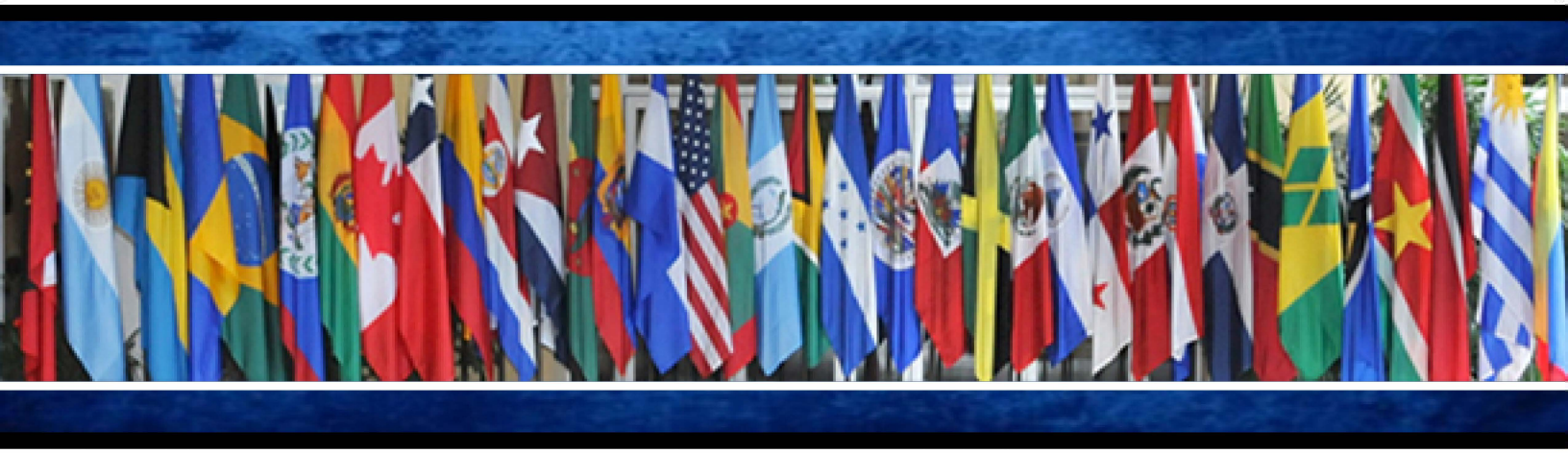
LATIN AMERICAN SECURITY CONCERNS



APRIL 2023

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NOTICES

Latin America continues to confront multiple political, social, economic, health and security concerns, including populist leadership, corruption, criminal activities, terrorism, and human rights abuses that threaten regional and global stability. A panel of interdisciplinary experts considered the future strategic outlook and offered recommendations for "best practices" response strategies on governmental, inter-governmental, and non-governmental levels.

Video of the full conference may be found here: LINK

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"LATIN AMERICAN SECURITY CONCERNS"

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I. PREFACE

PROFESSOR YONAH ALEXANDER AND PROFESSOR DON WALLACE, JR.

EDITORS

Like any other world region, Latin America has faced two security challenges. The first stems from natural disasters, such as earthquakes and infectious diseases. The second consists of "man-made" threats including organized crime, terrorism, insurgency, and war triggered by internal and external adversaries.

Indeed, many factors have contributed to these dual security calamities. Aside from afflictions by Mother Nature, mention should be made of vulnerabilities created by porous borders; established smuggling routes; implementation at various times of Marxism, Leninism, Maoism, Castroism, fascism, and right-wing ideological models promoting dictatorships and military regimes; violating individual and collective human rights; weakening governmental institutions and the rule of law; sustaining corruption practices; and mismanaging scarce economic resources.

Some of the notable security-related concerns in Latin America several years prior to the Covid-19 pandemic include a landslide in Colombia that killed over 300 people;[1] protests surrounding Venezuela's Supreme Court ruling on the National Assembly's power;[2] Brazil's Alcaçuz prison riot;[3] an earthquake in Ecuador that killed over 650 people;[4] and the assassination of a Mexico City mayor.[5]

The security challenges in early 2023 are: Nicaragua's canceled citizenship for 94 political opponents;[6] an outbreak of dengue in Bolivia which killed 26 people;[7] Ecuador being ranked as the least safe country in Latin America due to escalated gang violence, drug trafficking, and civil unrest;[8] and in Peru, 48 citizens being killed as well as over 1,300 others injured while protesting the removal of President Pedro Castillo.[9]

AN ACADEMIC CONTEXT

The Inter-University Center for Terrorism Studies (which is administered by the International Center for Terrorism Studies at the Potomac Institute for Policy Studies and the Inter-University Center for Legal Studies at the International Law Institute) has provided an intellectual context for many of the historical and contemporary security challenges in Latin America. For instance, over the past two decades, the IUCTS, in collaboration with universities, think tanks, professional institutions, and public affairs bodies, as well as with governmental and intergovernmental organizations, initiated numerous lectures, briefings, seminars, and conferences in the region and in the United States.

Drawing from the numerous research-related activities over the years, several publications were produced. A report on "Counter Terrorism Strategies for the 21st Century: Latin American Perspectives" was published by the Potomac Institute for Policy Studies, the Inter-University Center for Terrorism Studies, and the Inter-University Center for Legal Studies in 1999. It included topics such as "The Role of Multinational Cooperation in Fighting Terrorism" by Dr. Camilo Granada, "Colombia's Paramilitaries: Criminals or Political Forces?" by David Spencer, "Legal Issues in Colombia" by Dr. Miguel Ceballos-Averalo, "Intelligence and Subversion in Peru" by Professor Alberto Bolivar, "Two Different Counter-Terrorism Strategies in Latin America: Islamic Groups and the Sendero in Peru" by James L. Zackrison, and "Narco Trafficking and Economic Sanctions" by Bruce Zagaris.

The second publication on *Combating Terrorism: Strategies of Ten Countries* (published by the University of Michigan Press, 2002) was edited by Professor Yonah Alexander with a foreword by R. James Woolsey, former director of the CIA. This book included chapters on "Argentina" by Roger Fontaine, "Peru" by Professor Alberto Bolivar, and "Colombia" by James Zackrison.

The third report, based on the conference "Latin America's Security Challenges in the 21st Century," was released in 2009 and consisted of contributions from Ambassador Arturo Sarukhan (Mexican Ambassador to the United

States), Ambassador Carolina Barco (Colombian Ambassador to the United States and former Minister of Foreign Affairs of Colombia), Ambassador Luis Diego Escalante (Costa Rican Ambassador to the United States), Rep. Eliot L. Engel (former member of the U.S. House of Representatives and Chairman, House Subcommittee on Western Hemisphere Affairs), and Ambassador Javier Rupérez (former Spanish Ambassador to the United States and former Executive Director of the United Nations Security Council Counter-Terrorism Committee).

The fourth publication was a conference report in 2010 on "Venezuelistan: Iran's Latin American Ambitions," produced by the Hudson Institute and the Inter-University Center for Terrorism Studies. The participants included Ken Weinstein, Dan Mariaschin, Professor Yonah Alexander, Ambassador Jaime Daremblum, Brig. Gen. (ret.) Boris Saavedra, Professor Alberto Bolivar, and Professor Manochehr Dorraj.

The fifth publication, "Latin America's Security Challenges in the 21st Century," published in 2014, was comprised of a preface by Professor Yonah Alexander and contributions from Professor Alberto Bolivar, Ambassador (ret.) Roger Noriega, Professor Monica Arruda De Almeida, Brig. Gen. (ret.) Boris Saavedra, Fernando Jimenez, and Dan Mariaschin.

The sixth event was "Latin America's Security Outlook: Challenges and Opportunities in the Post-Castro Era," held on December 16, 2016 at the Potomac Institute for Policy Studies, and included Professor Margaret Hayes (former Director of the Center for Hemispheric Defense Studies at National Defense University, senior staff on the U.S. Senate Foreign Relations Committee, and visiting fellow at the Center for Naval Analyses. She also held appointments at Johns Hopkins University and George Mason University. Currently, Adjunct Professor at Georgetown University and Vice President of Evidence Based Research, Inc.); Diana Villiers Negroponte, Esq. and Ph.D. (Public Policy Scholar at the Woodrow Wilson International Center for Scholars and Chair of the Wilson Council); Bruce Zagaris, Esq. (partner at Berliner Corcoran & Rowe LLP specializing in international criminal law as well as regulatory and enforcement aspects. His practice includes counseling in Latin America and other regions to individuals, entities, and governments. Since 1985 he has edited the International Enforcement Law Reporter); and Fernando Jimenez, Esq. (former legal advisor to the Inter-American Development Bank and Governor of the Basque Country in Spain. Currently, Director of TecnoLegal Consult LLC).

The seventh publication is a report, "Latin America's Strategic Outlook: Populist Politics, Health Concerns, and Other Security Challenges," released in 2017. It includes contributions from invited panelists; Abraham Stein (former Deputy Secretary for Multidimensional Security and Senior Advisor to the Secretary General on Defense and Hemispheric Security, Organization of American States); Professor Gary Simon (Director, Division of Infectious Diseases, Medical Faculty Associates, The George Washington University); Professor S. Gerald Sandler (Professor of Medicine and Pathology at Georgetown University Medical Center and Medical Director of the Blood Transfusion Service, MedStar Georgetown University Hospital, Washington, D.C.); Dr. Asha M. George (CoDirector of the Blue Ribbon Study Panel on Biodefense); and Dr. Tara Kirk Sell (member of the USA national swim team for eight years, served as captain for six national teams, and earned a silver medal at the 2004 Olympics in Athens, and serves as an associate at the Center for Health Security at the University of Pittsburgh Medical Center).

The latest publication on "Latin American Security Concerns" that was hosted virtually by the International Law Institute on November 30, 2022, included contributions from David M. Mizrachi, Senior Partner of MDU Legal in the Republic of Panama; Ambassador (Ret.) Lino Gutiérrez, Former U.S. Ambassador to Argentina and Nicaragua as well as Acting Assistant Secretary of State for Western Hemisphere Affairs; Distinguished Professor Emeritus Jaime Suchlicki, University of Miami and Current Director at the Cuban Studies Institute; Andrew I. Rudman, Director of the Mexican Institute at The Woodrow Wilson International Center for Scholars; and Bruce Zagaris, Esq., Partner at Berliner Corcoran & Rowe LLP. The entire discussion is available for viewing here: LINK.

Additionally, the highlights of the presentations are included following the Preface.

ACKNOWLEDGEMENTS

On a personal note, Professor Alexander wishes to express his deep appreciation for the decades-long academic and professional partnerships with the Potomac Institute for Policy Studies and the International Law Institute; Thanks are due particularly to PIPS's Dr. Jennifer Buss (CEO), General Al Gray (USMC (Ret.), Chairman of the Board), and Gail Clifford (VP for Financial Management & CFO). Likewise, he is most grateful to the ILI's Professor Don Wallace, Jr. (Chairman), Robert Sargin, Deputy Director, and intern Min Ah Joo (Pomona College).

Finally, thanks are also due to Kevin Harrington (coordinator of the IUCTS internship program since 2021) who provided some research and administrative support for this publication in conjunction with our graduate and undergraduate student interns: Adrik Bagdasarian (James Madison University); William Brooks (The George Washington University); Louisa Burch (American University); Matthew Dahan (American University); Joshua Isaiah Horton (University of North Carolina at Chapel Hill); Xiang Ji (Brown University); Grace Johnson (University of Texas at San Antonio); Andrew Jones (University of Arizona); Harrison Kopitsch (American University); Jinhan Li (Johns Hopkins University); Jacquie Linden (Miami University, Oxford Ohio); Claudia Rodriguez Loys (University of Miami); Yunchao Mao (The George Washington University); Royon Meerzadah (Carnegie Mellon University); Evan Rohe (University of Kent); Loren Sera (American University); Bastien Veilhan (London School of Economics and Political Science); and John Walters (Colby College).

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II. SELECTED HIGHLIGHTS [DRAWN FROM THE NOVEMBER 30, 2022, FORUM'S PARTICIPANTS]

1. Security is essential for human survival and to coexist in a world with many actors.

2. Warfare takes two forms: conventional and non-conventional. Latin America has not seen conventional security threats recently but has witnessed non-conventional security threats.

3. Terrorism is a term that varies depending on who is using it. People refer to anarchists, insurgents, and freedom fighters as terrorists, and vice versa.

4. Drug trafficking across borders is the most potent form of criminality. It spans the entire hemisphere, with consumption in the north and production in the south.

5. The lack of political stability is a risk to Latin America.

6. The absence and abuse of human rights is a risk to Latin America, and it comes in three dimensions: immigration, inequality, and lawlessness.

7. Immigration control needs to be enforced to guarantee a secure environment in Latin American countries. Border control is a necessity.

8. Poverty is the cause of social insecurities in Latin America.

9. Lawlessness can be minimized by enforcing the law across the region.

10. Increasing diplomacy and cutting funds to it the best way to combat terrorism.

11. To minimize criminality, policies that punish and deter criminality need to be created to remove incentive.

12. To ensure political stability, there must be a focus on democracy and creating a democratic environment for citizens to feel safe.

13. Striving for fair immigration policies and border control will help strengthen human rights within Latin American nations.

14. There is a strategic importance of the Isthmus of Panama. Therefore, ensuring the security of Panama makes the entire hemisphere safer.

15. The long-shared history between the U.S. and Latin America includes some controversial events, including the Monroe Doctrine in 1823, the U.S.-Mexican War in 1846, Manifest Destiny, and the Spanish-American War in 1898.

16. FDR's Good Neighbor Policy is considered part of a period that Latin America might refer to as "the Enlightenment." In reality, it was a double-edged sword because it led to further entrenchment of militaries in countries without U.S. intervention.

17. A key moment of hemispheric solidarity occurred during WWII when all countries in the hemisphere declared that the Japanese attack at Pearl Harbor was an attack on the entire hemisphere.

18. The advent of revolution in 1959 with the coming of Fidel Castro marked the beginning of the Cold War in the hemisphere because of his alignment with the Soviet Union.

19. The great defeat of the Bay of Pigs Operation was an instance of U.S. naïveté because the formula the U.S. used in Guatemala in 1954 and Iran in 1955 did not apply to Cuba in 1961.

20. Many policymakers may be using the Cuban Missile Crisis as a case study when looking at the situation in Ukraine with Putin threatening the use of nuclear weapons.

21. President Clinton in 1992 was motivated by NAFTA to establish the Free Trade Area of the Americas (FTAA) to unleash free trade from Tierra del Fuego in South America to Prudhoe Bay, Alaska.

22. The OAS did not envision that populist leaders could still attack democracy after a fair election.

23. It was an unusual reality when President George W. Bush gave Latin America priority in his foreign policy with the signing of the Inter-American Democracy Charter in 2001.

24. After 9/11, the focus of national security changed to international terrorism and Latin America worked alongside the U.S. to sign a number of counterterrorism agreements.

25. Democracy and the erosion of democracy should be the number one strategic issue for the U.S. in the Western hemisphere.

26. The Biden Administration's National Security Strategy stated that the U.S. derives security and economic benefits from the Western hemisphere's democratic stability and institutions.

27. In the Western hemisphere, the institution of democracy continues to expand; however, its quality is deteriorating and threats to it are rising.

28. A disturbing trend within the Western hemisphere is the concept of democratic fatigue because people are still longing for someone to come in and fix the country's problems.

29. Latin America has the highest level of electoral participation in government in the world, but democratic fatigue exists in these countries because political parties as institutions are not doing as well in elections due to independent candidates.

30. Corruption has been around in Latin America since the colonial days because the colonists from Spain were not initially focused on development within the Latin American colonies, and there was a distrust of institutions.

31. Latin America is the most violence-prone region in the world with a homicide rate of 17.2 deaths per 100,000 population, and 37% of all homicides in the world are committed in Latin America.

32. When lacking adequate security institutions in their countries, a traditional Latin American response has been to emigrate to the United States.

33. Human trafficking and drugs are also problems within Latin America that impact the U.S., which resulted in 29,000 drug-related deaths in the U.S. during 2021.

34. Immigration is another security concern because, in addition to traditional immigration through the Mexican border, people are now escaping to the U.S. from authoritarian Cuba, Venezuela, and Nicaragua.

35. One out of three Latin Americans live in extreme poverty, which further highlights the intense problem of inequality in these countries.

36. China's relationship with Latin America is focused on trade, investment, and geostrategic plans whereas Russia and Iran are opportunistic when it comes to anti-U.S. governments in the region.

37. Cuba continues to be an enemy of the United States even after 63 years. The continuation of Castro's anti-Americanism and affliction towards whatever means necessary to threaten Western power, maintain alliances with delegitimate governments, support extremist factions and mobilizations, and pursue nuclear standoff roots in his upbringing.

38. Castro's father was a Spaniard who staunchly opposed U.S. involvement in Cuba. Castro was profoundly attracted by fascist ideologies and the falangist movements. He wrote to his friends and allies, "My biggest struggle is going to be against the United States once I come to power and I pledge to fight against the United States."

39. Cuba remains to be an overarching factor due to the overspill of most terrorist activities except drug trafficking. Cuba has maintained strong and close ties with Iran and Venezuela by providing intelligence and irregular warfare training to Hezbollah and Iran, including assisting their mobilizations and activities in Latin America.

40. Cuba directly provides intelligence to Hamas and Hezbollah. Hezbollah continues to have an operational network and base in Cuba that Hassan Nasrallah demanded to be set up. Recently, Cuban military officers have acted as liaisons between Venezuela's leftist militia and FARC Narco guerillas. Cuban General Leonardo Ramon Andollo has traveled back and forth to Venezuela, acting as a go-between for both militias.

41. The FBI estimates that Cuba has provided safe harbor to dozens of fugitives from the United States and violent terrorists from all sides of the globe, including Puerto Rico's Macheteros, Colombia's FARC, Venezuela's Tupamaros, and Hezbollah and Hamas, who were mentioned earlier.

42. Venezuela provided fraudulent duplicate guides and forms to Cuba to assist allies in obtaining papers to enter Latin America, resulting in robust growths of Arab, Middle Eastern, Hezbollah, and Hamas groups entering Latin America with falsified passports completed by the Cuban government.

43. The Cubans trained Venezuela's extremist group, the Tupamaros, in irregular warfare. Venezuela now provides violent terrorist movement training and anti-American mobilizations in Latin America. Additionally, a notable factor was the shooting down in 1996 of two unarmed civilian planes traveling in international waters that ended the lives of four Americans who were acknowledged and accepted fault by both Fidel and Raul, yet nothing has been done.

44. Diaz-Canel, acting President of Cuba, visited Putin in Russia last week. Previously, we had seen many interests in Russia to extend naval activities through the Caribbean and Latin America. Besides wanting a handout, Diaz-Canel is highly likely to offer the Soviet Union the possibility of using ports for nuclear submarines and vessels from Russia.

45. Security issues in Mexico can be divided into two aspects: national security, including organized crimes, trafficking, drugs, weapons, and contrabands; and personal security, including femicide and attacks on journalists and other members of society.

46. National security issues tend to be more bilateral or multilateral, while personal security issues tend to be domestic or national in nature.

47. While the current President Andrés Manuel López Obrador (AMLO) didn't create the problems, he promised in his 2018 presidential campaign to end the war on drugs and confront organized crime through a strategy called "hugs, not bullets."

48. Under the AMLO administration, homicides, femicides, the number of journalists killed, and the confiscation of opiates have all increased compared with previous administrations.

49. The AMLO campaign believed that the root causes of insecurity in the country should be addressed by creating opportunities and adopting preventive measures instead of direct confrontation with the drug cartel.

50. Addressing the root causes is not a bad idea, but it needs a long-term, long-range solution, rather than an immediate solution.

51. The cooperation between Mexico and the U.S. has been both a necessity and a challenge, since AMLO did not expect a similar hands-off approach from the Biden Administration compared with the Trump Administration.

52. Mexico's mistrust towards the U.S. goes back as far as the ill-fated attempt by the Mexican armed forces to arrest El Chapo Guzmán and the arrest of Mexican former Secretary of Defense Cienfuegos in the U.S.

53. Despite the tensions, the U.S. and Mexico have agreed to develop a program to replace the failed Merida Initiative during the first-ever high-level security dialogue in September 2021, in which the framework addresses both countries' priorities to rebuild trust and recognize the shared nature of both countries' challenges.

54. The recognized priority of the U.S. is the reduction of fentanyl overdoses. For Mexico, it is the reduction of arms trafficking flowing into Mexico from the United States.

55. Another aspect of security cooperation is the increasing involvement of the Mexican armed forces in law enforcement activity, as well as a number of other activities that are not traditional military responsibilities.

56. As AMLO developed on his promise, he created a civilian national guard to control the flow of migrants and reduce criminal activity, although about 70% of it are military officers and soldiers.

57. The guard is still under-trained and under-armed in comparison to the cartels, and to keep with this idea of "hugs, not bullets," the guard and the rest of the armed forces have often been constrained in their ability to respond to armed actions by the cartels.

58. In August 2022, AMLO's congressional majority, with the cooperation of the opposition pre-party, adopted legislation placing the guard back under the Secretary of Defense. In addition, Congress decided to maintain the army's street presence until 2028. The combination of this decision with the guard returning to the armed forces, the operational collaboration between Mexico and the U.S. could be complicated further.

59. Mexico is now the most dangerous country in the world to journalists, apart from countries that are in the midst of the war. In 2022, at least 13 journalists were assassinated.

60. Attacks on journalists and on a free and independent press are significant threats to Mexican democracy that U.S. officials should be raising attention to.

61. Femicide rates under the AMLO administration have spiked with ten women being assassinated daily.

62. Impunity and improper implementation of public policy, and insufficient funding dedicated to women's programs account for a large part of the rise of femicide.

63. At the federal level, several Mexican states have changed their penal codes to include femicide as an instinctive crime and have created special prosecutors' offices to investigate and prosecute femicide. The Mexican Senate established a special commission to investigate cases of femicides of girls and adolescents.

64. Mexican security is highly related to U.S. national security. Re-establishing trust is essential, and there may be more opportunities for cooperation at the state level, at least in the short term.

65. On the personal security front, pressure from civil society, activists, and NGOs are essential if Mexico is going to reduce femicide and improve the protection of journalists.

66. The U.S. executive and the legislative branches, and civil society can engage by providing technical assistance, training, and practice sharing for those officials in Mexico responsible for investigating and preventing femicide. The U.S. government should also be much more vocal about the importance of protecting a free and independent press.

67. Illicit firearms trafficking is one of the key security concerns of the Western Hemisphere.

68. There are three main international conventions that govern illicit firearm trafficking: the Inter-American Convention Against the Illicit Manufacturing and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials; the Firearms Protocol to Palermo Convention; and the UN Arms Trade Treaty (ATT).

69. The United States is one of the only countries in the Western Hemisphere not to join any American-based conventions.

70. The U.S. is the main source of illicit trafficking in firearms.

71. The Protection of Lawful Commerce in Arms Act (PLCAA) protects the U.S. firearm industry from civil liability for criminal use of its products.

72. In response to a large influx of illicit firearms entering their country, the Mexican government filed a lawsuit against seven gun manufacturers and one gun wholesaler and distributor, who were all based in America.

73. Mexico's lawsuit was dismissed on the notion that the PLCAA protects all U.S.-based gun manufacturers from any criminal use of its products.

74. According to the Mexican government, 70 to 90 percent of guns recovered at crimes in Mexico were trafficked from the U.S.

75. In Mexico's complaint against U.S.-based gun manufacturers, they claimed that these manufacturers design weapons to appeal to criminal organizations in Mexico. For example, guns made by Colt, a gun manufacturer, title guns like the "El Jefe" pistol.

76. Mexico's Ministry of Foreign Relations will appeal to the decision of the previous lawsuit in hopes "to insist that the arms trade must be responsible, transparent, and accountable and that the negligent way in which they are sold in the United States makes it easier for criminals to access them."

77. On October 10th, 2022, the Mexican government filed another U.S. gun lawsuit against five gun shops and distributors in Arizona, claiming that they were responsible for the illicit trafficking of military-style weapons for criminal organizations.

78. The Mexican government is working with the D.C.-based Global Action on Gun Violence to stop or slow the flow of American-made guns to Mexico.

79. Some commentators at the United Nations General Assembly urged other CAPRICOM members to follow Mexico in suing U.S. gun manufacturers.

80. To further combat illicit firearm trafficking, governments and organizations should consider focusing on the financing of illicit firearms trafficking.

81. According to the Government Accountability Office, federal agencies have reported that money laundering strategies are of high use by illicit firearms traffickers, making the importance of setting stricter financial standards much more relevant.

82. Any person or organization interested in stopping illicit firearms trafficking should use international human rights tribunals and courts to press for the right to life and freedom from gun violence.

83. The U.S. plays a great role in being the guarantor of security within the region.

84. There is a concern about preserving security and about the multidimensional definition of what security is.

85. Security is not just physical safety but also economic security, having full security, and being able to live in a peaceful society, regionally as good neighbors.

86. It is a pity that outside forces are dividing Latin nations due to their political philosophies. The heritage of Latin nations unites them more than we think.

87. Being relatively young nations, Latin nations have grown together, and they should continue to live together in harmony, respecting each other.

88. There have been many talks related to the modernization of the Panama Canal to allow larger tankers in.

89. Daniel Ortega's announcement regarding a new canal through Nicaragua raised some concern in relation to potential Chinese investment.

90. The Panama Canal has been operating as an efficient and profitable enterprise due to the U.S. building it as a point of service. It has become a point for commerce, and is probably the largest contributor to the Panamanian GDP.

91. The ecosystem built around the canal includes the ports, some of which are operated by Chinese entities.

92. China's involvement may have been an overstated concern. The canal is operated very efficiently. It is operated with transparency. It is a success story.

93. Panama must be thankful to the United States. The United States complied with the Panama Canal treaties and returned the most valuable infrastructure in the region to Panama.

94. Due to Panama being a small county, it had the fastest and most constant rate of GDP per capita growth in the region. This is remarkable for a country of its size.

95. Democracy and human rights underscore the complexity of security since it is an internal issue rather than a traditional power struggle against an invading country. If democracy cannot deliver, then voters become easily subject to populism, which is a real concern and a security threat to every country in the hemisphere.

96. When it came to drug trafficking, the conventional wisdom was that the U.S. was the demanding country and all the other Latin American countries were suppliers or transit countries. However, there has been an increase of drug use in all countries.

97. In Panama, Fort Clayton has been turned into an "innovation hub" that has become a citywide spot for foreign universities, many from the United States, to do research and other activities.

98. Cuba, Venezuela, and Nicaragua are the three countries that were not a part of the protocol on migration, an agreement that took place at the summit of the Americas; due to this, the United States has had to personally try new things to attempt to control the migration.

III. CONTRIBUTORS' PRESENTATIONS

This section of the Report consists of presentations made by the contributors at the Special Forum: "Latin American Security Concerns" that was held on November 30, 2022, via Zoom conferencing. Some updates and revisions were made by the invited participants.

DAVID M. MIZRACHI

SENIOR PARTNER OF MDU LEGAL IN THE REPUBLIC OF PANAMA

Thank you very much Professor Alexander, indeed it is an honor to be part of this program. I want to thank you for inviting me. As you mentioned, I was your student at the Hebrew University of Jerusalem exactly 35 years ago. I am very honored to be here. The idea that 35 years ago you were teaching a course for non-Israeli students on terrorism as a political tool in 1987, so you've always been ahead of the game, this is way before 9/11 when there wasn't quite the same type of awareness of terrorism and what a threat it is to society and to mankind as a whole. I'm going to start by looking briefly at the main topic, which is Latin American security concerns, and it's rather broad. I will look at certain generic issues and then focus on the one area where I have a little bit of knowledge, which is in my home country, Panama. Even though I was educated in the United States, I have lived in Panama most of my life and I've practiced law in Panama for the past almost 30 years. It is important to know why I will be focusing on Panama while at the same time not neglecting the general topics which you aptly proposed.

I will start by looking at what the security concerns are, where the threats are, and what the order of the best practices are. Of course, if this being an area that is in constant flux is not something that we can have a straight answer. Yes, security is essential for human survival, security is essential for societies to remain as such, and security is essential to coexist in a world with many actors and with many factors. What are the threats? The first threat in terms of security, and there's no specific order but I'd like to go by order of magnitude, is warfare. Warfare takes two forms, conventional and non-conventional. Luckily, in this hemisphere we haven't had that direct security threat during my lifetime, I was born in 1967. A major regional conflagration has not been on the books; we have been able to coexist as nations in this hemisphere relatively peacefully. I say relatively because there are other types of security threats that we have experienced first-hand and that perhaps do not reach the same level of warfare that we see in the Middle East, what we are seeing now in the former Soviet Union, and what we have seen in other continents. There are security threats of a lesser magnitude but by no means are negligible. These are threats that are real and that we need to deal with as nations that are sharing this hemisphere. I like to call this a peaceful hemisphere; this is the one hemisphere where there is one nuclear power. That's it. There is nuclear proliferation, and the one attempt to bring nuclear weapons from elsewhere was done with diplomacy over 60 years ago. Looking at Latin America during my lifetime, yes, we had to deal with terrorism. Professor Alexander mentioned the terrorist acts that took place in Argentina. I need to mention that there is also a connection with Panama. There was an airplane in 1994 that was blown up in the sky that was connected to the same type of terrorist activities which you described and the same organizations you described in the beginning. It is not something that escapes even a very tiny country like Panama. Terrorism itself is a very complex term because it depends on who is using the term. I have heard, and I am sure Professor Alexander has too, people who refer to an anarchist as a terrorist, an insurgent as a terrorist. Others refer to freedom fighters, or to be people that are terrorists referred to as freedom fighters. Others refer to themselves as guerillas and not terrorists. Others simply refer to their political opposition as terrorists. Finally, a term which I find very involved in Latin America since the 1960s is "revolutionary." Now what does that mean? I would like to go into a little bit of an anecdote because in Panama I was born in 1967 and there was a coup in 1968 by the military. It was virtually bloodless, yet they called themselves a revolutionary government. Now this was a social revolution; revolution is not necessarily a call to arms by the people. Then we have much later in Venezuela, the current government in Venezuela calls itself the revolutionary republic of Venezuela. The term "revolution" has been used and abused across the hemisphere. Of course, the Cuban revolution is probably the most famous, but I can tell you in Panama when I was growing up, there was the revolutionary government which there was really no revolution. It was a coup d'état.

Another threat to security is criminality. Drug trafficking across borders is probably the most potent form of criminality. It spans the entire hemisphere, with consumption in the north and production in the south. We will look at some maps later. All that is connected to drug trafficking under that denomination of criminality. For example, money laundering is tied, originally, to drug trafficking, not tied to terrorism; like I said, there are no set boundaries in this definition. They don't have political stability when you do not have a democracy; when you do not know what to expect during elections. When governments do not respect that they are entrusted temporarily with managing the public good, then we have political instability. That is a risk, it is a latent risk and a patent risk to our nations.

Human rights violations are also a risk, and I would like to look at it in three dimensions. Lately the one we have been feeling the most throughout the hemisphere, and this is not a problem of the United States and of Canada alone. This is a problem of the entire hemisphere, immigration. If we do not have immigration controls, we cannot guarantee a secure environment in our countries. The flow of immigrants are not only coming from the hemisphere. In Panama, for example, at the border with Colombia, we're holding thousands of immigrants or refugees, many of which have nothing to do with this hemisphere. They come from Africa, they land in South America, and they want to get to the United States. They use the hemisphere as a corridor and along the way that presents a lot of threats. There are economic threats. Who will take care of those human beings? After all, they are human beings, there are men, women, children, old people, babies going across borders. There needs to be border control and there needs to be some sort of unified front to deal with this immigration crisis.

Across the hemisphere we have huge inequalities between countries. There is a country like Haiti and there is a country like Chile within the same hemisphere and they are all a part of Latin America. Why do we have all these huge inequalities across and within nations? Forget about situations like Haiti compared to Chile or Haiti compared to another prosperous country like Peru that faces other security threats that include terrorism which has been fought over in the past 30 years. In the distribution of wealth, again, we have issues both internal and regional. Poverty is rampant in the hemisphere; we cannot turn a blind eye to the extent that there is poverty. There is social insecurity to the extent that people are not able to earn a decent living and live with dignity. Finally, lawlessness; when states do not control what their inhabitants do, what they do to others, and what they do when they move across borders, then we have a security problem.

The best practice is to tie up a threat with a solution. When there is warfare, diplomacy is the best way to deal with it, but it must be real honest diplomacy. Not a façade of diplomacy, but good intention diplomacy in the way bilateral or multilateral treaties are negotiated and enforced. With terrorism, we have to work really hard to prevent the financing of terrorism, the arming of these terrorist groups, and their infiltration into our hemisphere. With criminality, we need to create policies that both punish and deter criminality so there will be no incentive and there will be a disincentive to engage in those activities. With political instability, we need to focus on democracy and creating a democratic environment for people to feel safe in. With human rights, we need to strive toward equality. We need to strive towards fair immigration policies with appropriate controls. We need to work on human development to ensure economic fairness. Finally, with lawlessness, and this is perhaps the one issue that I have some sort of minor expertise on, we need to, and this is what the International Law Institute (ILI), does daily, to look, to work, and to reinforce the rule of law across each and every nation in the hemisphere. That is the ultimate key that ties together all the best practices.

Now as I promised, I am just going to look briefly into the case of Panama. I am going to touch upon only a few of these threats and best practices. I see we have distinguished scholars who probably know more about Panama than I do, but I would like to look briefly into some aspects which touch upon Panama. Number one with Panama is the geography.

The world's most important trade routes all converge in Panama. The isthmus of Panama is the small strip of land that's in the middle that joins North America to South America. It is within Central America which is a transitional zone. Panama is literally the navel of our hemisphere; others say that it's actually the navel of the universe. This is a major trade route; this is where world commerce comes together. This is where goods come from one place and make it to another place. This is the strategic importance of the isthmus of Panama. Its position as a crossroad and the importance of keeping it safe and secure. Keeping the Republic of Panama safe and secure, ensuring that peace reigns in Panama, ensures that goods flow and the entire world is secure to access consumer goods, food, and fuel. This is why in 1979, the Panama Canal treaties were implemented after

a negotiation between the United States and Panama. The United States since 1904 had been building and running the Panama Canal as an enclave of the United States in Panama.

I remember there were two different sets of police forces. Up until 1999 there were American armed forces stationed in Panama. Why? Because of the answer we saw on the map. We need to ensure the free flow of goods and with that together with the Panama Canal treaty, which was a treaty that reverted the canal and its facilities to Panama, there was a treaty concerning the permanent neutrality and operation of the Panama Canal. It is called the Neutrality Treaty, but it's not about neutrality. It is about ensuring security, ensuring safe passage, and it has a contradiction. It says only Panama may maintain military forces in the canal and in Panama after the Americans leave, which was in 1999. Yet, article 4 of that treaty says that "The United States of America and the Republic of Panama agree to maintain the regime of neutrality that is established in this treaty which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two contracting parties"-being the United States and Panama. What does that mean? I was able to look at documents from Jimmy Carter's presidency. The statement he made after the neutrality treaty was agreed in 1977. Again, it was put forth in 1979 and it was fully implemented in 1999 as the Canal treaties, but the neutrality treaty is still a binding international treaty. This is what President Carter and General Torrijos, who was then the head of state, had to say, "Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations." Then they add, "The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the canal." This illustrates that the Panama Canal is of utmost importance. That its security allows military intervention to defend neutrality.

Finally, I would like to contrast two maps with the original map. One was a map of Panama as the main hub for international trade, the next map is the drug trafficking routes, which I mentioned when I spoke about criminality. As you see, Panama is also a thoroughfare for trafficking drugs. In that regard, ensuring there is security in Panama to prevent that from happening also makes us safer. With immigration, we have this map that shows where international migration routes in Central America start. What borders Panama? Colombia, which is in South America, where drugs are being produced. How do they get to the center of consumption? Where do they go through? Through Central America, which is represented by the blue lines. Where does the journey start? In Panama. So, we have the same situation with drugs and migrants. I cannot stress the importance of ensuring the security of free transit of goods and the neutrality of the Canal, but to ensure that immigration and drugs are controlled as they come through Panama to avoid and prevent. This is one of the keys to ensure security and safety in our hemisphere.

AMBASSADOR (RET.) LINO GUTIÉRREZ

FORMER U.S. AMBASSADOR TO ARGENTINA AND NICARAGUA AS WELL AS ACTING ASSISTANT SECRETARY OF STATE FOR WESTERN HEMISPHERE AFFAIRS

Thank you very much, Professor Alexander. Thank you to the Potomac Institute for its kind invitation. I am very glad to be here. I think it is very timely and important that you chose to focus on Latin America. You might ask why we are focusing on Latin America when the whole world appears to be burning, and everything appears, at first glance, to be much better in Latin America than in other areas of the world. Of course, we have a shared history with Latin America. We have proximity; we are neighbors. We have shared values, for the most part. We had $1.9 trillion in trade in the past year.

In understanding Latin America and its relationship to the United States, you have to look at history. You have to go back to the first years of independence when the U.S. became an independent nation after the Battle of Yorktown. Ever since then, the United States has looked South and found a lot in common with the nations of the Western hemisphere.

Even if you look at the first days of independence in Latin America, when Simón Bolivar and others were leading independence movements, patriots like Manuel Belgrano in Argentina carried in his knapsack the speeches of George Washington. The U.S. sent special envoys to the region before the countries were fully independent. There is a long, shared history between the U.S. and its neighbors.

However, that long shared history included some controversial events, starting with the Monroe Doctrine in 1823, which was initially viewed as an attempt to keep European nations out of the Western Hemisphere. Today, it is not regarded with a lot of adulation in Latin American countries. There was also the U.S.-Mexican War in 1846, the whole Manifest Destiny movement in the United States, and the Spanish-American War in 1898 which resulted in Cuba, Puerto Rico, Guam, the Marianas, and the Philippines essentially receiving protectorate status with the United States, and with Cuba becoming independent. In the early 20th century, with the Roosevelt Corollary to the Monroe Doctrine, where the United States sent troops to the region, in many cases at the invitation of some local actors, but also to prevent European countries like Germany, France, and others to return and collect the debts that they were owed by the Latin American fledgling nations.

During this period, the U.S. occupied countries like the Dominican Republic (1916-1924) and Haiti (1915-1934); in Nicaragua they intervened several times, and in other Central American nations as well. My colleague already talked about Panama, and that was also a focus, when President Theodore Roosevelt sought to build the Panama Canal.

Then there were periods of what the Latin Americans might call "enlightenment." The Good Neighbor Policy under President Franklin Delano Roosevelt was announced to Latin America in 1933 that the U.S. would no longer intervene and wanted to be good neighbors. This well-meaning policy became a double-edged sword when, in some of the places where the U.S. did not intervene, the local military in some of these countries, saw it as a green light to take over the government and became entrenched. This led to the famous phrase by President Franklin Roosevelt about a dictator in the hemisphere. Some say it was about Somoza in Nicaragua, when in referring to him he said, "He is a son of a bitch, but he is *our* son of a bitch."

A moment of hemispheric solidarity occurred during World War II when the nations of the hemisphere signed the Rio Treaty, which was the first real treaty where all the countries of the hemisphere proclaimed that the attack on the United States at Pearl Harbor was an attack on all the countries of the hemisphere, save for Argentina, which declared war on the Axis powers with the Allies a few miles from Paris. So, there have been ups and downs in the relationship.

Of course, as the previous speaker commented, the advent of revolution in 1959 with the coming of Fidel Castro changed the ballgame completely. Castro's revolution essentially marked the beginning of the Cold War in the region when he aligned himself with our enemy at the time, the Soviet Union, at the height of the Cold War. When Soviet missiles were pointed at American cities, our focus understandably became more of a Cold War focus than a regional approach. The Bay of Pigs Operation in 1961 was a disaster for the United States. It was one of the instances of U.S. naive thinking that a formula that worked in one country could work in another. Guatemala in 1954 or Iran in 1955 was not Cuba in 1961. It was a significant defeat for the United States.

The Cuban Missile Crisis in 1962, when the world was on the brink of nuclear war, is an event many policymakers are looking at now, given the situation in Ukraine where Putin has threatened to use nuclear weapons. How do we get off of that? The Cuban Missile Crisis is an interesting case study.

Then, there were other interventions. In the Dominican Republic in 1965, when what appeared to be a pro-communist movement was gaining traction, the U.S. and other Latin American nations sent troops to prevent another Cuba. The U.S. also intervened in Grenada in 1983 when President Reagan decided to intervene after the assassination of Prime Minister Maurice Bishop. The U.S. also sent troops to Panama in 1989 to get rid of Manuel Noriega. Then in 1989, you see the beginning of the collapse of the Soviet Empire. The Berlin Wall falls in 1989 and people like Francis Fukuyama are writing about "The End of History." Things would no longer be the same because the bipolar world as we knew it ceased to exist.

At that time, the reaction in Latin America was one of seeking solidarity between countries and a movement to try to establish what we call the "Free Trade Area of the Americas" (FTAA), which would unleash free trade from Tierra del Fuego in Argentina to Prudhoe Bay, Alaska. Those of us who were working on this issue at the time

were a bit surprised at the intensity of this effort by the Latin Americans. The desire for free trade by our Southern neighbors was motivated in part by the creation of the North American Free Trade Agreement (NAFTA), which began as a tri-country agreement with the U.S., Canada, and Mexico. We were surprised that the rest of the hemisphere, after years of economic teachings about dependency theory and Marxist dogma, wanted into the Washington Consensus at the time.

With great fanfare in Miami in 1992, President Clinton announced the launching of the Free Trade Area of the Americas. He started with the three amigos: President Clinton, the Prime Minister of Canada, and the President of Mexico. Pretty soon, Chile joined in. There was considerable movement, because a few years later the Central America Free Trade Agreement (CAFTA) was negotiated, followed by free trade agreements with Colombia, Chile, and others until the Summit of the Americas in Mar del Plata in 2005 (I happened to be there at the time) when some of the countries of the hemisphere, notably Brazil and Argentina, decided they would not join in the free trade agenda.

Soon thereafter there was the first "Pink Tide" in the hemisphere, which was marked by populist leaders being elected in some countries. This phenomenon took place even though the FTAA had led to the creation of the Inter-American Democratic Charter, where 34 of the 35 countries of the hemisphere agreed that democracy should be the system of government for the hemisphere, and that dictators need not apply to the Organization of American States (OAS).

What some of us had not envisioned was the fact that populist leaders could attack democracy after a fair election. Leaders like Chavez in Venezuela were initially elected in a free election, promising to end corruption, and after he assumed power, he promised "lead" (bullets) for his opponents. There were not any regional mechanisms to deal with this. So, what do we do when people like Chavez, Aristide in Haiti, or Ortega in Nicaragua, try to destroy democracy from above?

In 2001, as Professor Alexander commented, I was with Colin Powell in Lima, Peru at the OAS meeting where we were to sign the Inter-American Democracy Charter. At this time, President George W. Bush had been in power for six months, and he said things like "2002 is going to be the 'Year of the Americas.'" It was very unusual for a U.S. President to give Latin America priority in his foreign policy.

The visit of Vicente Fox, the first freely elected president of Mexico, created momentum for the "Year of the Americas." I remember on September 7th, 2001, President Fox was received at the White House by President Bush. The foreign minister of Mexico said in a speech that his country wanted to sign an immigration agreement with the U.S. that would legalize the status of undocumented Mexican workers in the U.S. In his words, he said "We want the whole enchilada." His words, not mine. It seemed to those of us who worked on Latin American issues that this was a new era of U.S. engagement.

And then, of course, September 11th happened. On September 11th, Secretary Colin Powell was in Lima, Peru at a meeting of the OAS. Powell stayed long enough to sign the new Inter-American Democratic Charter, which was approved by acclamation. Even Hugo Chavez of Venezuela signed the Inter-American Democratic Charter. But, of course, by then our focus turned to combating international terrorism. The nations of the hemisphere did sign a number of counterterrorism agreements at this time with the United States which were very important.

Some observers have said that the United States neglected Latin America after 9/11. Naturally, when there is a fire in the neighborhood, one has to put out the fire rather than have tea with your neighbors. Clearly Latin America was not the main focus as President Bush had envisioned. We were fighting a war in Afghanistan, in Iraq later on, and much of our energy and effort in foreign policy was to support that effort.

In examining the situation in Latin America today, I will contend that the erosion of democracy in the region should be the number one strategic issue for the United States in this hemisphere. President Biden's recently-published National Security Strategy states very clearly that the United States has derived security and economic benefits from the region's democratic stability and institutions. Thus, supporting democracy in the hemisphere, I believe, is our number one interest. When the United States deals with democratic governments, things go much easier for the United States.

The picture of democracy in the hemisphere, unfortunately, is a mixed one today. While democracy continues to expand in the world, studies have shown that its quality is deteriorating and that threats to democracy are rising in the Western hemisphere. There are bright spots of traditional democratic countries like Costa Rica, Uruguay, Ecuador, and Chile, of course. On the other extreme, there are also the three totalitarian authoritarian governments: Cuba, Nicaragua, and Venezuela. Others that have flirted with authoritarianism are Ecuador under Correa, Bolivia under Morales, and others.

However, what is more disturbing to me is the fact that there seems to be democratic fatigue in the hemisphere. In a recent poll, the Latinobarómetro found that only 48% of Latin Americans currently support democracy. There is still some longing for the person on the white horse, and that strong person could be a man or a woman, to fix all the country's problems.

Latin America has the highest level of voter participation in the world, with 67% of the population voting in elections, and the highest percentage of female parliamentarians. Democratic fatigue is seen in the fact that political parties are not doing as well in elections as they used to. People like Jair Bolsonaro in Brazil, Gustavo Petro in Colombia, and others could come out of nowhere and defeat the political parties.

There is less trust in institutions. Corruption has been around since the days of the colonies when the Spanish-American colonists told the mother country "Obedezco pero no cumplo," or "I will obey but I will not comply." This mixed message was a result of Spain's mercantilist policies, which sought to bring riches to the mother country but did little for the development of the colonies. Corruption has always been around; I think what is different now is that there is brighter light shining on it, so we know about it, and many corrupt acts that we were never aware of are now coming to light.

There are many countries vulnerable to democratic erosion, such as Haiti, Guatemala, Honduras, and even Mexico and Paraguay. Looking at today's world, strategic thinkers would naturally prioritize Europe, which has a shooting war in Ukraine, or Nigeria, where terrorist groups like Boko Haram are active, also Syria and other regional conflicts. By comparison, Latin America appears relatively calm.

Yet Latin America is the most violence-prone region of the world. The world homicide rate is 6.1 deaths per 100,000 population. Latin America's homicide rate is the highest in the world at 17.2%. Africa follows at 13.1%. 37% of all homicides in the world are committed in Latin America, which has 8% of the population. These are problems that, in Latin America, are beneath the surface, but they are real problems that can affect the U.S. National Security. When people do not have trustworthy security institutions in their country, they seek a better life in other countries. In many Latin American countries, the solution is to go to the United States.

We have talked about criminality in the region; human trafficking is a problem and, of course, drugs have been a problem for years. President George H.W. Bush was the first to admit that U.S. demand is a large part of the problem. In the United States, there were 29,000 deaths due to drugs last year. This is a problem that must be attacked domestically and internationally; one does not work without the other.

In the last few years, illegal immigration border crossings have broken records. In addition to the traditional immigration through the Mexican border from Mexico and the Northern Triangle countries (Guatemala, Honduras, and El Salvador), now there are people escaping from authoritarian regimes like Cuba, Venezuela, and Nicaragua that are crossing the Mexican border. 200,000 Cubans alone have crossed the border during the last fiscal year. This is a major problem that we need to continue to address with cooperation from our neighbors. At the recent Summit of the Americas in Los Angeles, twenty countries from the region and the United States signed an agreement to cooperate concerning migration. I think that is a good first step.

In addition, the problem of inequality exists, because Latin America remains the most unequal region in the world. One out of three Latin Americans live in poverty. The most unequal distribution of money in the world happens in Latin America with a very strong and disproportionately large upper elite and a large majority of the population in poverty.

The United States has to address all these issues with our neighbors, but I believe they all start with democracy. We need a vision. I think it can be agreed that, since 2001, we have not paid enough attention to Latin America.

And we need to be aware of China's growing involvement in the region. China has been playing for the long term in Latin America. Its focus seems to be on trade and investment, but it is also a geostrategic focus. Russia and Iran's involvement is mostly opportunistic, working with anti-U.S. governments in the region. We have to take a serious look at these efforts.

We need a new approach and vision toward the region, as we had with President Kennedy in the Alliance for Progress, President Roosevelt in the Good Neighbor Policy, and President Reagan in the Caribbean Basin Initiative. We need to offer Latin Americans something new, and I hope that the Biden Administration will be up to the task. Thank you very much.

DISTINGUISHED PROFESSOR EMERITUS JAIME SUCHLICKI

UNIVERSITY OF MIAMI; CURRENT DIRECTOR AT THE CUBAN STUDIES INSTITUTE

In terms of Latin America, Cuba for the past 60 years has been an enemy of the United States using whatever matters, equipment, or modality to oppose the United States, including terrorism, joint ventures with the Soviet Union, or inviting the Soviet Union to bring nuclear missiles to Cuba. This is the result of Castro's own perception of the world and his own anti-Americanism. This goes back to the independence of Cuba and the fact that his father was a Spaniard that opposed U.S. involvement in Cuba. Castro, as a high school student, was impacted by fascist ideas and falangist ideas at Belen Jesuit High School. While he was in the mountains fighting for power and opposing the Batista Regime, he wrote to some of his allies and friends, "my biggest struggle is going to be against the United States once I come to power, and I pledge to fight against the United States."

Cuba has been an enemy of the U.S., and that is maybe the overarching factor in most of the terrorist activities except drugs, which naturally has been the monetary component. Many of the activities of these leaders throughout the world have to do with the United States. Cuba, in the past two decades, has created a very close alliance with Iran and Venezuela and has provided intelligence, training, and help to Hezbollah as well as the Iranians and facilitated their activities in Latin America.

In addition to its proven technical prowess to interfere with and intercept U.S. telecommunications, Cuba has deployed around the world a highly effective human intelligence network. The type of espionage carried out by Ana Belén Montes, the senior U.S. defense intelligence analyst who spied for Cuba for some 16 years until her arrest in 2001, has enabled the Cuban regime to amass a wealth of intelligence on U.S. vulnerabilities as well as a keen understanding of the inner workings of the U.S. security system.

Let me explain some of the points that I would like to elaborate on. Cuba provides intelligence to Hamas and Hezbollah. Hezbollah, on orders from Hassan Nasrallah, set up an operational base in Cuba that is working and still exists. Cuba and Venezuela fundraise for Hezbollah, and all of this is part of the Cuba-Venezuela alliance. Recently, Cuban military officers have been acting as liaisons between the Venezuelan military and the Narco guerrillas of the Colombian FARC. Cuban General Leonardo Ramón Andollo, Chief of Operation of the Cuban Ministry of the Armed Forces, has visited Venezuela several times and has acted as a go-between the Cuban and Venezuelan military. The FBI estimates that Cuba has provided safe harbor to dozens of fugitives from the United States and terrorists from all over the world including the Macheteros from Puerto Rico, Fuerzas Armadas Revolucionarias from Colombia, ETA, the Basque terrorist organization, other groups like we mentioned such as Hezbollah and Hamas have used Cuba.

Venezuela also has provided Cuba with duplicates, guides, and forms to provide allies of Cuba papers to enter Latin America. Thus, we have seen a growth of Arab, Middle Eastern, Hezbollah, and Hamas groups entering Latin America with falsified passports by the Cuban government. The Tupamaros, the Venezuelan group that beat up students in Venezuela, were trained by the Cubans. Venezuela is now providing training for terrorists and anti-American activists in Latin America. It is not coming out of Cuba, but primarily Venezuela. Two factors have remained on the table for a number of years now; in 1996, the Cuban Air Force shot down, in international waters, two unarmed civilian planes and killed four Americans. Fidel Castro and Raul Castro both acknowledged and accepted their personal responsibility for the two planes being shot down. The second one is the electromagnetic cyber-attacks against the U.S. and Canadian diplomats in Havana that harmed a number of them, which is still an unresolved issue. The United States has complained, but nothing has been done yet.

Let me finish with one thought here. Miguel Diaz-Canel, the acting President of Cuba, visited Putin in Russia last week. In the past few years, we have seen an interest of Russia to extend its naval activities through the Caribbean and into Latin America. I presume that besides obtaining a handout, Diaz-Canel is probably offering the Soviet Union the possibility of using Cuban ports for nuclear submarines and surface vessels from Russia. If this were to happen, and I am sure it will happen, we would have a confrontation again between Russia and the United States. Nuclear submarines are a dangerous provocation and having them close to the United States will represent a security threat to U.S. interests. The United States will react violently. Let me leave it here, and hopefully, we can answer some questions.

ANDREW I. RUDMAN

DIRECTOR OF THE MEXICAN INSTITUTE, THE WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS

My presentation is going to be a little different than the two previous ones in that I am going to talk specifically about Mexico, so I suppose it is more of a case study and some of the themes and points that were raised in the last two presentations may come through.

When I think of security issues in Mexico, I tend to think of it in two aspects. You have national security which, for Mexico, means organized crime, many of which were mentioned earlier - such as the trafficking, drugs, weapons, and contraband. And then you have personal security, by which I mean crimes such as femicide, homicide, and attacks on journalists and other members of society. I think another distinction is that national security issues tend to have more of a bilateral or multilateral dimension, whereas personal security issues tend to be domestic or national issues. Obviously, all are connected in terms of the sense of the country's security.

Starting with national security, again meaning organized crime, drug trafficking, money laundering, and smuggling of people throughout Mexico is a longstanding challenge. Current President Andrés Manuel López Obrador (AMLO) didn't create the problems. But he did promise in his 2018 presidential campaign to end the war on drugs and confront organized crime through a strategy called “hugs, not bullets,” or “Abrazos, no balazos” in Spanish.

Before I jump in, I want to show you a few slides to give you a sense of some of the crime and insecurity numbers in Mexico. If you look at homicide rates, you can see that prior administrations also faced homicides, but you also see a big increase during this administration. The femicide rate under López Obrador is on pace to exceed the rate under President Peña Nieto and his predecessors. The number of journalists killed in this administration is also likely to exceed past numbers under previous administrations. Confiscation of opiates has also increased considerably over the last administration. Obviously, some of the increase is due to shifts in what consumers are seeking, so you would see similar increases in CBP, or U.S. Customs and Border Protection data as well. CBP seizures have increased from around 4,000 or 5,000 pounds in 2020 and 2021, to about 12,000 pounds in FY 2022.

Now I’d like to talk about what AMLO has tried to do and how cooperating with the U.S. has been part of that strategy. AMLO’s presidential campaign was based on the belief that the poor and those in rural areas in Mexico have been neglected by successive Mexican “neoliberal governments.” AMLO promised to address their concerns and create a more equitable country. In the realm of security, as I said earlier, that meant “hugs, not bullets,” or to put it another way, to address the root causes of insecurity by creating opportunities and adopting preventive measures instead of direct confrontation with the drug cartels. The National Peace and Security Plan combined anti-corruption measures, economic policies, enhanced human rights protection, and public health measures, including treatment for drug abuse and exploration of legalization, transitional justice, and amnesty for some criminals. His social approach to preventing violence also included the creation of a new civilian national guard to replace the federal police.

I think addressing root causes is not a bad idea. In fact, that's what we talk about all the time in the context of migration across the Western Hemisphere - attacking the root causes. But I think the challenge is that addressing the root causes requires a long-term, long-range solution. And we often need or want immediate solutions. We want short-term solutions to a long-term problem. AMLO may have been correct to criticize the overemphasis on the strategy employed by former president Calderon that led to a dramatic increase in violence as different

elements of the cartel fought against each other which led to the splintering of the cartels as opposed to their elimination and an end to the violence.

I imagine you're all aware that the cooperation between Mexico and the U.S. has long been both a necessity and a challenge, at least from the perspective of the Mexican president. The Merida initiative, which had been established by President George W. Bush in 2007, was intended to govern bilateral cooperation to dismantle criminal organizations, strengthen Mexico's rule of law, modernize the border, and help violence-ridden communities. But AMLO was distrustful of the U.S., and he feared greater interference in Mexican domestic issues, especially when President Biden took office. President Trump largely maintained a hands-off approach to Mexico's domestic affairs; AMLO did not expect similar silence from the Biden administration.

The mistrust during the AMLO administration goes back at least as far as, and this would be from the U.S. perspective, the ill-fated attempt by the Mexican armed forces to arrest the son of Chapo Guzmán in Culiacan, Mexico. The short story is that heavily armed cartel members forced the armed forces to retreat leaving Guzmán behind. That effort to arrest Guzman occurred with support from the DEA. The relationship deteriorated further, from the Mexican perspective, perhaps. It started developing a greater mistrust after the October 2021 arrest in the U.S. of Mexican former Secretary of Defense Cienfuegos, who was charged with collaborating with the H2 cartel to smuggle cocaine, heroin, synthetic drugs, and marijuana. Mexico reacted angrily. It ultimately led the DOJ to drop the case and allow Cienfuegos to return to Mexico. Shortly thereafter, the Mexican attorney general claimed there were no grounds on which to charge Cienfuegos. López Obrador then released some of the confidential DEA documents which had been shared by the DOJ with the Mexicans to justify their decision to arrest Cienfuegos. The Mexican government subsequently took additional punitive steps against the DEA. Suffice to say, collaboration between our countries was undermined by these two incidents and others. U.S. law enforcement officials have spoken privately with us about the near loss of trust between the U.S. and Mexican law enforcement agencies.

Despite the tensions, and in recognition of the need to collaborate to address the shared challenges, the U.S. and Mexico have agreed to develop a program to replace the Merida Initiative. In September 2021, during the first-ever High-Level Security Dialogue, the U.S. and Mexico announced the Bicentennial Framework for Security, Public Health, and Safe Communities. (Bicentennial refers to the fact that December 12, 2022, marks 200 years of U.S.-Mexico diplomatic relations.) One of the key features of the Framework is that for the first time it addresses both countries' priorities. For the U.S., that is the reduction of fentanyl overdoses, which exceeded 100,000 last year. And for Mexico, it is the reduction of arms trafficking flowing from the U.S. into Mexico. The Framework and the High-Level Security Dialogue, (an inter-agency dialogue intended to ensure communication), is intended in general to rebuild trust and recognize the shared nature of our challenges. Our countries have committed to transforming their cooperation to better protect the health and safety of our citizens, prevent criminal organizations from harming our countries, and pursue and bring criminal organizations to justice during interagency efforts. There, I'm quoting INL Assistant Secretary Todd Robinson who spoke at the Wilson Center last month after the High-Level Security Dialogue.

Another part of security cooperation, I think, that is important to mention with respect to Mexico, is the increasing involvement of the Mexican armed forces in law enforcement activity, as well as a number of other activities that are not traditional military responsibilities. In 2019 AMLO delivered on his promise, as I mentioned, to create a civilian national guard, though, 70% or so of its members are military officers and soldiers. The guard itself reported to the Secretary of Security and Civilian Protection. Much of the national guard's focus was diverted, in response to pressure from President Trump, to control the flow of migrants, and the Guard continues to have a heavy role in migration control rather than to reduce criminal activity. The guard is under-trained and under-armed in comparison to the cartels. Further, and in keeping with this idea of "hugs, not bullets," the guard and the rest of the armed forces have often been constrained in their ability to respond to armed actions by the cartels.

In August of this year, AMLO's congressional majority with the cooperation of the opposition PRI party, adopted legislation placing the guard back under the Secretary of Defense, returning it to the armed forces, whereas I mentioned most of its members have come. Opposition leaders and civil society groups have pledged to challenge the constitutionality in the Supreme Court. Around the same time, Congress also voted to extend the army's presence in the streets for an additional 5 years, that is, until 2028. Given the traditional reluctance of

the Mexican army to collaborate with its U.S. counterparts, this decision could further complicate operational collaboration between our countries.

There is a lot more we could say regarding militarization and the entrance of the Mexican military into nonmilitary tasks but let me talk quickly about personal security. I'm thinking about violence committed by perpetrators who are not part of a cartel or a transnational criminal organization, but more what we call “common criminals.” The two types of crimes I'm thinking of are attacks on journalists and women.

Beginning with journalists, Mexico is now the most dangerous country in the world for journalists, apart from countries that are amidst a war. And so far, this year at least 13 journalists have been assassinated. This would likely make this year the deadliest for journalists in the past 22 years. During AMLO’s 4 years so far, 37 journalists have been murdered, exceeding the figures of the administrations which preceded him. AMLO has largely ignored journalists’ expressions of concern for their safety, and some argue that his messaging, especially his comments and actions during his daily press conferences, actually have exacerbated the violence. I’d also suggest that even if it doesn't lead to their deaths, these attacks on journalists and on a free and independent press are significant threats to Mexican democracy that U.S. officials should be addressing.

I also mentioned violence against women, and that's an issue that we are addressing at the Mexico Institute through an initiative called Engendering Safety: Addressing Femicide in Mexico. Femicide rates under the AMLO administration have spiked. Ten women are assassinated daily. Impunity and improper implementation of public policy, and insufficient funding dedicated to women's programs account for a large part of the rise of femicide. According to the Ministry of Security and Citizen Protection, 2021 was the most violent year against women in Mexico's history with a total of 1,016 murders. In several of his morning press conferences, AMLO has blamed the violence against women on “a crisis of values provoked by the neoliberal model.”

Several Mexican states have changed their penal codes to include femicide as a distinct crime and have created special prosecutors’ offices to investigate and prosecute femicide. The definition of femicide varies among states however, so it’s difficult to know exactly how many cases there are in the country. In addition, at the federal level, the Mexican Senate established a special commission to investigate cases of femicides of girls and adolescents, with which we worked last month (October 2022) to organize a full-day forum on femicide to discuss and present policy recommendations to reduce or eradicate femicides. Several state legislatures are interested in replicating the forum, so awareness, which is incredibly important to reducing femicide is, in fact, growing in Mexico.

Just to wrap up, the security challenges facing Mexico are considerable and not easily or quickly resolved, and I don't need to say how much Mexican security is related to U.S. national security. The trust between law enforcement agencies in both countries has been severely undermined. It is essential to re-establish this trust and the USG is committed to working with the López Obrador administration for the remainder of its time to address the challenges when it is possible. There may be more opportunities for cooperation at the state level, at least in the short term.

On the personal security front, pressure from civil society, activists, and NGOs is essential if Mexico is going to reduce femicide and improve the protection of journalists. As I mentioned, these are largely domestic issues as opposed to cartel issues. The U.S. government, the executive and the legislative branches, and civil society, can engage by providing technical assistance, training, and best practice sharing for those officials in Mexico responsible for investigating and preventing femicide. On the question of the attacks on journalists, the U.S. government should be much more vocal about the importance of protecting a free and independent press, even if the López Obrador administration accuses it of intervention. These are long-held values that we should not be afraid to defend, even if it creates a little bit of political turmoil. I am going to stop there, and I look forward to the discussion that follows. Thank you.

BRUCE ZAGARIS, ESQ.

PARTNER AT BERLINER CORCORAN & ROW LLP[2]

One of the key security concerns in the Western Hemisphere is illicit firearms trafficking. Most of the illicit firearms emanate from the U.S.

This paper looks at selected mechanisms to reduce the illicit firearms trafficking. In particular, it looks at the international conventions regulating illicit trafficking of firearms, the liability of U.S. gun manufacturers and distributors.

I. PARTICIPATION IN THE MAIN INTERNATIONAL CONVENTIONS ON ILLICIT TRAFFICKING OF FIREARMS

Three main international conventions govern the illicit trafficking of firearms: the Inter-American Convention Against the Illicit Manufacturing and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials;[3] the Firearms Protocol to Palermo Convention;[4] and the UN Arms Trade Treaty (ATT),[5] regulating the international trade in conventional arms – from small arms to battle tanks, combat aircraft and warships. A major gap is that the U.S. government is one of the only countries in the region not to join any of these conventions notwithstanding the U.S. is the main source of illicit trafficking in firearms. Each of these conventions are important for regulating the illicit trade in firearms.

The governments and civil society should exert pressure on the U.S. Congress, executive and U.S. people for the U.S. government to join and effectively implement these three international conventions, other ways to attack the money aspects of illicit trafficking of firearms, and the need to press for international human rights to life and in that context the need for accountability for governments regulating gun manufacturers and distributors and for the manufacturers and distributors themselves.

II. LIABILITY OF U.S. GUN MANUFACTURERS AND DISTRIBUTORS

An important requirement is to hold gun manufacturers and distributors liable. Gun manufacturers and distributors are motivated by one thing: money. In the U.S. when a company manufactures a product that is inherently or negligently dangerous and especially there are ways to reduce the dangerousness, but the manufacturers choose not to take advantage of ways to reduce the danger from the product, they can be held liable.

One problem in the U.S. is the Protection of Lawful Commerce in Arms Act ("PLCAA"), 15 U.S.C. §§7901-7903 et seq. has the express purpose of protecting the firearm industry from civil liability for criminal use of its products.

The Mexican government has brought two lawsuits recently in an effort to hold liable U.S. gun manufacturers and distributors.

A. CASE IN U.S. DISTRICT COURT IN MASSACHUSETTS[6]

On September 30, 2022, Chief Judge F. Dennis Saylor of the U.S. District Court in Boston dismissed the Mexican government's lawsuit against U.S. gun manufacturers and a wholesale

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[3] The treaty has adopted in 1997 and all 31 OAS members signed it. The only countries in the Western Hemisphere that are not members are Jamaica, Canada, and the U.S.

[4] The treaty became effect on July 3, 3005 and has 122 participants, including the EU.

[5] The treaty entered into force on 24 December 2014; it has 110 participants; 31 signatories not yet state parties; and 54 states that have not joined the treaty.

[6] Much of the rest of this section is from Bruce Zagaris, *Mexico Files New Suit against Gun Distributors After U.S. Court Dismisses Suit Against Gun Manufacturers*, 38 INT'L ENFORCEMENT L. REP. 430 (Nov. 2022).

distributor, seeking to hold them liable for alleged illegal trafficking of guns to Mexico.[7] On October 10, the Mexican government filed a new lawsuit against gun distributors in the U.S. District Court in Arizona. Judge Saylor ruled that the PLCAA requires dismissal of the complaint.

The complaint asserts claims against eight defendants. Seven are gun manufacturers—Smith & Wesson, Beretta, Century Arms, Colt, Glock, Ruger, and Barrett. The eighth defendant is Interstate Arms, a gun wholesaler and distributor. All claims arise under state law, and include, among other things, claims for negligence, public nuisance, defective design, unjust enrichment, and violation of Connecticut and Massachusetts state consumer-protection statutes.

The Mexican government complaint alleges that the significant recent increase in gun-related violence in Mexico is directly linked to the expiration of the U.S. ban on assault rifles in 2004. It alleges that when that ban expired, the production and manufacturing of firearms in the United States increased dramatically. In particular, gun manufacturers increased the production of military-style assault weapons, which are the type favored by criminal organizations. According to the complaint, the manufacturers are aware of this and are "deliberate and willing participants, reaping profits from the criminal market they knowingly supply."[8]

The complaint alleges that 70 to 90 percent of guns recovered at crime scenes in Mexico were trafficked from the U.S., with defendants producing more than 68 percent of those guns. The defendants allegedly are "fully on notice of the massive trafficking of their guns into Mexico" because it has been extensively documented in government reports and throughout the media.[9] According to the complaint, defendants have been nonetheless unwilling to implement any public-safety monitoring of their distribution systems to limit that illegal trafficking.

Judge Saylor ruled that, unfortunately for the government of Mexico, all of its claims are either barred by federal law or fail for other reasons. The PLCAA unequivocally bars lawsuits seeking to hold gun manufacturers responsible for the acts of individuals using guns for their intended purpose, and while the statute contains several narrow exceptions, none are applicable here.

According to Judge Saylor, "while the Court has considerable sympathy for the people of Mexico, and none whatsoever for those who traffic guns to Mexican criminal organizations, it is duty-bound to follow the law."

The complaint alleges that the design and marketing practices of the gun manufacturers and wholesale distributor intentionally and negligently are marketed for the cartels in Mexico. For instance, Colt sells three guns that it intends for Mexican buyers: the "El Jefe" pistol, the "El Grito" pistol, and the "Emiliano Zapata 1911" pistol.[10] Allegedly, these "models are status symbols and coveted by the drug cartels." Criminals in Mexico used the weapon in the 2017 murder of Miroslava Breach, a journalist based in Chihuahua. The complaint alleges the gun manufacturers design semi-automatic weapons and military-style weapons, and machine-guns primarily for the cartels in Mexico.[11]

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[7] *Estados Unidos Mexicanos v. Smith and Wesson Brands, Inc., et al*, U.S. District Court D. of Mass., Civil Action No. 21-11269-FDS, Memorandum and Order on Defendants' Motion to Dismiss, Sept. 30, 2022, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://storage.courtlistener.com/recap/gov.uscourts.mad.236945/gov.uscourts.mad.236945.163.0.pdf.

[8] Compl. ¶ 16.

[9] *Id.* ¶ 6.

[10] Complaint, ¶ 215.

[11] Memorandum and Order, *supra*, at 7-9.

The complaint also claims that other gun manufacturers also design weapons to appeal to criminal organizations in Mexico, among which are drug cartels, such as the Sinaloa Cartel and the Jalisco New Generation Cartel.

By its plain terms, the PLCAA limits the types of lawsuits that can be brought against gun manufacturers and distributors in federal and state court. Specifically, the PLCAA states that a "qualified civil liability action may not be brought in any Federal or State court." 15 U.S.C. § 7902(a) (emphasis added). The PLCAA also provides that any such pending action, as of the date of enactment, must be "immediately dismissed by the court." 15 U.S.C. § 7902(b). The PLCAA, therefore, is a jurisdictional statute. And because it bars exactly this type of action from being brought in federal and state courts, no choice-of-law analysis is necessary.[12]

Judge Saylor rejected plaintiff's claims that the PLCAA does not apply when the lawsuit is brought by a foreign government for harms that primarily occurred in a foreign country. Judge Saylor found that the presumption against extraterritoriality applies.[13]

Judge Saylor also found that the defendants were not negligent in the design or the marketing of their products. These findings may be reversed on appeal.

Mexico's Ministry of Foreign Relations has that it will appeal the decision of Judge Saylor and will continue "to insist that the arms trade must be responsible, transparent and accountable, and that the negligent way in which they are sold in the United States makes it easier for criminals to access them."[14] On October 26, Mexico filed its notice of appeal.

On appeal the Mexican MFR is expected to argue that 1) the PLCAA does not bar the case because under PLCAA's "predicate exception," it allows actions in which defendants knowingly violate gun laws, which the complaint alleges; and 2) even the case did not satisfy that exception, PLCAA does not apply to cases involving violations of foreign laws; and 3) PLCAA should not be applied extraterritorially, to foreign harms. In addition, amicae may argue that the trial court's broad reading of PLCAA is inconsistent with fundamental principles of American justice, that respect a right of access to the courts, a right to seek civil justice, accountability. This would support narrowly reading PLCAA under the presumption against preemption, federalism, and perhaps the rule against extraterritorial application, which are legal arguments the plaintiff makes.

B. MEXICO FILES NEW LAWSUIT IN ARIZONA

Meanwhile, on October 10, 2022, the Mexican government filed another U.S. gun lawsuit, this time in the U.S. District Court in Arizona against five U.S. gun shops and distributors it claims are responsible for the flow of illegal weapons into Mexico.[15]

The lawsuit alleges that these dealers routinely and systematically engage in the illicit trafficking of weapons, including of military-style weapons, for criminal organizations in Mexico through sales to straw purchasers and sales meant for arms smugglers.

The lawsuit alleges that the five stores are among the Arizona dealers whose guns are most frequently recovered in Mexico. The companies being sued are: (i) Diamondback Shooting

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[12] *Id.* at 20.

[13] *Id*. at 21-26.

[14] Raghu Gagneja, *US federal judge dismisses Mexico's $10B lawsuit against US gun manufacturers*, www.jurist.org, Oct. 1, 2022.

[15] Associated Press, *Mexico files a 2nd lawsuit targeting U.S. gun dealers to stem flow of weapons*, NBC News, Oct. 11, 2022, https://www.nbcnews.com/news/latino/mexico-files-2nd-lawsuit-targeting-us-gun-dealers-stem-flow-weapons-rcna51669.

Sports, Inc. (Tucson); (ii) SNG Tactical, LLC (Tucson); (iii) Loan Prairie, LLC, known as The Hub Target Sports (Tucson); (iv) Ammo A-Z, LLC (Phoenix), and (v) Sprague's Sports, Inc. (Yuma).[16]

Analysis

In addition to the lawsuit, the Mexican government is working with the D.C.-based Global Action on Gun Violence to push for "impactful gun violence prevention strategies" in the U.S. The main emphasis is to stop or slow the flow of American-made guns to Mexico. According to a September report from the Arms Control Association, Mexico has the world's fifth-largest number of unregistered guns in civilian hands.[17]

On October 5, 2022, at the 24th meeting of the Caribbean Community's (Caricom) Council of Ministers of National Security and Law Enforcement (CONSLE) in Montego Bay, the illegal trafficking of firearms was a main topic of discussion. Dr. Horace Chang, the Deputy Prime Minister of Jamaica and the Minister of National Security for the Jamaican government, said "(t)he small arms trade, which was highlighted by the prime minister (Andrew Holness) when he spoke at the United Nations, is a major topic for all of us, also the transshipment of drugs."[18] It will be interesting to see if any of the governments in the region file an amicus brief on appeal.

Chang says the U.S. has committed to the region that it will work towards stemming the flow of illegal firearms into the Caribbean. The commitment was made during a presentation at the three-day meeting. U.S. agencies including Homeland Security; the Bureau of Alcohol, Tobacco, Firearms and Explosives and Agency for Narcotics contributed to the presentation.[19]

Already the Belize and Antigua and Barbuda governments, along with Association for Public Policies d/b/a/ the Latin American and Caribbean Network for Human Security ("SEHLAC"), fourteen states, and groups of law professors have filed amicus curiae briefs.

At the United Nations General Assembly in September, Jamaican Prime Minister Andrew Holness urged the strengthening of the regimes against trafficking in small arms. Some commentators are urging CARICOM countries to join Mexico in its suit against the U.S. gun manufacturers.[20]

Governments and civil society in the Western Hemisphere should consider joining the lawsuits as amicae. By joining as amicae, they will make the voices heard to the judiciary and will be able to multiply some of the legal arguments used by the Mexican MFR.

In 2000, Smith & Wesson -agreed to dozens of once-unthinkable safety and marketing restrictions aimed at keeping firearms out of the hands of children and criminals. The settlement with the federal government and more than a dozen cities was a landmark victory for gun control advocates.[21] Smith and Wesson agreed to about 80 reforms, including "to put trigger locks on all its handguns, make gun grips too big and triggers too powerful for young children to fire, to imprint a hidden second serial number on guns to deter theft and to develop

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[16] Mexican Ministry of Foreign Relations, *The Government of Mexico files a second lawsuit to combat illicit arms trafficking, Press Release 377*, Oct. 10, 2022 https://www.gob.mx/sre/prensa/the-government-of-mexico-files-a-second-lawsuit-to-combat-illicit-arms-trafficking?idiom=en.

[17] Kevin McCauley, *Mexico Targets Cut in Gun Flow from US*, Oct. 7, 2022 https://www.odwyerpr.com/story/public/18598/2022-10-07/mexico-targets-cut-gun-flow-from-us.html.

[18] *Regional security ministers meeting to target transnational crime, says Chang*, JAMAICA OBSERVER, oct. 6. 2022.

[19] *US commits to help stem flow of illegal guns into Caribbean*, October 10, 2022 http://radiojamaicanewsonline.com/local/us-commits-to-help-stem-flow-of-illegal-guns-into-caribbean.

[20] Editorial, *CARICOM should join Mexico's new gun suit*, THE GLEANER, Oct. 13, 2022 https://jamaica-gleaner.com/article/commentary/20221013/editorial-caricom-should-join-mexicos-new-gun-suit?utm_source=newsletter&utm_medium=email&utm_campaign=am_newsletter

[21] Eric Lichtblau and Ricardo Alonso-Zaldivar, *Smith & Wesson Agrees to Key Safety Reforms*, L.A. TIMES, Mar. 18, 2000.

"smart" technology that would allow only an authorized user to fire a gun."[22] Thereafter, Smith & Wesson reneged without consequences.[23]

Interested persons must hold federal and state legislatures responsible for removing impunity from gun manufacturers and distributors.

III. OTHER WAYS TO ATTACK THE MONEY ASPECTS OF ILLICIT FIREARMS TRAFFICKING

Governments and international organizations should focus on the financing of illicit firearms trafficking.

A recent United Nations study shows there is a lack of data with respect to the financing of illicit firearms trafficking.[24]

According to a study by the Government Accountability Office, federal agencies and others have reported that money laundering strategies used by transnational criminal organizations and terrorist groups, including those engaged in illicit firearms trafficking, include sophisticated techniques such as phony trade transactions or purchase and resale of real estate or art. Such techniques can involve the services of professional money laundering networks or service providers in legitimate professions, such as complicit lawyers or accountants. For example, lawyers or accountants can create shell companies (entities with no business operations) to help criminals launder illicit proceeds. Transnational criminal organizations and terrorist groups also continue to smuggle cash in bulk or transmit money electronically across borders.[25]

The Financial Action Task Force has prioritized compliance with anti-money laundering, counter-terrorism financing, and counter proliferation financing.

Because of the daily harm, including loss of lives, harm to national and international security, and the damage to political stability and sectors such as tourism, FATF should also add financing illicit firearms trafficking as a priority area for measuring conduct by financial institutions and gatekeepers. FATF also should prepare and disseminate typologies of the financing of illicit firearms trafficking.

The FATF has typologies for all kinds of laundering, terrorist financing and proliferation financing. However, until now FATF does not have typologies for the financing of illicit firearms trade.[26]

Once FATF does typology reports on the financial of illicit firearms trafficking and provides standards for the control of such financing, national governments, financial institutions, and gatekeepers would be responsible to meet these standards.

IV. THE HUMAN RIGHT TO BE FREE FROM ILLICIT FIREARMS TRAFFICKING

Increasingly civil society is calling for action with respect to the right to be free from violence caused by illicit firearms trafficking. In this regard, on October 25, 2022, the Inter-American Human Rights Commission held a hearing on Illicit Firearms Trafficking. Jonathan Lowy, the founder and counsel for Global Action on Gun Violence (GAGV) , testified. GAGV provides litigation and advocacy to victims of gun violence, nations and international organizations, with a focus on stopping gun trafficking from the U.S.

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[22] *Id.*

[23] Avi Selk, *A gunmaker once tried to reform itself. The NRA nearly destroyed it*, WASH. POST, Feb. 27, 2018.

[24] Mark Bromley, Marina Caparini and Alfredo Malaret, MEASURING ILLICIT ARMS AND FINANCIAL FLOWS: IMPROVING THE ASSESSMENT OF SUSTAINABLE DEVELOPMENT GOAL 16 (SIPRI Background Paper)2 (July 2019) chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.sipri.org/sites/default/files/2019-07/bp_1907_sdg_16.pdf. For additional background see Global Initiative against Transnational Organized Crime, Arms trafficking and organized crime: Global trade, local impacts (Aug. 2022) https://globalinitiative.net/analysis/arms-trafficking-and-organized-crime/

[25] GAO, TRAFFICKING AND MONEY LAUNDERING: STRATEGIES USED BY CRIMINAL GROUPS AND TERRORISTS AND FEDERAL EFFORTS TO COMBAT THEM, GAO-22-104 (Dec. 2021) chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.gao.gov/assets/gao-22-104807.pdf.

[26] For a list of FATF typology projects, see https://eurasiangroup.org/en/fatf-typology-reports.

Lowy stated that the illegal arms trade causes a regional citizen security crisis and infringes on human rights, including the right to life.[27] Contrary to its due diligence obligations, the U.S. fails to prevent or investigate human rights violations,[28] or impose "appropriate punishment" on those responsible.[29] Instead, the U.S. provides effective immunity which creates impunity for conduct that feeds human rights abuses.

Increasingly, attention focuses on the nexus between the availability of small arms and the perpetration of violent acts on a large scale. As a result, some States have included end-use criteria based on human rights and humanitarian law in their arms transfer laws and policies.[30]

Civil society, human rights lawyers, governments, and persons interested in stopping illicit firearms trafficking should use international human rights tribunals and courts to press for the international human right to life and to be free from gun violence. In this regard, they should hold accountable governments regulating gun manufacturers and distributors, as well as the gun manufacturers and distributors and persons complicit, such as financial intermediaries.

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[27] Members of the OAS are at least guided by its normative framework of American Declaration of the Rights and Duties of Man (American Declaration) in complying with their legal obligations. The American Declaration is "recognized as constituting a source of legal obligation for member states of the Organization of American States, including those States that are not parties to the American Convention on Human Rights," such as the United States. *Lenahan v. United State*s, Case 12.626, at para. 172, Inter-Am. Comm'n H.R., Report No. 80/11 (July 21, 2011). The Inter-American Human Rights Commission has repeatedly recognized that the American Convention and its interpretation by the Inter-American Court are as an authoritative expression of many of the fundamental principles set forth in the American Declaration, the rights to life and security of person among them. See, Inter-Am. Comm'n H.R. Report No. 40/04 Maya Indigenous Communities of the Toledo District (Belize), Oct. 12, 2004, at parag. 87.

[28] *See*, Thomas M. Antkowiak and Alejandra Gonza, THE AMERICAN CONVENTION ON HUMAN RIGHTS: ESSENTIAL RIGHTS, 19 (Oxford Univ. Press 2017); *see also Lenahan v. United State*s, Case 12.626, at paragr. 172, Inter-Am. Comm'n H.R. Report No. 80/11 (July 21, 2011).

[29] *Velásquez Rodrïguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser.C) No.4, paragr. 174 (July 29, 2988).

[30] Allexandra Boivin, *Complicity and Beyond: international law and the transfer of small arms and light weapons*, 87 INT'L REV. OF THE RED CROSS 467, 468 (Sept. 2005) chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.corteidh.or.cr/tablas/a21940.pd

IV. QUESTION AND ANSWER DISCUSSION

Selected comments by the contributors to this report during the discussion following the presentations. Some of the invited attendees from the United States and internationally participated during this segment.

DAVID MIZRACHI

Well, again, thank you very much, Professor Wallace. Particularly, I do appreciate that Professor Alexander has been recognized as a pioneer of academic studies on terrorism.

I would like to comment, again, I am actually a history buff, so I enjoyed listening to Ambassador Gutiérrez run us through this very long and winding road of the U.S.-Latin America relationship, being that Panama has had such an important role in that area. Indeed, the role the United States plays in being the guarantor of security is something that is interesting. I believe Ambassador Gutiérrez touched upon that. I am also very happily surprised that most of our talks, even though they intertwined with each other, each of us had, and although we did not plan it, there was not much repetition. We touched on each other's heels without really stomping on our feet; and that was remarkable. I hope that we do the same on other panels.

We are all certainly very concerned about preserving security and about the multi-dimensional definition of what security is. Security is not only not being killed when we walk out from our offices or our homes. Security is having economic security, having full security, and being able to live in a peaceful society, regionally as good neighbors. It is a pity that outside forces are contributing to our divisions based upon political philosophies. At the very end, there is more that unites us because we have the common heritage of having lived through the colonial period and the post-colonial period and with being relatively young nations in the sense that no nation in Latin America is over 250 years old. We have grown together, and we should continue to live together in harmony, respecting each other.

AMBASSADOR (RET.) LINO GUTIÉRREZ

Thank you very much. I also want to say that it is a pleasure to be on this distinguished panel and have former colleagues like Andrew Rudman there, who was formerly in the Foreign Service, and Dr. Jaime Suchlicki, whom I have known for many years and whose books I have used in my courses at GW.

But I want to ask David Mizrachi a question. In 2000, I had to testify before the Senate Armed Services Committee on a question about whether the Chinese are taking over the Panama Canal. There was a company named Hutchinson Whampoa, which was supposedly Chinese-controlled but had George Shultz as chairman of the board, bidding on some of the projects involving the canal?

In recent years, there have been talks that the Panama Canal had to modernize to allow bigger tankers in. There was a lot of hoopla in Nicaragua when Daniel Ortega announced that there would be a new canal coming in through Nicaragua with Chinese investment. Do you have comments on the current viability of the canal right now?

DAVID MIZRACHI

Well, the Panama Canal has been operating as a much more efficient and profitable enterprise. It is the notion that the Americans built, rightfully so, at the beginning of the 20th century, the canal as really a point for service. It has become a point for commerce, and it is probably the largest contributor to the Panamanian GDP.
The ecosystem built around the canal including the ports, some of which are operated by Chinese entities, does not mean that there are no other port operators that are not controlled by China. I believe that, at some point, it might have been an overstated concern. The canal is operated very efficiently. It is operated with transparency. It is really a success story.

We have to be thankful to the United States. The United States complied with the Panama Canal treaties, returned to us the most valuable infrastructure probably in the region, the canal and the surrounding areas. Because the United States fully developed the Panama Canal Zone and, when it was turned over, it was a very valuable asset, and the Republic of Panama has been able to multiply its value for society.

Being that we are such a small country - we were barely over 4 million people before COVID-19 - we had the fastest and most constant rate of per capita GDP growth in the region. This is remarkable for a country of our size. On the side of the bilateral relationship with Panama, which is probably our most important relationship, after a few years without a Panamanian ambassador, Ambassador Mari Carmen Aponte came to Panama. She is already here, and she has expressed what her most important concerns as the ambassador are. I believe, as General Omar Torrijos said, we are under the umbrella of the Pentagon and that is good for security purposes.

ANDREW I. RUDMAN

I agree with the other panelists that this has been a great conversation, and you are right, David, that we all talked collectively about many of the same topics without overlapping with one another, which with no planning does not always happen.

As you particularly mentioned, David, we touched on security, democracy, and human rights. I think it just underscores the complexity of security. It is not the traditional armed forces against invading forces from some other country. So much of it is internal. And so much of it is driven by the way people experience and live their lives. Another point that comes through is the challenge to democracy that we are seeing in our country and around the hemisphere. To me, it is a concern that if democracy cannot deliver, then voters become easily responsive to populism. I think that is a real concern and a security threat to every country in the hemisphere. A question I will pose back is that, traditionally, when it came to drug trafficking, the conventional wisdom was that the U.S. was the demanding country, and all the other Latin American countries were supply or transit countries. It was very binary. But my sense, I don't know if this is shared by the others, is that increasingly, there is an awareness that there are usage problems in all countries. And because fentanyl is so particularly deadly and so easy to produce, you are seeing production in places you did not before.

DISTINGUISHED PROFESSOR EMERITUS JAIME SUCHLICKI

I want to thank all my colleagues, and I especially want to say hello to Ambassador (ret.) Lino Gutiérrez, who I have known for many years, and we worked together on many things.

Basically, the threats are internal and external. I don't think we can minimize external threats, whether they are from the Russians, Chinese, or Iranians; all these actors have an eye on Latin America as a vehicle to put pressure on the United States. Russia, in particular, wants to use ports in Latin America to bring their ships and create or try to create a crisis to put pressure on the United States.

PROFESSOR DON WALLACE JR.

Let me just conclude. Once again, as I always say Yonah, you have assembled a wonderful panel. We had a very rich discussion, and it was pointed out I think initially by Mr. Mizrachi, not too much overlap. Here is what I sort of gleaned.

One, the United States is awfully important. For ill and good. The Monroe Doctrine undoubtedly has cast a shadow all over the world. The United States has evolved through FDR and otherwise, but it is a complicated phenomenon.

Secondly, I agree with Professor Suchlicki. Cuba has been a source of trouble. The Russians and the Chinese, the Iranians, and others obviously would like to play in the field created by Castro and his successors. I also think it is interesting that there are real problems of criminality all over the world, but apparently because of drugs, trafficking, etc., crime is awfully important. Bruce mentioned firearms. It is kind of a scandal that we produce them, others consume them, and we do not regulate it. That is why we have not joined it. We have this obsession with the Second Amendment misunderstood probably, to not get involved with firearms. You know, there was one

recent case in Connecticut where the family of some of those children has collected against arms manufacturers on the ground that they were defamed. And maybe we will see some ingenious litigation.

The challenge to democracy, of course, is with us. I think we will win that fight. I do not think the Chinese are distinguishing themselves these days in their treatment of Covid-19. I mean, there must be a God, because Xi is really being punished and he doesn't know what the hell to do. Ditto with Putin. He has punished himself. He does not know what the hell to do. So, I think things are hopeful in that respect.

Finally, the point which impressed me a great deal which was made by Andrew Rudman and others, so much of the problem of security in our hemisphere is insecurity. It is the insecurity of individuals and, obviously, if you live in Mexico and there are cartels everywhere, etc., and so forth. But this problem, would you call it personal security, strikes me as the anxiety that it generates is obviously something we must deal with. It is very difficult to deal with. These are essentially domestic in their inspiration.

But I must say, I think Latin America in essence is special, Mr. Ambassador. It is interesting what the Mexicans always say, in a way "Why is God is so far away, and America is so close." The irony is we are close, but we are not aware of our neighbors, but our neighbors are aware of us and suddenly we have to constantly cope with that, asymmetry, if you will. But I want to thank you all. I will report to Yonah what I think has been a very successful panel. So again, thank you all very much and *hasta la vista*.

V. ABOUT THE EDITORS

PROFESSOR YONAH ALEXANDER is the Director of the International Center for Terrorism Studies (at the Potomac Institute for Policy Studies) and the Inter-University Center for Legal Studies (at the International Law Institute). He is a former Professor and Director of Terrorism Studies at the State University of New York and The George Washington University. Professor Alexander also held academic appointments elsewhere such as American, Catholic, Chicago, Columbia, and Georgetown's Center for Strategic and International Studies (CSIS). He has published over one hundred books and founded five international journals. His personal collections are housed at the Hoover Institution Library and Archives at Stanford University.

PROFESSOR DON WALLACE, JR. Yale University BA, Harvard University, LLB, is a Professor of Law at Georgetown University as well as Chairman of the International Law Institute. He is a U.S. delegate to UNCITRAL, vice president of the UNIDROIT Foundation, a member of the American Law Institute, and the former chairman of the International Law Section at the. American Bar Association. He is also the author and co- author of several books and articles.

VI. ABOUT THE CONTRIBUTORS

DAVID M. MIZRACHI has practiced private law in the United States and Panama for over three decades. He is also an academic and member of service organizations. Mr. Mizrachi is the founder of MDU Legal, a Panama-based law firm specializing in complex international dispute resolution and transactional work. He is admitted to practice law in Panama and the State of Florida and has served as an expert in Panamanian law in several jurisdictions. He has taught International Law and Legal Environment of Business at Quality Leadership University's undergraduate programs accredited by the University of Louisville, Illinois State University and Towson University, among others. David is a published author and a renowned international speaker. He has served as president of the Jewish Community of Panama, is a member of the Board of Governors of B'nai B'rith International, recipient of the Label A. Katz Award and a Nahum Goldman Fellow. Mr. Mizrachi is a member of the Lions Club of Panama and Vice President of the National Commission for Civic, Ethical and Moral Values. He holds a Bachelor of Arts in Political Science (Hons.) and Economics from the University of Pennsylvania, a Juris Doctor cum laude from Tulane University Law School and a Master of Laws (LLM) in Global Business Law from Columbia University Law School. He received a Recognition of Achievement in International and Comparative Law from the Parker School of Foreign and Comparative Law at Columbia University. David is a certified English/Spanish interpreter and translator and has conversational skills in Hebrew. He is currently involved in two rule- of-law projects under the auspices of UNCITRAL and the World Bank Group, respectively.

AMBASSADOR (RET.) LINO GUTIÉRREZ is the President of Gutiérrez Global LLC, a consulting firm specializing on strategic advice for corporations and individuals interested in investing in Latin America and Europe. He serves as a member of the Foreign Service Grievance Board, is a professional lecturer at The George Washington University, and is on the Board of the Institute for the Study of Diplomacy at Georgetown University. From 2010 to 2022 he served as the Executive Director of the Una Chapman Cox Foundation, which is dedicated to a strong and professional Foreign Service. In his 29-year Foreign Service career, Mr. Gutiérrez served six U.S. Presidents and 11 Secretaries of State. His last posting was as Ambassador to Argentina from 2003-2006. During his tenure, the United States and Argentina signed agreements on counterterrorism and counter-narcotics cooperation, and container security. In 2005, Ambassador Gutiérrez welcomed President Bush to Argentina as he attended the Summit of the Americas. Gutiérrez also served as Acting Assistant Secretary for Western Hemisphere affairs and Principal Deputy Assistant Secretary from 1999-2002. He led the Bureau of Western Hemisphere Affairs on September 11, 2001 and beyond. He accompanied Secretary of State Colin Powell to Lima, Peru for the signing of the Inter-American Democratic Charter and returned with the Secretary's party to the United States on September 11, 2001. From 2002-2003, Gutiérrez occupied the George Kennan chair as International Affairs Advisor at the National War College. In 1996, President Clinton nominated Lino Gutiérrez to serve as Ambassador to Nicaragua. While in Nicaragua, Ambassador Gutiérrez coordinated the relief effort after Hurricane Mitch. Other overseas postings included tours in the Dominican Republic, Portugal, Haiti, France, and the Bahamas. Ambassador Gutiérrez served as Senior Advisor to Secretary of Commerce Carlos Gutiérrez on Cuba transition and Latin America from 2007-09. In 2010, Gutiérrez Global LLC won a five-year State Department

contract to direct and teach a course on the Southern Cone countries at the Foreign Service Institute. From 2008-2018, he was an adjunct professor at Johns Hopkins University. Lino Gutiérrez has been the recipient of the State Department's Distinguished Honor Award, Superior Honor Award (twice) and Meritorious Honor Award (three times). He has also earned the U.S. Army's Civilian Award. A native of Havana, Cuba, Gutiérrez has a master's and bachelor's from the University of Alabama, and also attended the University of Miami.

DISTINGUISHED PROFESSOR EMERITUS JAIME SUCHLICKI was born in Havana, Cuba and came to the United States in 1960. He is currently the Director of the Cuban Studies Institute, Inc., a research group in Coral Gables, FL. He was professor of history at the University of Miami since 1967. From 1989 until 1992 he was the founding executive director of the North/South Center. He edited the Journal of Inter-American Studies from 1982 until 1996. He founded and directed the Research Institute for Cuban Studies at the University of Miami from 1978 until 1992. From May 1999 to 2017, he was the Emilio Bacardi Moreau Distinguished Professor and Director of the Institute for Cuban and Cuban-American Studies at the University of Miami. Dr. Suchlicki holds undergraduate and master's degrees from the University of Miami and a Ph.D. from Texas Christian University. His books on Cuba include University Students and Revolution in Cuba (1969), Cuba: From Columbus to Castro (1975), now revised and updated as Cuba: From Columbus to Castro and Beyond (2002), now in its 5th edition; and, as editor, Cuba, Castro and Revolution (1972), and Cuba: Continuity and Change (1985). He is also the author of Mexico: From Montezuma to the Rise of the PAN (2002) 2nd edition, and Breve Historia de Cuba (2006). Professor Suchlicki is also a highly respected consultant to the public and private sectors.

ANDREW I. RUDMAN is the Director of the Wilson Center's Mexico Institute. Before joining the Wilson Center, Andrew was Managing Director at Monarch Global Strategies (Monarch), a boutique strategic advisory firm located in Washington, D.C. focusing on government relations and market entry/access for companies interested in doing business in Mexico and other Latin American countries. Andrew managed Monarch's healthcare practice and supported clients across a range of sectors and interests. He also writes and speaks on Mexican healthcare policy issues. Prior to joining Monarch in 2014 (then known as Manatt Jones Global Strategies), Mr. Rudman was Deputy Vice-President for the Western Hemisphere at the Pharmaceutical Research and Manufacturers of America (PhRMA) (2007 – 2014) where he was responsible for developing and executing policy advocacy strategies for member companies across the hemisphere with particular focus on Mexico and Brazil. He also covered Canada and Russia at various times during his tenure. Mr. Rudman began his professional career with the U.S. Government and served in the Department of State as a tenured Foreign Service Officer (1991 – 2001) followed by the Department of Commerce (2001 – 2006) where he was Director of the Office of NAFTA and Inter-American Affairs. His government and private sector experience allow him to provide guidance for development of government relations strategies especially for the healthcare industry including drug, device, and supplement manufacturers facing regulatory and market access/approval challenges. Mr. Rudman has a master's degree in Latin American Studies from Tulane University and a bachelor's degree in Government and Spanish from Colby College. He is fluent in Spanish and has a working knowledge of Portuguese.

BRUCE ZAGARIS, ESQ. has advised individuals, entities and governments on international business, especially the regulatory and enforcement aspects. Mr. Zagaris has worked on tax controversy matters, including representing individuals on voluntary disclosures, audits, and litigation, as well as consulting and serving as an expert witness in criminal trials for defendants and the U.S. government. Since 1981, he has also represented foreign governments in international tax and financial services, including advising and helping negotiate income tax, tax information exchange agreements, and bilateral investment treaties. His practice includes counseling on a wide variety of criminal, especially white collar, work. He has handled evidence gathering and extradition cases and cases involving prisoner transfer applications. His criminal work has included counseling on extradition and international evidence gathering cases, testifying as an expert in international criminal cases involving money laundering and tax crimes, and counseling of witnesses for grand jury investigations. Since 1985, he has edited the International Enforcement Law Reporter, a monthly publication. His practice has included a substantial amount of money movement issues, especially international ones. He has counseled defendants in criminal cases and served as a consultant and expert witness for criminal defendants. His work includes advising businesses on developing and implementing anti-money laundering due diligence plans. He has trained prosecutors, regulatory, and law enforcement officials on prosecuting money laundering and recovery of assets. Mr. Zagaris is fluent in Spanish and Portuguese and has a working knowledge of French.