closely with the press to make sure that the public is educated about their rights as citizens and that appropriate limits are put on the powers of intelligence agencies. He added that organizations like his and Martin's also have a responsibility to educate the press about the complexities of intelligence issues and urge them to cover public debates and write in-depth articles and commentaries that can enhance public understanding and awareness about intelligence.

The presentations about civil society oversight of intelligence prompted an extensive discussion about Guatemala's civil society and the role that it should play in creating a new intelligence apparatus for the country. A representative of the Institute of Comparative Legal Studies in Guatemala noted that in Guatemala there is a culture of silence, fear, and impunity, so taking action on these sensitive issues can cost an individual his life. Although he said that the present political situation in Guatemala is still relatively tense and insecure, he felt that it was important for human rights groups to assert pressure on congress to bring the issue of intelligence reform into the open and create a coordinated, lawful civilian intelligence structure.

A member of the Secretariat of Strategic Analysis asked the panelists to comment on how civil society in Guatemala could have a more constant, long-term effect on controlling the

intelligence agencies. Martin said that human rights organizations should stay very informed about intelligence and civil liberties issues and monitor changes in the laws, so that they can educate the public and assert pressure on congress. Rzeplinski added that that declassification of documents was very important, because if documents are not made public, civil society has no mechanism for controlling the intelligence services.

Working Meeting about the Future of Guatemalan Intelligence

A closed meeting with members of the FLACSO intelligence working group and the nine international speakers provided an opportunity for a focused discussion about the proposals which had been completed by the working group and the challenges that lay ahead during the process of designing a new Guatemalan intelligence apparatus. Many of the international guests stated that they were impressed by the group's depth of understanding about intelligence structures and oversight systems, as demonstrated by the impressive documents prepared by the group on the topics of Guatemalan state intelligence and the general criteria for intelligence reform in Guatemala.

A Guatemalan working group member explained that the process had been, and continued to be, a tremendous challenge and that it took great ingenuity to create a new system that had not previously existed. He said that his working group, which brought together individuals from all sectors of society, many of whom had been on opposing sides of the conflict, demonstrated that change in Guatemala was possible. He added that the support and solidarity of the international community helped strengthen the process and provide the Guatemalans with new ideas and hope.

Some of the international speakers gave recommendations to the working group about specific areas in which the documents approved by the group could be improved. Kate Martin urged the group to reconsider a section that focused on secrecy. The document stated that congressional access to secret information should be limited, and

Martin urged the group to state this differently, in a more open way. She also asked the Guatemalans to consider whether information that reveals misconduct should be always be declassified, even if there is sufficient reason to keep the information secret.

Peter Russell said that the group's definition of Guatemala's national security threats should be more specific. During the Canadian reform process, it was very important that the threats were outlined in a concrete way, and that the public was educated about these threats. Russell said that this will result in an increase in public support for the intelligence agencies, as well as greater control and supervision.

César Balguerías asked the Guatemalans to consider up to what point they will continue to have control over their product, and Philip Heymann wondered what the group viewed as the challenges ahead. Iduvina Hernández, the moderator of the working group, explained that Guatemalan civil society will need to put pressure on congress to pass the legislation. Although this may be difficult, Hernández said that it was indeed possible. She pointed to the signing of the peace accords, which 10 years ago no one believed possible, as evidence that reform in Guatemala could take place. According to Heymann, the group had two important challenges ahead. First, it had the task of turning the group's working documents into public legislation that would be taken seriously enough to enact. Second, if the law is enacted, the group must ensure that public support for the new system exists, so that there is no danger of returning to the old intelligence regime.

Conclusions and Outcomes of the Round Table

Bernardo Arévalo and Philip Heymann provided concluding remarks at the end of the three-day round table discussion. Heymann asked the Guatemalans to carefully consider the reasons, if any, necessitating a domestic intelligence agency in their country. He said that there are four circumstances which dictate whether or not a country needs an internal intelligence structure:

1. If there is a strong law enforcement agency, domestic intelligence is generally not necessary.
2. If espionage and terrorism are threats to national security, and there is an international element to these activities, domestic intelligence may be required.
3. If there are very significant threats to the state and the nation's population (such as terrorism or a coup d'état) which necessitate action other than prosecution, a country may also decide to have internal intelligence.
4. In some countries, such as Germany and Great Britain, organized crime is a justification for having a domestic intelligence agency.

Heymann said that the Guatemalans should consider what dangers and threats exist in Guatemala today, and for what purposes, if any, their country needs a domestic intelligence agency.

Bernardo Arévalo concluded by highlighting some of the key points brought up during the conference and noting that the experiences shared about reform in other countries would prove useful in future discussions of the intelligence working group. He stated that the central dilemma for intelligence services around the world was how to act as a protectorate of democracy, while at the same time engaging in secret operations that could not be disclosed to the public. During its transition and transformation, Arévalo said that it was important for Guatemala to build efficient institutions that work to consolidate democracy. Arévalo thanked all of the international speakers for coming to Guatemala to share their perspectives and insights. He said that it was useful for Guatemala to know that other countries, including

"mature democracies", had confronted similar problems and made progress at reforming their intelligence agencies.

At the conclusion of the event, both Guatemalan participants and international speakers expressed that they found the program useful and productive. Because the sessions were focused and dealt with technical issues, such as oversight, currently being discussed by the intelligence working group, the round table was able to have a positive impact on a Guatemalan-led intelligence reform effort. The discussions after presentations by international intelligence experts provided an opportunity for the Guatemalans to bring up issues of concern and put the topics discussed into the context of the Guatemalan experience. Many Guatemalan participants noted that the working meeting that allowed international guests and Guatemalans to discuss the agenda and documents of the intelligence working group, was extremely worthwhile.

Follow-up to this program is currently being discussed, however no formal plans have been made for the Project on Justice in Times of Transition to continue work in Guatemala. Several international speakers have expressed interest in maintaining contact with the Guatemalans who were present at the meeting and assisting them with their work in the future, either by returning to Guatemala or bringing a group of Guatemalans to their countries. As a result of the round table, the Project on Justice in Times of Transition hopes to publish a book about experiences of intelligence reform around the world, based on the materials which were put together for this meeting. In addition, it is likely that the Project will organize a similar program in another Latin American country that is also dealing with the challenges of reforming its intelligence services.

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This report was written by Jenny Ellis.

The Project on Justice in Times of Transition

The Project on Justice in Times of Transition is an inter-faculty initiative of Harvard University under the auspices of the Kennedy School of Government, the Harvard Law School, and the Faculty of Arts and Sciences. Originally founded in 1992 as part of the New York-based Foundation for a Civil Society, the Project assists states emerging from repression or conflict to engage in dialogue across national, ethnic, religious and ideological boundaries with the intention of preventing legacies of the past from jeopardizing their progress toward democracy and peace. The November - December round table discussion was the 24th of the Project's distinct initiatives which have provided an extraordinary stimulus to pragmatic problem-solving by offering a broad spectrum of individuals exposure to international experiences in ending conflict, establishing peace, and building civil society. Among the countries and regions in which the Project has worked are South Africa, Northern Ireland, Central and Eastern Europe, and Central America.

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